

**FINAL REPORT**

**CONSULTANCY FOR THE PROVISION OF A LEGAL  
FRAMEWORK TO SUPPORT THE NIDS PROJECT**

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## **PART 1:**

### **Overview of the National Identification Systems Project**

#### **1. Background**

The National Identification System (NIDS) project aims to develop a national identification system that will result from the creation of a database that will store personal identity information about all citizens and ordinarily resident persons. By so doing problems associated with criminal activities facilitated by fraudulent use of multiple identities are expected to be better tackled by law enforcement agencies while cardholders will be afforded a convenient and reliable means to verify their identification as required in the conduct of their daily lives.

The NIDS is also expected to assist in the furtherance of the 2030 Vision, specifically the empowerment of Jamaicans to achieve their fullest potential, ensuring that the society is secure, cohesive and just and contributing to the prosperity of the economy.

The objectives of the national registration and identification programme are as follows:

1. assist with governance and distribution of socio-economic benefits
2. identification of citizens and lawful residents;
3. assist in citizen security
4. assist in prevention of identity fraud
5. assist law enforcement

The stated policy goal and vision of the NIDS is that the National Identification System will become <sup>1</sup>“... the primary source of verifiable and authentic identity assurance for every citizen and persons ordinarily resident in Jamaica.” The NIDS policy document describes the key outputs for the implementation of the NIDS as:

- (1) issue each citizen or persons ordinarily resident in Jamaica, a lifetime unique national identification number (NIN);
- (2) establish a reliable database of Jamaican citizens and other individuals with a NIN as the primary identifier;
- (3) issue each registered person with a multi-purpose identification card;
- (4) provide an effective and convenient system of ID verification and authentication;
- (5) improve governance and management of national, social, economic and security programmes;
- (6) strengthen immigration and border control arrangements

## **2. The Conduct of the Legal Consultancy**

In order to determine the appropriate legal framework required to support the NIDS, extensive desk research was conducted into:

- (a) proposals that were made over the years since 1982 by previously appointed committees;
- (b) steps taken by other countries to determine the legislation appropriate to their requirements for a national identification system;

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<sup>1</sup> The National Identification System (NIDS) Policy Document, page 13; September 2014

- (c) laws of both civil law and common law countries that have established national identification systems;
- (d) the National Registration Bill and its history since being tabled in parliament in December 2000;
- (e) the comments of the Attorney General's Chambers, the Legal Reform Department and the Office of the Parliamentary Counsel on the National Registration Bill;
- (f) the recommendations of the Joint Select Committee of Parliament to examine the National Registration Bill;
- (g) international policies and principles on privacy and data protection;

In addition to desk research, there was consultation with key GOJ agencies such as the Registrar General's Department, the Electoral Office of Jamaica, eGov Jamaica Limited, the Ministry of Finance, the Ministry of Labour and Social Security and the Ministry of Justice mostly in a group setting.

Library research was also conducted particularly the Hansard of the proceedings in Parliament when the National Registration Bill was discussed.

### **Summary of Phase I Findings**

#### **The key focus considered for the legal consultancy were:**

- Registration of citizens and resident non-citizens
- Data storage and management
- Data sharing
- Sanctions for illegal use of information
- Creation of appropriate regulatory vehicle
- Creation of unique identification number (NIN)

- Identification cards
- Protection of individual right to privacy

**New legislation will be required for:**

- establishment of the NIDS
- data protection
- data sharing across GOJ entities
- protecting the privacy of individuals

**Amendments will be required to:**

- the Registration (Births and Deaths) Act
- Representation of the People Act
- Fingerprints Act
- Forgery Act
- Marriage Act
- Access to Information Act
- Justice Protection Act

**Phase II Findings**

**Policy Issues yet to be decided:**

- the scope of registration of newborns;
- the disclosure of personal information by the RGD to the GovNet;
- the inclusion of persons under witness protection who have been given a new identity;
- the registration of divorces by the RGD;
- the registration of a mentally ill person;
- the registration of persons who are legally adopted;

- legislatively stipulate the public services to be accessed on presentation of the NIDS Identification Card;
- to whom or to what office will the NIDS management answer? The Electoral Commission? The Parliament?

### **NIDS Policy Document**

It is noted that amendments are being made to the NIDS Policy document and it is intended that the legal consultant will make changes to the reports consistent with the revised policy.

### **Data protection**

Given the extreme importance of the data protection and disclosure of personal information protocols, it is being proposed that special provisions be included in the NIDS legislation specific to the NIDS. To that end the Personal Information Protection Act of British Columbia is examined in this report with a view to putting it forward as a model that could guide the insertion of appropriate provisions in the drafting instructions for the NIDS Bill.

### **Data Sharing**

Similarly, the lack of a data sharing policy to govern the disclosure of personal information between public bodies is an issue that directly affects the viability and public acceptance of the NIDS. The Freedom of Information and Protection of Privacy Act of Canada is being examined and put forward as a model for consideration. It is recommended that in the absence of data sharing legislation, provisions from the Canadian Act be inserted into the NIDS legislation to ensure that guidance is provided to public bodies at the operational stage of the NIDS.



## **PART 11**

### **THE JOURNEY TO THE NIDS**

#### **The 1982 Advisory Committee**

In 1982 an advisory committee was appointed by the then Minister of Labour. Its mandate was to examine various aspects of the policy decisions taken by a bi-partisan Parliamentary Committee for implementing a National Registration System and to recommend matters which would form the basis for legislation to bring the system into operation.

The Committee was chaired by the late Professor Gladstone Mills and after concluding its work it produced a length report of matters it considered and its recommendations for implementation.

In summary the Committee recommended as follows<sup>2</sup>:

The objectives of the system were:

- (a) to establish a system of positive identification of all persons in Jamaica 15 years and over who are Jamaican citizens or foreign nationals ordinarily resident in Jamaica, foreign diplomats excepted;
- (b) to provide a standard identification card bearing a photograph and such other information as is necessary to reasonably establish the identity of the holder; a national registration number under which by itself, conveys specific information regarding the individual; and comprehensive data regarding each registrant which should be appropriately stored for easy accessibility for security and other purposes.

