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PRIVACY MODEL BILL

AN ACT to make provision for the promotion and protection of the privacy of individuals, and for connected matters

BE IT ENACTED by the Parliament of [*name of country*] as follows:

PART I

PRELIMINARY

- Short title 1. This Act may be cited as the Privacy Act, [*year of enactment*].
- Commencement 2. This Act shall come into operation on a day to be appointed by the Minister, by Order published in the *Gazette*.
- Object of Act 3. The object of this Act is to make provision for the collection, holding, use, correction and disclosure of personal information in a manner that recognises the right of privacy of individuals with respect to their personal information.
- Interpretation 4. In this Act -
- “administrative purpose”, in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual;
- [“Commissioner” means the Privacy Commissioner appointed under section 15];*
- “correct” in relation to personal information, means to alter that information by way of correction, deletion, or addition; and “correction” has a corresponding meaning;
- “document” means any medium in which information is recorded, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;
- “Minister” means the Minister who has been assigned responsibility for [*information/public administration*] under the Constitution;
- “personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing –

- (a) information relating to the race, national or ethnic origin, religion, age or marital status of the individual;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, fingerprints or blood type of the individual;
- (e) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual;
- (f) correspondence sent to a public authority by the individual that is explicitly or implicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence; or
- (g) the views or opinions of any other person about the individual;

“public authority” includes –

- (a) a House of Parliament or a committee of any House of Parliament;
- (b) the Cabinet as constituted under the Constitution;
- (c) a Ministry, a department or division of a Ministry, or the private office of a Minister, wherever located;
- (d) a local authority;
- (e) a public statutory corporation or body;
- (f) a body corporate or an incorporated body established for a public purpose, which is owned or controlled by the state;
- (g) any other body designated by the Minister by regulation made under this Act, to be a public authority for the purposes of this Act.

Saving of certain other enactments 5. This Act shall not affect the operation of any enactment that makes provision with respect to the collection, holding, use, correction or disclosure of personal information and is capable of operating concurrently with this Act.

Act to bind state 6. This Act shall bind the state.

PART II

COLLECTION, USE, DISCLOSURE AND RETENTION OF PERSONAL INFORMATION

Collection of personal information 7.(1) A public authority shall not collect personal information unless –

- (a) the information is collected for a lawful purpose directly related to a function or activity of the authority; and
- (b) the collection of the information is necessary for, or directly related to, that purpose.

(2) A public authority shall not collect personal information -

- (a) by unlawful means; or
- (b) by means that, in the circumstances of the case -
 - (i) are unfair; or
 - (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Source of personal information 8.(1) A public authority shall, subject to subsection (3), collect personal information directly from the individual concerned.

(2) At or before the time, or if that is not practicable, as soon as practicable after, a public authority collects personal information under subsection (1), the authority shall take such steps as are, in the circumstances, reasonable to ensure that the individual concerned is aware of -

- (a) the purposes for which the information is being collected;
- (b) the fact that the collection of the information is authorised or required by or under law, if such collection is so authorised or required; and
- (c) the intended recipients of the information.

(3) A public authority is not obliged to comply with subsection (1) where -

- (a) the information is publicly available information;
- (b) the individual concerned authorises the collection of the information from someone else;
- (c) non-compliance will not prejudice the interests of the individual concerned;
- (d) non-compliance is necessary -
 - (i) for the prevention, detection, investigation, prosecution or punishment of any offence or breach of law;
 - (ii) for the enforcement of a law imposing a pecuniary penalty;
 - (iii) for the protection of public revenue;
 - (iv) for the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
 - (v) in the interests of national security, [national] defence or international relations;

- (e) compliance would prejudice the purpose of the collection; or
- (f) compliance is not reasonably practicable in the circumstances of the particular case.

Accuracy etc of personal information to be checked before use

9. Where a public authority holds personal information, having regard to the purpose for which the information is proposed to be used, it shall not use that information without taking such steps as are, in the circumstances, reasonable to ensure that, the information is complete, accurate, up to date, relevant and not misleading.