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<sup>2</sup> Report of the Advisory Committee Appointed to Recommend Legislation for the Establishment of a National Registration System, 1983

In order to achieve those objectives it recommended the following steps be taken:

1. The data to be collected about each person should be :- full name, date and place of birth, gender, nationality, name and place of birth of each parent, marital status, name of spouse whether alive or deceased, address, occupation, height, complexion any marks or scars. A photograph and thumb print should be a mandatory requirement of the registration process.
2. Registration should be conducted on a house to house basis and the resulting identification cards should be as tamper proof as possible and contain the registrant's name, date of birth, nationality, height, distinguishing marks, photograph, signature and national registration number, date of issue and date of expiry. The signature of the authorising officer was also to be displayed on the card.
3. A system of continuous registration once a child attained 15 years of age and the card issued was to be a different colour from that issued to a person of 18 years and older.
4. registration was to be compulsory
5. identification cards should be carried at all times and a minor offence is committed by not producing a card when an authorised person requested to examine the card
6. foreign nationals domiciled in the island to be issued a card with a different colour from that of citizens
7. the administration and maintenance of the national registration system would be the responsibility of the Electoral Advisory Committee.

Following on the publication of the report, the relevant GOJ agencies and departments developed proposals for taking the project forward, significantly, proposals were made for the responsibility for the registration of births deaths marriages etc be removed from the Registrar-General's department and be placed with the organisation to be given responsibility for the national registration system<sup>3</sup>.

A Cabinet Submission was accordingly prepared in 1993 seeking approval for the issue of drafting instructions for legislation to be drafted consistent with the recommendations of the Electoral Advisory Committee as well as the report of above-quoted committee.

The response of the Attorney General's Chambers to be draft Cabinet Submissions cautioned that linking the national registration process with that of the electoral process could be problematic, particularly as non-citizens are to be included. This category is not usually included in the electoral process. The opinion recommended that the two systems be kept separate and apart.

Support was however given for the proposal to link the national registration system with that of the registration of births and deaths.

Sometime in 1996 a draft National Registration Bill was prepared by the Office of the Parliamentary Counsel and after undergoing the usual review process by the Attorney General's Chambers and the Legislation Committee of the Cabinet, the Bill was approved for tabling in Parliament in December 2000.

#### **THE NATIONAL REGISTRATION BILL<sup>4</sup>:**

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<sup>3</sup> Correspondence in files at the Legal Reform Department

<sup>4</sup> Full text in Appendix

The National Registration Bill was tabled in the House of Representatives in December 2000 and taken at the first sitting of the House in January 2001. The tabling of the Bill was the culmination of 17 years of bi-partisan Parliamentary efforts and extensive research and consultations between senior public officers from the Ministries of Health, Justice, Labour and Social Security, the Attorney-General's Chambers, the Legal Reform Department and the Chief Parliamentary Counsel.

A Joint Select Committee was appointed by the Parliament to examine the Bill in January 2001 however 2001 was described as a busy legislative year and the Committee was not able to begin its meetings until January 2002. The Committee held three meetings on; January 24, 2002, February 28, 2002 and March 26, 2002.

In summary, the Joint Select Committee's findings and recommendations were<sup>5</sup>:

1. the Bill did not stipulate that the name of the father of a child would included in the information to be collected at registration and the father of the child was necessary and appropriate; The decision taken was that all children born in Jamaica should be registered with the name of both parents. The Registration of Births and Deaths Act should be amended to facilitate the compulsory registration of the name of fathers subject to advice being received from the Attorney General's Chambers on the matter;
2. Separate registers should be established for citizens and persons ordinarily resident in the island;
3. the Bill should include a definition of ordinarily resident;
4. the Bill should state that a birth certificate had to be produced by each citizen as a prerequisite for registration. Any person whose birth was

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<sup>5</sup> Unpublished reports from the files at the Legal Reform Department

never registered would be required to apply to the Registrar General for late registration of their birth before applying for registration under the national registration system.

5. Any change of name by a registrant should be referred to the Registration Commission by the person concerned and the Registrar General and a new identification card should be issued to the person with both the old and new name contained on the face of it.
6. There should be no charge for the first card issued but there should be a charge for change, renewal or replacement;
7. the Bill should empower the Director General to make alterations to the national register as necessary upon a change of information (such as a change of name by deed poll) and in any other circumstances, (such a new identity being obtained under the witness protection programme) the Commission is to be empowered to instruct the Director General to make an alteration to the register accordingly. A woman who changed her surname after marriage would have to apply for a new card bearing the new surname on presentation of the marriage certificate.

The Joint Select Committee closed its sittings after the March 26, 2002 meeting however the writer was not able to determine whether its recommendations were adopted by the House only a draft of the Committee's report dated May 2002 has been perused.

The issues raised by the Joint Select Committee, particularly that of the compulsory registration of fathers was examined by the Legal Reform Department, the Attorney General's Chambers and the Registrar-General's department. Proposals for the amendment of the Bill consistent with the Joint Select Committee's recommendations were also developed culminating in a

submission being made to the Cabinet in 2006 for the implementation of the National Registration System.

The submission proposed to the Cabinet that the Bill be withdrawn from the Parliament and be re-submitted to the Parliamentary Counsel with instructions for its redrafting. Among the changes recommended to be made were:

1. new provisions limiting the use of the TRN database to bio-data only and amend the relevant tax laws to permit its use;
2. allowing for the disclosure of personal information to prescribed persons;
3. allowing for the compulsory registration of all individuals and incorporated entities;
4. the amendment to the Companies Act to:
  - allow the Registrar to assign a national registration number to companies;
  - allow the Registrar-General to register and assign a national registration number;
  - allow the Tax Administration to register and assign a number
  - allow the Ministry of labour (Immigration Services) to register and assign a national registration number.

The submission also sought cabinet approval of a proposal for the implementation of the NIDS to be put in effect after the legislation was enacted.

The proposal for implementation provided:

- implementation was targeted for the 2005/2006 financial year
- the Taxpayer Registration Number (TRN database was to be used to activate the National Registration System database;
- Fiscal Services Limited (now eGov) creates the algorithm for the TRN numbering system and would also use that algorithm for the National Registration System;

- A cross link between GOJ agencies was to be facilitated so that organisations such as the Electoral Office can access the database to verify the information in its electoral register;
- Organisations would be allowed limited access to the database as necessary for their need for identification information while protecting the privacy of individuals;
- The national registration number would be a requirement for individuals and incorporated entities to transact business with government agencies and departments;
- The Registrar-General's Department (RGD), the Office of the Registrar of Companies (ORC), the Electoral Office of Jamaica (EOJ); the National Insurance Scheme (NIS); the National Health Fund (NHF) and Tax Administration would continue to use the numbers those agencies generate for its own purposes but those numbers would be secondary to the national registration number and should only be issued after a national registration number has been issued;
- The RGD; ORC; Passport Immigration and Citizenship Agency (PICA); the Ministry of Labour and Tax Administration Department would be empowered to assign numbers as these agencies already have a wide network of registration centres throughout the island;
- The RGD would assign when it registers births while the ORC will assign to legal entities registered to operate in the island. The Ministry of Labour would assign to individuals issued work permits while Tax Administration would issue to TRN applicants;
- The EOJ would be asked to produce the identification cards;
- A technical team would be formed to evaluate the proposed implementation plan and conduct a detailed requirements analysis that

include technical specifications for user requirements, infrastructure, data specifications, system design and costing;

- The main users of the database would be GOJ Ministries, agencies and departments.