Limits on use of personal information

10. Subject to section 12, where a public authority holds personal information that was collected in connection with a particular purpose, it shall not use that information for any other purpose unless –

- (a) the individual concerned authorises the use of the information for that other purpose;
- (b) use of the information for that other purpose is authorised or required by or under law;
- (c) the purpose for which the information is used is directly related to the purpose for which the information was collected;
- (d) the information is used -
 - (i) in a form in which the individual concerned is not identified; or
 - (ii) for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned;
- (e) the authority believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or other person, or to public health or safety; or
- (f) use of the information for that other purpose is necessary -
 - (i) for the prevention, detection, investigation, prosecution or punishment of any offence or breach of law;
 - (ii) for the enforcement of a law imposing a pecuniary penalty;
 - (iii) for the protection of public revenue;
 - (iv) for the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
 - (v) in the interests of national security, [national] defence or international relations.

Limits on disclosure of personal information

11.(1) Subject to section 12, where a public authority holds personal information, it shall not disclose the information to a person, body or agency (other than the individual concerned), unless -

- (a) the individual concerned has expressly or impliedly consented to the disclosure;
- (b) the disclosure of the information is required or authorised by or under law;

- (c) the disclosure of the information is one of the purposes in connection with which the information was collected, or is directly connected to that purpose;
- (d) the individual concerned is reasonably likely to have been aware or made aware under section 8 (2)(c) that information of that kind is usually passed on to that person, body or agency;
- (e) the information is to be disclosed -
 - (i) in a form in which the individual concerned is not identified; or
 - (ii) for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (f) the authority believes on reasonable grounds that disclosure of the information is necessary -
 - (i) to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or other person, or to public health or safety;
 - (ii) for the prevention, detection, investigation, prosecution or punishment of any offence or breach of law;
 - (iii) the enforcement of a law imposing a pecuniary penalty;
 - (iv) the protection of public revenue;
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
 - (vi) in the interests of national security, [national] defence or international relations.

(2) Any person, body or agency to whom personal information is disclosed under subsection (1) shall not use or disclose the information for a purpose other than the purpose for which the information was given to that person, body or agency.

Condition for use or disclosure of personal information

12. A public authority shall only use or disclose personal information under section 10 or section 11, where such use or disclosure would not amount to an unreasonable invasion of privacy of the individual concerned, taking into account the specific nature of the personal information and the specific purpose for which it is to be so used or disclosed.

Storage and security of personal information

13. Where a public authority holds personal information, it shall ensure that -

- (a) the information is protected, by such security safeguards as is reasonable in the circumstances to take, against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) where it is necessary for the information to be given to a person, body or agency in connection with the provision of a service to the authority, everything reasonably within the power of the authority is done to prevent unauthorised use or disclosure of the information.

Retention and disposal of personal information 14.(1) Where a public authority uses personal information for an administrative purpose, it shall retain the information for such period of time after it is so used as may be prescribed by regulation in order to ensure that the individual concerned has a reasonable opportunity to obtain access to the information.

(2) Subject to subsection (1) and this Act, the Minister shall prescribe by regulation, guidelines for the retention and disposal of personal information held by a public authority.

Correction of personal information 15. (1) Where a document of a public authority to which access has been given under any enactment, contains personal information of a person and that person claims that the information –

- (a) is incomplete, incorrect or misleading; or
- (b) not relevant to the purpose for which the document is held,

the public authority may, subject to subsection (2), on the application of that person, amend the information upon being satisfied of the claim.

(2) An application under subsection (1) shall –

- (a) be in writing; and
- (b) as far as practicable, specify:
 - (i) the document or official document containing the record of personal information that is claimed to require amendment;
 - (ii) the information that is claimed to be incomplete, incorrect or misleading;
 - (iii) whether the information is claimed to be incomplete, incorrect or misleading;
 - (iv) the applicant's reasons for so claiming; and
 - (v) the amendment requested by the applicant.

(3) To the extent that it is practicable to do so, the public authority shall, when making any amendment under this section to personal information in a document, ensure that it does not obliterate the text of the document as it existed prior to the amendment.

(4) Where a public authority is not satisfied with the reasons for an application under subsection (1), it may refuse to make any amendment to the information and inform the applicant of its refusal together with its reasons for so doing.

[PART III

PRIVACY COMMISSIONER

*Office of Privacy
Commissioner*

16.(1) *For the purposes of this Act, there is hereby established the office of Privacy Commissioner.*

(2) *The Privacy Commissioner shall be appointed by the [President] upon the recommendation of the Minister, subject to such terms and conditions as may be specified in the instrument of appointment.*

Tenure of office

17. (1) *A person appointed as Privacy Commissioner shall hold office during good behaviour for a period of five years and shall, at the expiration of such period, be eligible for reappointment.*

(2) *A person appointed as Privacy Commissioner may resign from office by writing under his or her hand addressed to the [President] and shall in any case vacate office on attaining the age of sixty-five years.*

(3) *The Privacy Commissioner may be removed from office only for inability to discharge the functions of office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.*

Disqualification for appointment etc

18. (1) *No person shall be qualified for appointment to the office of Privacy Commissioner if that person -*

- (a) is a Member of Parliament;*
- (b) is a member of a local authority;*
- (c) is an undischarged bankrupt; or*
- (d) has at any time been convicted of any offence involving dishonesty or moral turpitude.*

(2) *The Privacy Commissioner shall vacate office if any circumstances arise that, if he or she were not Privacy Commissioner, would cause him or her to be disqualified for appointment as such, by virtue of subsection (1) of this section.*

Restriction on employment

19. *A person appointed as Privacy Commissioner shall be a full-time officer and -*

- (a) shall not be employed in any other capacity during any period in which the person holds office as Privacy Commissioner; and*
- (b) shall not, at any time after that person has ceased to hold office as Privacy Commissioner, be eligible for appointment in the public service.*

Filling of vacancy

20. (1) *Where -*

- (a) a vacancy arises in the office of Privacy Commissioner; or*
- (b) by reason of illness, absence from the country or other sufficient cause, a person appointed as Privacy Commissioner is unable to perform his or her functions under this Act,*

the [President] may, upon the recommendation of the Minister, appoint a suitable person to act in that office or perform those functions, as the case may be.

Functions of Privacy Commissioner

21. *The functions of the Privacy Commissioner shall be -*

- (a) to monitor compliance by public authorities of the provisions of this Act;*
- (b) to provide advice to public authorities on their obligations under the provisions, and generally on the operation, of this Act;*

- (c) *to receive and investigate complaints about alleged violations of the privacy of persons and in respect thereof may make reports to complainants;*
- (d) *to inquire generally into any matter, including any enactment or law, or any practice, or procedure, whether governmental or non-governmental, or any technical development, if it appears to the Commissioner that the privacy of the individual is being, or may be, infringed thereby;*
- (e) *for the purpose of promoting the protection of individual privacy, to undertake educational programmes on the Commissioner's own behalf or in co-operation with other persons or authorities acting on behalf of the Commissioner;*
- (f) *to make public statements in relation to any matter affecting the privacy of the individual or of any class of individuals;*
- (g) *to receive and invite representations from members of the public on any matter affecting the privacy of the individual;*
- (h) *to consult and co-operate with other persons and bodies concerned with the privacy of the individual;*
- (i) *to make suggestions to any person in relation to any matter that concerns the need for, or the desirability of, action by that person in the interests of the privacy of the individual;*
- (j) *to undertake research into, and to monitor developments in, data processing and computer technology to ensure that any adverse effects of such developments on the privacy of individuals are minimised, and to report to the Minister the results of such research and monitoring;*
- (k) *to examine any proposed legislation (including subordinate legislation or proposed policy of the Government that the Commissioner considers may affect the privacy of individuals, and to report to the Minister the results of that examination;*
- (l) *to report (with or without request) to the Minister from time to time on any matter affecting the privacy of the individual, including the need for, or desirability of, taking legislative, administrative, or other action to give protection or better protection to the privacy of the individual;*
- (m) *to report to the Minister from time to time on the desirability of the acceptance, by [name of country] of any international instrument relating to the privacy of the individual;*
- (n) *to gather such information as in the Commissioner's opinion will assist the Commissioner in discharging the duties and performing the functions of the Commissioner under this Act;*
- (o) *to do anything incidental or conducive to the performance of any of the preceding functions; and*
- (p) *to exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment.*

Staff and funds

22. (1) There shall be appointed such officers and employees as may be necessary to enable the Privacy Commissioner to discharge the duties and perform the functions of such Commissioner under this Act.