Cabinet gave its approval for the proposal for implementation of the national registration system, the amendment to existing laws and the amendments to the National Registration Bill in March 2006.

A re-formulation of the proposals for the National Registration System subsequent to the March 2006 Cabinet decision resulted in the development of the National Identification System (NIDS) the notable change being the emphasis placed on Identification rather than Registration.



### **PART III**

## **The Legislation to Establish the NIDS**

Before considering what is required for the establishment and proper functioning of the NIDS, it is necessary to examine the existing legislative framework and to assess its adequacy in that regard.

### **Overview of the Existing Legislative Framework**

The Constitution, specifically Chapter III as amended, guarantees each citizen rights that are universally regarded as basic human rights that are necessary in a modern free society. The rights that are significant for the NIDS are:

The right of everyone to-

- (i) protection from search of the person and property;
  - (ii) respect for and protection of private and family life, and privacy of the home; and
  - (iii) protection of privacy of other property and of communication
- The protection of property rights

Any enactment by the Parliament has to be consistent with the Constitution and as such careful attention has to be given to ensuring that privacy and property rights are not infringed by the NIDS legislation save and except as is permitted.

The primary legislation that provides for the collection of personal, demographic, biometric or photographic information from citizens are:

- Registration (Births and Death) Act
- The Marriage Act
- Passport Act

- Representation of the People Act
- Statistics Act
- Revenue Administration Act

It is to be noted that only the Representation of the People Act provides for the collection of all categories of personal, demographic, biometric or photographic for identification purposes. While the Revenue Administration Act permits the tax authority to collect the information about taxpayers that it deems necessary, the issued TRN number and card are intended to assist in the collection, storage and retrieval of tax compliance information rather than to verify the identity of the taxpayer when he presents himself at the tax collectorate.

Similarly, the Registrar-General of Births, Deaths and Marriages operates a civil registry and personal information is collected on each citizen and is available to the public. A member of the public may apply for the issue of a certificate as evidence of the registration of birth, marriage or death.

The Electoral Commission derives its authority to collect personal information about citizens who register to vote in general and parochial elections from the Representation of the People Act. The Act empowers the Commission to issue an identification card to registrants in order to satisfy itself of the identity of persons who present themselves as being on the voter's list at polling stations during elections. Significantly, the collection of biometric information by the Electoral Commission has not resulted in significant opposition from the public (although there was initially some expression of concern by the public), nor have any reports been made that the writer has found that would reflect a lack of confidence in the integrity of the data storage and protection systems in use.

A significant weakness in the existing framework is the absence of data protection, privacy protection and data sharing legislation. These are necessary safeguards against methods of collection, storage and retrieval of personal information that potentially infringe the rights of citizens and it is strongly recommended that the enactment of laws that will afford protection to each individual be at least contemporaneous with the enactment of the law establishing the NIDS.

## **Review of Relevant Legislation**

### **The Jamaica Constitution**

The Constitution is relevant to the NIDS in two respects, firstly the provisions pertaining to the acquisition of citizenship and secondly, the Charter of Rights and Freedoms.

1. Sections 3-8 of Chapter II of the Constitution set out the basis on which Jamaican citizenship is acquired. The PICA applies the criteria set out in the Constitution in determining whether to grant of citizenship to applicants did not acquire citizenship by having been born in Jamaica. The Jamaica Nationality Act (discussed below) is consistent with the Constitutional provisions.
2. In 2011 the Parliament passed the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 ("the Charter") and by so doing, inserted modern principles of human rights and freedoms into the Constitution.

Significantly, the Charter includes at Section 13(3)(j), the right of everyone to:

- (i) protection from search of the person and property;
- (ii) respect for and protection of private and family life, and privacy of the home; and
- (iii) protection of privacy of other property and of communication;

The Charter also explicitly states that the rights conferred on citizens of Jamaica cannot be exempted "...save only as may be demonstrably justified in a free and democratic society". Additionally, any law passed

by Parliament or the grant power to any organ of the state to take any action which abrogates or infringes the rights conferred by the Charter, can be struck down as unconstitutional by the court.

The proposal to compulsorily require citizens to provide personal information as well biometrics for storage on a national database raises privacy issues that can be argued as being in violation of the protection of personal privacy enshrined in the constitution. The question to be answered is in order to show good cause for the violation of individual privacy is whether the compulsory taking of personal information including biometrics for storage on a national database is justified in a free and democratic society.

### **The Evidence Act**

The Evidence Act sets out the basis for the admission of documents in evidence in a court proceeding. While the statute does not specifically define an identification card as a document, Section 22 and Section 31 bears examination.

It is the writer's view that the combined effect of Sections 31 and 22 is that documents issued by the NIDS Commission, being a public entity, such as an identification card can be classified as a public document and as such can be admitted in evidence in the same way that other such documents are admitted.

#### Section 22:

*Whenever by any enactment now in force or hereafter to be in force any certificate, official or public document or documents, or proceeding of any corporation, or joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or the Senate or House of Representatives of this Island, or any Committee of the Senate or House of*

*Representatives or in any judicial proceeding, the same shall respectively be admitted in evidence provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective enactments made or to be hereafter made, without any proof of the seal or stamp where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence*

### Section 31B.

*In this Part-*

*“document” includes, in addition to a document in writing-*

*(a) any map, plan, graph or drawing;*

*(b) any photograph;*

*(c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being re-produced therefrom;*

*(d) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.*

### **The Aliens Act**

The Aliens Act provides for the identification and registration of non-nationals. The Constitution specifies the basis on which a person is to be classified as a citizen and correspondingly, the Act sets out the regime for treating with persons who do not fall within the categories outlined in the Constitution.