(2) Parliament shall appropriate annually, for the use of the Privacy Commissioner, such sums of money as may be necessary for the proper exercise, performance and discharge, by the Commissioner, of his or her powers, duties and functions under this Act.]

PART IV

INVESTIGATION OF COMPLAINTS

Receipt and investigation of complaints	<p>23.(1) Subject to this Act, the [Commissioner] shall receive and investigate a complaint from any person in respect of any matter relating to -</p> <ul style="list-style-type: none">(a) the collection, retention or disposal of personal information by a public authority; or(b) the use or disclosure of personal information held by a public authority; <p>(2) Nothing in this Act precludes the [Commissioner] from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorised by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorised.</p> <p>(3) Where the [Commissioner] is satisfied that there are reasonable grounds to investigate a matter under this Act, the [Commissioner] may initiate a complaint in respect thereof.</p>
Mode of complaint	<p>24.(1) A complaint under this Act shall be made to the [Commissioner] in writing unless the [Commissioner] authorises otherwise.</p> <p>(2) The [Commissioner] shall give such reasonable assistance as is necessary in the circumstances to enable any person who wishes to make a complaint to the [Commissioner], to put the complaint in writing.</p>
Notice of investigation	<p>25. Before commencing an investigation of a complaint under this Act, the [Commissioner] shall notify the chief executive officer of the public authority concerned of the intention to carry out the investigation and shall inform the chief executive officer of the substance of the complaint.</p>
Regulation of procedure	<p>26. Subject to this Act, the [Commissioner] may determine the procedure to be followed in the discharge of any duty or the performance of any function of the [Commissioner] under this Act.</p>
Investigations in private	<p>27.(1) Every investigation of a complaint under this Act by the [Commissioner] shall be conducted in private.</p> <p>(2) In the course of an investigation of a complaint under this Act by the [Commissioner], the person who made the complaint and the chief executive officer of the public authority concerned shall be given an opportunity to make representations to the [Commissioner], but no one is entitled as of right to be present during, to have access to, or to comment on, representations made to the [Commissioner] by any other person.</p>
Powers of [Privacy Commissioner] in carrying out investigations	<p>28.(1) The [Commissioner] has, in relation to carrying out of the investigation of any complaint under this Act, power -</p>

- (a) to summon and enforce the appearance of persons before the [Commissioner] and compel them to give oral or written evidence on oath and to produce such documents and things as the [Commissioner] deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
- (b) to administer oaths;
- (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the [Commissioner] sees fit, whether or not the evidence or information is or would be admissible in a court of law;
- (d) to enter any premises occupied by any public authority on satisfying any security requirements of the authority relating to the premises;
- (e) to converse in private with any person in any premises entered pursuant to paragraph(d) and otherwise carry out therein such inquiries within the power of the [Commissioner] under this Act as the [Commissioner] sees fit; and
- (f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph(d) containing any matter relevant to the investigation.

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the [Commissioner] may, during the investigation of any complaint under this Act, examine any information recorded in any form held by a public authority and no information that the [Commissioner] may examine under this subsection may be withheld from the [Commissioner] on any grounds.

(3) Any document or things produced pursuant to this section by any person or public authority shall be returned by the [Commissioner] within ten days after a request is made to the [Commissioner] by that person or authority, but nothing in this subsection precludes the [Commissioner] from again requiring its production in accordance with this section.

Findings and
recommendations of
[Privacy
Commissioner]

29.(1) If, on investigating a complaint under this Act in recommendations in respect of personal information, the [Commissioner] finds that the complaint is well-founded, the [Commissioner] shall provide the chief executive officer of the public authority that has control of the personal information with a report containing -

- (a) the findings of the investigation and any recommendations that the [Commissioner] considers appropriate; and
- (b) where appropriate, a request that, within a time specified therein, notice be given to the [Commissioner] of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.

(2) The [Commissioner] shall, after investigating a complaint under this Act, report to the complainant the results of the investigation, but where a notice has been requested under paragraph (1)(b), no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the [Commissioner].

(3) Where a notice has been requested under paragraph (1)(b) but no such notice is received by the [Commissioner] within the time specified therefor or the action described in the notice is, in the opinion of the [Commissioner], inadequate or inappropriate or will not be taken in a reasonable time, the [Commissioner] shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.

(4) Where, following the investigation of a complaint, the [Commissioner] has made recommendations to a public authority under subsection (1), and the decision of the public authority is –

- (a) not to implement the recommendations; or
- (b) to implement the recommendations, but, in the opinion of the [Commissioner], not within a reasonable time or in a manner that is inadequate or inappropriate,

the complainant is entitled to seek judicial review of the decision of the public authority.

Review of compliance with certain provisions

30.(1) The [Commissioner] may, from time to time at the discretion of the [Commissioner], carry out an investigation in respect of personal information under the control of public authority to ensure compliance with sections 7 to 14 of this Act.

(2) Sections 25 to 28 apply, where appropriate and with such modifications as the circumstances require, in respect of investigations carried out under subsection (1).

(3) If, following an investigation under subsection (1), the [Commissioner] considers that a public authority has not complied with section 7 to 14 of this Act, the [Commissioner] shall provide the chief executive officer of the authority with a report containing the findings of the investigation and any recommendations that the [Commissioner] considers appropriate.

(4) Any report made by the [Commissioner] under subsection (3) may be included in a report made to Parliament pursuant to this Act.

Report to Parliament

31. The [Commissioner] shall, as soon as practicable after the thirty-first of December of each year, prepare a report on the activities of the office during that year and cause a copy of the report to be laid before Parliament.

Security requirements	32. The [Commissioner] and every person acting on behalf or under the direction of the [Commissioner] who receives or obtains information relating to any investigation under this Act or any other Act of Parliament shall, with respect to the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.
Confidentiality	33. Subject to this Act, the [Commissioner] and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in carrying out duties and performing functions under this Act.
Protection of [Commissioner] etc from criminal or civil proceedings	34.(1) Notwithstanding the provisions of section 37, no criminal or civil proceedings lie against the [Commissioner], or against any person acting on behalf or under the direction of the [Commissioner], for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise, discharge, or performance of any power, duty or function of the [Commissioner] under this Act. (2) For the purposes of any law relating to libel or slander, (a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation carried out by or on behalf of the [Commissioner] under this Act is privileged; and (b) any report made in good faith by the [Commissioner] under this Act is privileged.
Obstruction	35.(1) No person shall obstruct the [Commissioner] or any person acting on behalf or under the direction of the [Commissioner] in the discharge and performance the [Commissioner's] duties and functions under this Act. (2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding [.....].

PART V

MISCELLANEOUS

Delegation by chief executive officer of public authority	36. The chief executive officer of a public authority may, subject to section 38(2)(b), by order, designate one or more officers or employees of that authority to exercise, discharge or perform any of the power, duties or functions of chief executive officer under this Act that are specified in the order.
Proceedings where disclosure was in good faith	37. In any civil or criminal proceedings against a public authority for the disclosure of any personal information pursuant to this Act, or for any consequences that flow from that disclosure, it shall be an absolute answer that such disclosure was made in good faith.

Regulations

38.(1) The Minister may make regulations for giving effect to the purpose of this Act and for prescribing anything required or authorised by this Act to be prescribed.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may prescribe -

- (a) guidelines for the disposal of personal information held by a public authority;
- (b) officers who may make decisions on behalf of a public authority.

(3) All regulations made under this Act shall be laid before Parliament as soon as may be after the making thereof and shall be subject to [negative/affirmative] resolution.