The determination of whether a person is lawfully resident in the island is based on the provisions of the Act. The Act treats persons entering the

island who are not citizens as aliens. The PICA maintain a register of aliens and aliens who are deemed to be ordinarily resident will be required to be registered in the NIDS. It will therefore be important to develop rules for determining whether an alien is ordinarily resident in Jamaica. The Act does not define ordinarily resident but it defines 'residence' as "ordinary dwelling-place and, where an alien has more than one dwelling-place, each of such dwelling-places"; and "resident" has a corresponding meaning;

### **Passport Act**

The Passport Act provides for the issue of passports and other categories of travel documents to citizens of Jamaica. For the NIDS, the presentation of a passport issued under the Act is to be regarded as conclusive evidence that the presenter is a citizen and as such is to be included in the national database.

At present the application for the issue of a passport is required to be accompanied by one's birth certificate and the birth certificate is accepted by the Passport and Immigration Agency (PICA) as *prima facie* evidence of the status of citizenship by birth.

### **Immigration Restriction (Commonwealth Citizens) Act**

The Immigration Restriction (Commonwealth Citizens) Act provides a mechanism for citizens of Commonwealth countries to reside in the island if they are able to find employment.

Section 9 of the Constitution lists the countries that apply in the determination of whether a person is a Commonwealth citizen. This list was further expanded by Section 15 of the Jamaican Nationality Act. The Act defines 'domicile' thus:

*"domicile" means the place in which a person has his present home or in which he resides or to which he returns as his place of present permanent abode and not for a mere special or temporary purpose; and a*

*Commonwealth citizen shall not be deemed to have a domicile within the Island for the purposes of this Act unless he has resided therein for at least two years otherwise than under terms of conditional or temporary residence permitted by this Act or any other enactment in force in the Island or as a person under detention in a prison, reformatory, orphanage, mental hospital or leper asylum; and a Commonwealth citizen shall be deemed for the purposes of this Act to have lost his domicile within the Island if he voluntarily go and reside outside the Island (except for a special or temporary purpose) with the intention of making his home outside the Island; and "domiciled" shall have a corresponding meaning;*

This definition clarifies the period after which a Commonwealth citizen can be regarded as domiciled in Jamaica. Additionally the Act provides at Section 2(2) and section 2(3) that a Commonwealth citizen is deemed to belong to the island if:

- (a) he was born in Jamaica to parents who were domiciled or ordinarily resident in Jamaica at the time of his birth;
- (b) he is domiciled in Jamaica;
- (c) he has been ordinarily resident in Jamaica continuously for seven years or more and even if he leaves Jamaica after seven years, he retains his status as long as he has not been ordinarily resident in another Commonwealth country continuously for seven years after leaving Jamaica;
- (d) he became a citizen of Jamaica by registration or naturalization;
- (e) he is a dependant of a person to whom any of (a)-(d) above applies

Based on the provisions of this Act, the category of persons to be included in the database will be expanded to include the category of residents who are Commonwealth citizens domiciled in Jamaica.



The PICA under Section 7 of the Act is empowered to issue a Certificate of Identity to Commonwealth citizens who belong to the island and who intend to leave the island to travel overseas and return to continue their domicile here.

Additionally, under Schedules 1 and 2 of the Regulations to the Act, a Government of Jamaica Identity card is issued to persons leaving the island to take up posts as temporary agricultural workers and recruited workers.

The card includes the right thumb print of the worker in addition to his personal information. It is the view of the writer that the identification card to be issued by the NIDS can satisfy the requirements for the issue of identity card to such workers and can potentially replace the card now being issued by PICA

### **Jamaican Nationality Act**

The Jamaican Nationality Act, in keeping with Section 3-9 of the Constitution, sets out the parameters for the acquisition of Jamaican citizenship. Under the Act citizenship may be acquired by registration in the case of Commonwealth citizens and by naturalization for citizens of other countries.

The jurisdiction to confer citizenship on an applicant rests solely with the Passport, Immigration and Citizenship Agency (PICA) and in the context of the NIDS, evidence of citizenship status provided by PICA should be sufficient for qualification for inclusion in the national identity database.

### **Foreign Nationals and Commonwealth Citizens (Employment) Act**

The Foreign Nationals and Commonwealth Citizens (Employment) Act unlike the Immigration Restriction (Commonwealth Citizens) Act was enacted after independence. The Act defines 'foreign national' as a person who is not a citizen of Jamaica, a Commonwealth citizen or a CARICOM national. A foreign national within the meaning of the Act may or may not be considered as

ordinarily resident in Jamaica and as such may be required to register with the NIDS depending on the nature and duration of their employment in Jamaica.

### **Registration (Births and Deaths) Act**

The Registration (Births and Deaths) Act provides the authority and framework for the collection of data in respect of the birth and death of persons in Jamaica. The Registrar-General, after collecting the information, registers and stores it in a form that facilitates retrieval. The database maintained by the RGD is the largest database of Jamaicans who are citizens by birth.

The NID will be seeking to have the Registrar-General share data contained in the births and death registers. There are no express provisions in the Act that bar the sharing of information in the births and deaths registers with another GOJ entity.

Depending on the role that is to be assigned to the Registrar-General in the collection and registration of data to be entered into the NIDS database, it would be recommended that enabling provisions be inserted into the Act to make it beyond doubt that the Registrar-General is empowered to carry out those functions.

The Act will also require amendment to empower the Registrar-General to collect and submit the information required for the NID to the Registrar of the national identity database.

In the case of reported deaths, the Registrar-General also has to be empowered to submit information NIDS to facilitate the cancellation of the identification card that may have been issued to the deceased.

Another possible amendment to the Act would be for the establishment and maintenance of a register of divorces and registration would be based on the filing by a divorced person of the decree absolute granted by the Supreme

Court. This would be useful for the NIDS as it is desirable for that information to be collected.

### **Representation of the People Act**

The Representation of People Act governs the enumeration of voters and the conduct of general elections. The Act at Part III of the First Schedule sets out in detail the procedure for the registration of voters and the taking of fingerprints and demographic information. The functions provided for in the Act are carried out under the direction and control of the Electoral Commission.

The Electoral Office that is operated by the Commission is the only public agency that collects personal, photographic, demographic and biometric data however the criteria for collection is that the citizen voluntarily supplies the information as they wish to comply with the eligibility criteria for casting their vote during parochial and general elections.

Given the significant expertise of the Electoral office in the registration of citizens, Commonwealth citizens and persons ordinarily resident in Jamaica, the NIDS would benefit from close collaboration.

There are two approaches that can be taken:

- (a) the Electoral Office can be retained on a consultancy basis to use its network of registration centres and staff to register persons for entry into the NID and assign a national identification number automatically generated by the NID to each person so registered. This means that the database of electors maintained by the Electoral Office will not be shared with the NID and as such no amendment to the Representation of the People Act will be required;
- (b) the Electoral Office can share the information it has collected and stored on its database on electors with the NID and by that data sharing, the NID

will have uploaded the data and assigned a national identification number to each person.

To facilitate this data sharing, it will be necessary to amend the Act to authorise the Chief Electoral Officer to share the information in that database as well as to carry out some of the functions of the Registrar to collect information required for the national identity database.

Specifically, Section 114 of the Act provides that fingerprints taken can only be used for the purposes of registering voters or to facilitate voting. This means that the Director of Elections would not be able to share biometric information stored in his register and as such if delegated to take biometric information for the national identity database.

The Act does not expressly prohibit the disclosure of some categories of personal information similarly collected for registration for the purposes of voting. Notwithstanding it is recommended that enabling provisions be inserted to put it beyond doubt that the information collected on electors can be shared with a GOJ agency or department.

If the Electoral Commission wishes to accept the NIDS identification card as evidence of the identity of a voter in the same way that it accepts identification cards that it issues to electors, it will be necessary to amend the Act to provide for the presentation of the card to be issued by the NIDS as evidence of the identity of a person registered to vote.

### **Electoral Commission (Interim) Act**

The Electoral Commission (Interim) Act provides for the establishment and functions of the Electoral Commission. The Commission is responsible for the management of the Electoral Office and the Commissioners are answerable to

Parliament in respect of the functions and duties set out in the Act and as provided in the Representation of the People Act.

Among the functions of the Commission is the compilation and maintenance of a register of voters as well as the verification of the identity of each person included in the register. The significance of functions of the Commission in respect of the NIDS was outlined above.

### **The Fingerprints Act**

The Fingerprints Act provides for the manner and circumstances in which the fingerprints and photograph of a person may be taken by order of the court. Importantly the Act defines fingerprint to include palm print and foot print. The Act does not anticipate the use of the fingerprints for any purpose other than for the identification of an accused or the investigation of crime. An amendment will be required to be made to the Act to authorise the taking of fingerprints for the purpose of the NIDS. An alternative approach is to instead insert the authority to take fingerprints in the NIDS legislation and confine the use to which the fingerprints may be put accordingly.

### **Forgery Act**

The Forgery Act provides for the prosecution and conviction of the fraudulent manufacture of false documents with the intent to deceive. The Act importantly clarifies what constitutes a false document and the punishment for the offences specified are based on specific categories of documents.

Section 6 provides for a misdemeanour punishable by imprisonment for a term not exceeding two years with hard labour for forgery committed by making a statement that the maker knows to be untrue with the intention of procuring a passport while Section 7 is very general and can be used to prosecute forgery of documents not specified in the Act. Section 7 provides:

*Forgery of any document which is not made felony under this or any other enactment for the time being in force, if committed with intent to defraud or deceive, shall be a misdemeanour, and punishable with imprisonment with hard labour for any term not exceeding two years.*

The national identification card and any other document that may be issued by the national identity database can be considered to be on the level of the documents that are specified in the Act. It is proposed that the Forgery Act be amended to establish the offences of making a false identification card or uttering a false identification card and to provide that those offences are to be punishable in the same manner as mentioned above in respect of a passport.

### **The Child Care and Protection Act**

The provisions of the Child Care and Protection Act reflect the broad principles enunciated in the UN Convention on the Rights of the Child. It provides guiding principles for the care of children by parents and caregivers as well as by public agencies.

The Act provides for steps to be taken to provide care and protection for a child found to be in vulnerable circumstances and to pursue criminal sanctions against any person found to have caused injury to the child or caused the child to suffer neglect. The Act also provides for how a child is to be treated by agents of the state when a child has been charged with an offence.

The Act also establishes a children's registry and a children's register which is to contain information submitted by prescribed persons about neglect and abuse of children.

An issue pertinent to the NIDS arising from the Act would be whether the Act bars the collecting of information, particularly biometric information from a child. The matter is one of ability to consent and whether the parent or guardian can authorise the collecting of information for inclusion in the national identity database.

On examination of some Commonwealth jurisdictions, biometric information is not collected from a child, a person who has mental limitations or the mentally ill. In the case of a child a photograph is taken and on the attainment of the prescribed age, the biometrics is collected and an identification card issued.

This issue will require careful consideration, particularly where it is proposed to extract personal information about a child from the records of the Register of Births. Consideration should be given whether to amend the Act to require that a parent expressly authorise the Registrar-General to disclose personal information about their child to the NIDS so as not to violate the privacy principles enunciated under the Act and by extension, the UN Convention on the Rights of the Child.

### **Marriage Act**

The Marriage Act provides the requirements for a marriage to be recognised in law and for a record of that marriage to be registered by the Registrar-General and for an index to the register to be available to the public for inspection. The Act provides for the appointment of marriage officers and for them to be registrars with responsibility to register the particulars of the parties to the marriage as well as the date and time of the marriage.

Information in respect of marriages will be very important for the NIDS in two respects;

- (a) firstly, the marital status of a citizen, Commonwealth citizen or ordinarily resident person is information that would be included in the national identity database, and
- (b) secondly, where there is a change in surname resulting from the marriage, the database would need to note the change and amend the relevant national identification card accordingly.

The Act does not provide for the information collected in order to register marriages to be confidential however it is recommended that enabling provisions be inserted into the Act to empower the Registrar-General provide information on marriages to the NID.

An amendment will also be necessary for the insertion of the national identification number (NIN) on the registration form used by marriage officers and for display on a marriage certificate.

### **Mental Health Act**

The Mental Health Act provides for the conduct of the affairs of a person who has been certified by a medical professional as mentally ill and for medical treatment to be dispensed to them.

In respect of the NIDS, the inclusion of data concerning a mentally ill will be governed by this Act given that a mentally ill person may not be capable of understanding the nature of the NIDS registration process or providing the information required.



The Act grants jurisdiction to the Court to make orders for the management of the affairs of mentally ill therefore any attempt to compel the registration of a mentally ill person will require an application being made to the Court accordingly. This has implications for the NIDS as mentally ill citizens are required to be registered and a lawful and medically safe procedure for acquiring the personal information necessary for their registration will have to be devised.

### **Revenue Administration Act**

The Revenue Administration Act provides for the powers and duties of the divisions of the tax department in respect of the collection of taxes and the enforcement of the tax laws. It also provides at Section 17D for the taxpayer being registered and issued a taxpayer registration number (TRN) which must be used in order to conduct business with tax collection departments.

On the assignment of the taxpayer registration number, the taxpayer is issued a card bearing the assigned number. It should be noted that no personal information is printed on the card save for the name and and TRN number to the taxpayer. Although the card does not show any personal information, the application form required to be submitted by the taxpayer collects an extensive range of personal data however no photographic or biometric information is collected.

It is also to be noted that registration by a taxpayer is mandatory in order for the taxpayer to make payments. Accordingly, the tax department is empowered under the Act to independently register a taxpayer, assign the number and then formally advise the taxpayer of the registration and assigned number.

Failure to apply for registration or provide required information is an offence under the Act for which the offender is liable on summary conviction for a fine of

one thousand dollars for individuals and five thousand for an incorporated entity or imprisonment for thirty days.

Section 17D(1) defines the registration authority as Tax Administration Jamaica or any other body that the Minister may by order, designate.

While the Act requires the information concerning a taxpayer's financial affairs to be kept secret, Section 17H(2)(a) makes allowance for the Minister of Finance to authorise the disclosure of information where the disclosure is required under any other law.

The effect of this provision is that the NIDS can lawfully request data sharing of the information in the TRN database through an inter-agency agreement once the approval of the Minister of Finance is obtained .

### **Access to Information Act**

The Access to Information Act states as its object that it seeks to give effect to principles of public accountability and transparency by “by granting to the public a general right of access to official documents held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information of a sensitive nature.”

Accordingly, the Act provides a procedure for the public to request access to information from a public agency and the public agency is obliged to provide the information sought unless the information sought falls within the exempted category of information. Section 5(7) states that the Act applies to “...official documents held in a registry or other office of a court, being documents that relate only to matters of an administrative nature”.

The Act at Section 22 bars the disclosure of an official document "...if it would involve the unreasonable disclosure of information relating to the personal affairs of any person, whether living or dead". This prohibition can only be lifted if access to the official document is requested by the person referred to in the document.

Further protection is afforded to a person whose personal information is contained in an official document in Section 24 where the information is claimed to be incomplete, out of date or misleading, and the information has been used or is being used by a public authority for administrative purposes, the person concerned may apply to the relevant public authority for an amendment to the information.

Section 24 is relevant to the NIDS in that a person can seek to compel the Commission to amend information about themselves provided that they comply with Regulation 19 and submit evidence to the satisfaction of the Commission to support the application for the amendment to the information that they consider to be incomplete, out of date or misleading.

It is recommended that the act be amended to insert a provision that will absolutely bar the disclosure of information contained in the NID notwithstanding the prohibition at Section 22. Such a provision will remove the possibility of personal information being disclosed on the basis that the disclosure was not unreasonable in the circumstances.

### **Cybercrimes Act**

The Cybercrimes Act provides for the prosecution of offences arising out of the unlawful use of computer data and programs. It is an offence to access,

modify, or use computer data without authorisation. The offences under the Act can be committed partly or wholly in Jamaica or entirely outside of Jamaica if it affects a computer, computer data or programs in Jamaica or if it is committed by a Jamaican national.

The Act is of particular significance to the NIDS given that it will operate an electronic database. Misuse or abuse of data stored in the database can be prosecuted under the Act particularly as the NIDS will be seeking to ensure that the information it collects is securely and safely stored and that unauthorised persons are not able to access the information.

### **Electronics Transactions Act**

The Electronic Transactions Act provides for legal recognition and validity of transactions conducted by the electronic exchange of contract documents. It also provides for the electronic filing of applications as may be facilitated by a government agency. The encrypted signature on an electronic document is also given validity and is deemed to satisfy the statutory requirements where a document is to be made, attested, acknowledged or authenticated. This provisions of this Act will have implications for the operations of the NIDS.

### **Official Secrets Act**

The Official Secrets Act 1911 of the United Kingdom was brought into Jamaican law but is not included in the published laws of Jamaica. While the Access to Information Act was being considered for enactment, it seems to have been intended that a review of the Official Secrets Act was to have been done. As it has up to now not been repealed, it is still in force in Jamaica.

Given that there is uncertainty now as to whether the Act will be repealed, it is recommended that provisions for the protection of information and prosecution of unlawful disclosure be inserted into the NIDS legislation.

### **The Statistics Act**

The Statistics Act established the Statistical Institute of Jamaica (STATIN) and its functions are set out in the Act to be to conduct population censuses, and collect statistical information on commercial, academic, industrial socio-economic and general information for compilation and publication.

No personal information is collected by STATIN however it is likely that STATIN will require data from the NIDS database to assist in the compilation of its statistical information. The NIDS legislation should authorise the disclosure of the information entered in the NID, to be made to STATIN.

### **Justice Protection Act**

The Justice Protection Act provides a scheme for the relocation and change of identity of a person who has been deemed to be vulnerable based on any assistance that person may have provided in the prosecution of an offender. The scheme facilitates such a person being given a new identity and where necessary relocation to another jurisdiction.

Where a person has been given a new identity, they are barred from disclosing their former identity and may permanently keep their new identity. The person may in the alternative be restored to their former identity.

The Act confers Top Secret status on information stored in the register of participants in the programme and limited authority is given to share information

in the register under Section 12 on the sole ground where it is in the interest of the administration of justice.

The Act provides strong penalties for the unauthorised disclosure of information about a participant.

This Act has implications for the NIDS in that the NID would wish to receive information about the change of identity information.

*12(2) The Centre may, if it is of the opinion that it is in the interest of the due administration of justice to do so, allow another approved authority to have access to information contained in the register and the ancillary documents in relation to a particular participant*

Section 12(2) does facilitate limited access to the register. The fact that the disclosure can only be made if it is in the interest of the due administration of justice, it is submitted that disclosure to the NID would not fall within the permitted criterion.

The NID would however wish to have information about a change of name in such circumstances. The database can block access to that person's information altogether until further notification is received from the administration centre for the relocation programme that the person's former identity is being restored or that the person is keeping their new identity.

Given the sensitive nature of such information specific provision would have to be made in the Act authorising the disclosure of the information to the NID and providing limitations on the nature of the information that may be so disclosed.

**Children (Adoption of) Act**

The Child (Adoption of) Act provides for the establishment of an Adoption Board that has responsibility for receiving applications for the adoption of children and for conducting investigations and consultations with the relevant parties to determine whether to advise the Court that the circumstances are suitable for the applicants to adopt the child.

The Act empowers the Court to make an adoption order where it is satisfied that the requirements of the Act for the qualifications to be adopters have been met. The order made by the Court is then sent to the Registrar-General.

Under Section 25 of the Act the Registrar-General is to establish an adopted children's register in which the information in the adoption order is to be entered. At the same time, a notation is to be made in the Register of Births that the child has been adopted and is now registered in the adopted children's register.

The implication for the NIDS of the scheme for the registration of adopted children is that the Act permits the name of the child to be changed from the name given at birth.

Additionally, where the Court has not determined the date of birth, an estimation may be made by the judge based on the facts known about the child, similarly the place of birth can be deemed to be the district that the registration of the birth took place or where that place is not known, the place where the Court granting the adoption order is situated.

If the intention is for the Registrar-General to assign the identification number to all reported births there may be a difficulty if, on the adoption of a child, the same identification number is entered into the adoption register. It is very common for an adoptive parent to not wish for the identity of the birth parents of the child to be known. The present practice is for any search of the RGD's database for birth information of an adopted child will reveal only the entry in the adopted children's register.

Consideration will therefore have to be given to whether the number assigned to a child at birth registration should be carried over into the adopted children's register or whether a new number is to be assigned when the child is being registered in the adoption register.

The critical issue for the NIDS is that there is the need to guard against the risk of the entry into the national identification database of differing identification information about the same person.

## **Public Policy Considerations**

### **The Civil Registration and Vital Statistics Systems Modernization Programme (CR & VS)**

The CR&VS project is the result of efforts by the Vital Statistics Commission to seek to improve the accuracy and reliability of the civil registration and the vital statistics produced by the relevant GOJ entities.

The Project under funding from the Inter-American Development Bank, is aimed at:

- (a) improving inter-agency communication and coordination; and
- (b) modernizing the civil registration and vital statistics systems.



Both objectives are to achieve the ultimate aim of having timely and reliable data being made available to guide the Government's developmental initiatives in order to achieve the Vision 2030 goals.

The NIDS will become one of the programmes that are central to the achievement of the CR&VS goals as it is expected to become the main source of information the required to provide the timely and reliable statistics required. The CR&VS initiatives to improve the collection of vital statistics will also serve to ensure that the NIDS can receive civil registration data that will be timely and accurate. The NIDS concerns about data duplication and errors that could result in unsafe identity information entering the database will be significantly alleviated if the improvements to be implemented by the CR&VS project are achieved.

The project includes an ICT component that is expected to significantly improve the volume, completeness and accuracy of civil registration data that is accessible electronically. The completion of this component will also be of significance to the NIDS as the NIDS will be able to more efficiently receive data from agencies such as the RGD and the STATIN.

A component of the CR&VS project is the creation of coordinated policies to facilitate data sharing. The legal framework of the governing legislation of relevant agencies is to be examined and draft inter-agency sharing guidelines and agreements are to be developed. Given that data sharing protocols and agreements are to be developed between the NIDS and related agencies, the framework for data sharing developed by the CR&VS can form the basis for the NIDS data sharing relationships.

### **Public Sector Data Sharing Policy**

Considerable personal data is collected and stored by government agencies in Jamaica annually. At present there is no published policy concerning the safe and secure storage and permitted dissemination of such information. In some cases legislation stipulates the parameters for the use of the information and sanctions are provided for unauthorised use.

The government has begun the process of addressing the need for a data sharing policy to guide public sector entities and in that regard a Data Sharing Policy Steering Committee has been established and the intended outcome of the initiative is said to be provision for public sector data sharing in legislation. Included in the remit for the Committee is consideration of the issues involved in the transferability of data across the public sector in keeping with requirements for privacy and confidentiality.

This initiative is of much significance for the NIDS given that agencies that currently collect personal data, agencies with which the NIDS must interact and collaborate, are either expressly barred from using the information for purposes other than those for which its enabling law prescribes, or the agency often chooses to err on the side of caution and refuse to disclose information.

From information gleaned by the writer, it seems very likely that the completion of the policy and by extension the legislation to guide public sector entities in the permitted sharing of information will not keep pace with the progress of the NIDS. It is of critical importance to the attainment of the objectives of the NIDS that information required for the database can be obtained from the relevant public sector entities. In the absence of policy guidance through legislation, the NIDS may meet with resistance from some agencies, particularly where governing laws do not permit the sharing of the information sought by the NIDS.

A workable solution could be for the amendment to laws barring or restricting the sharing of information required for the NIDS to be included in the transitional provisions to be drafted for the NIDS legislation. Additionally, the authorisation for relevant data sharing between public sector entities can be inserted into the NIDS legislation and as such would serve to remove any doubts and concerns that Ministries, Department and Agencies could have when asked to provide information to the NIDS database.

### **The Govnet Project**

The Govnet as conceptualized is to be a "...Government wide communications infrastructure for the seamless transfer of information between government/state agencies and other stakeholders and for the provision of on-line services to the public".

A contract to conduct an assessment of the existing connectivity programmes and to make recommendations for the technical design of the Govnet was awarded to PriceWaterhouseCoopers in 2011. On completion of the deliverables under the contract in 2012 it is expected that the steps to achieving an operational Govnet will take place. The data sharing policy being developed for GOJ entities will rely on a functioning Govnet to achieve its objectives as the Govnet will assist in ensuring that shared data is efficiently transferred with minimal duplication or distortion of information.

The Govnet has immense implications for the NIDS because the Govnet will have capability to facilitate the transfer of data between the NIDS and other data gathering GOJ entities. Information concerning the current status of the Govnet was not available when sought by the writer. Further the department that had been expected to pilot the project, the CITO, has been closed and its

replacement has not yet been established. It is intended that further reporting on the status of the Govnet will be provided in subsequent reports.

## **The HIPCAR Project**

Jamaica is part of project funded by the European Union that aims to harmonize ICT policy legislation regulatory procedures in the region. Other participating countries are Antigua, the Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, St Kitts and Nevis, St. Lucia, St. Vincent, Suriname and Trinidad and Tobago.

The project has published Model policy guidelines and legislative texts in respect of privacy and data protection<sup>6</sup>. Under the acronym HIPCAR meaning Harmonization of ICT Policies, Legislation and Regulatory Procedures in the Caribbean. The following extract from the HIPCAR document illuminates the policy issues that must be considered for a project such as the NIDS:

*Privacy has been identified as a human right, as concretized in various provisions of the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, as well as the American and European Convention on Human Rights. This right to privacy which protects the individual's private life against arbitrary, unlawful or abusive interference, by extension provides for the protection of the personal information of the individual, and the protection of the transmission of such information.*

The role of data protection therefore is to, as far as technology is able, put technical barriers in place to ensure that there is no misuse of information and that in the event of such misuse, there is a mechanism

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<sup>6</sup> Privacy and Data Protection: Model Policy Guidelines & Legislative Texts  
<http://www.itu.int/en/ITU-D/Projects/ITU-EC-ACP/HIPCAR/Documents>

for criminal sanctions to be enforced against the misuse. The point is well made in the following extract from the HIPCAR report:

*Privacy and Data Protection laws are based on the premise that the individual must have some level of control of how the personal information collected from them by the government or businesses are utilised, processed or disclosed.*

*This control is primarily asserted at the point at which information is collected, at which time the collecting party must make a full disclosure of the intent for which the information is to be collected, and be commit to be so constrained in the use of the personal information after it is collected.*

*The other major facilitation of the individual's control is the obligation of the collecting party to provide the individual with the opportunity to review any information which is stored by the party about the individual.*

*Despite this, there should be exemptions to the general rules associated with the restriction of the use of personal information, with the application of specific, different guidelines in the fields of medical services and national security where gaining the assent of the individual is not practical.*

The countries participating in the HIPCAR initiative have committed to implementing 'clear and institutional frameworks to ensure the protection of personal and private information. The framework to be put in place should provide for:

- Protection of privacy
- Individual rights to access information
- Data accuracy
- Security safeguards
- Regulation of disclosure or transfer of information
- Accountability
- Limitations in respect of collection, purpose and use of information

- Enforcement and compliance

It will be important for the NIDS legislation and administrative practices to be consistent with the framework outlined above.

### **The UN Convention on the Rights of the Child**

The proposed registration of children, particularly the assignment of a national identification number at birth and the sharing of personal information about the child raises issues that are provided under the UN Convention.

The relevant Articles are extracted below:

Article 7 provides:

*1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.*

Article 8 provides:

*1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*

*2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*

Article 16 provides:

*1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.*

*2. The child has the right to the protection of the law against such interference or attacks.*

The principles set out in the above-quoted Articles are partially incorporated into the Child Care and Protection Act however express provisions safeguarding the right of the child to privacy of information and the preservation of a child's

identity may need to be made by amendment to the Child Care and Protection Act. Jamaica is a party to the Convention and as such is obligated to ensure that legislative and other measures are adopted to ensure that the Convention is observed.

### Comparison of Legislation from Some Commonwealth Countries

Jurisdiction	Legislation	Provisions	Comments
Guyana	National Registration Act	<p>An Act to provide for the establishment of a National Register, for the issue of identification cards, and for purposes connected therewith.</p> <ul style="list-style-type: none"> <li>• The Act creates the offices of Commissioner, Deputy Commissioner and Assistant Commissioner of Registration under the Elections Commission;</li> <li>• The appointment of registrarial staff is in accordance with the Elections law;</li> <li>• The country is divided into registration districts and the process for establishment of such districts is done with the approval of the Elections Commission;</li> <li>• Registration is done of both electors and all persons <b>fourteen</b> and over;</li> <li>• The parent or guardian to register fourteen to eighteen year olds;</li> <li>• Refusal or failure to register is a summary offence;</li> <li>• A database is established and Commission determines procedure for acquiring and electronic processing of data;</li> <li>• Identification cards are issued to each registered person;</li> <li>• Minister may direct Commission to compile and tabulate data for</li> </ul>	<p>The Guyana legislation provides for compulsory registration of all citizens fourteen and over. There is one database that includes citizens who are minors as well as adults.</p> <p>Each registered person receives an identification card but the Act does not stipulate the uses of the card outside of the identification of electors for the purpose of voting.</p> <p>New borns are not registered</p> <p>Registration is compulsory. This means that there is no separate registration/enumeration exercise.</p> <p>The Guyana model differs significantly from the model being pursued in Jamaica</p>



Jurisdiction	Legislation	Provisions	Comments
		statistical purposes – no information about registered persons is to be included.	
Nigeria	National Identity Management Commission Act	<p>An Act to provide for the establishment of a National Identity Database and the National Identity Management Commission to be charged with the responsibilities for maintenance of the National Database, the registration of individuals, and the issuance of general Multi-purpose Identity Cards; and for related matters.</p> <ul style="list-style-type: none"> <li>• A statutory body called the National Identity Management Commission is established headed by a Director-General;</li> <li>• Nineteen persons comprise the governing board of the Commission;</li> <li>• The Commission is responsible for the national identity database; the registration of citizens and lawful residents; issuing a general multi-purpose identity card; assigning a unique national identification number to each registered person;</li> <li>• The Commission is empowered to request information from any person in relation to any of its functions;</li> <li>• A fund is established from income earned from fees and other charges;</li> <li>• The identity database includes fingerprints and other biometric</li> </ul>	<p>There are several similarities between the Jamaican policy and the Nigeria model.</p> <p>A significant difference however is that registration in the Nigeria model is mandatory while in the case of Jamaica it is voluntary however the need for the card to be presented to access some GOJ services is expected encourage registration.</p> <p>Significantly newborns are registered and are issued an identification number.</p>

Jurisdiction	Legislation	Provisions	Comments
		<p>information;</p> <ul style="list-style-type: none"> <li>Existing identity cards are to be harmonised with national identity card;</li> <li>Citizens, permanent lawful residents and lawful residents living there for two years or more;</li> <li>Registration is mandatory for persons <b>sixteen</b> and over; newborns are to be registered within 60 days of birth;</li> <li>Not necessary for card to be carried by registered person at all times;</li> <li>Disclosure of personal information permitted if; it is in the interest of national security; necessary for detection of crime; for any other specified purpose;</li> <li>The <b>card or the identification number</b> must be used for: passport applications; opening bank accounts; purchasing insurance policies; purchase, transfer and registration of land; pensions transactions; transactions for contributory health insurance scheme; social security transactions; consumer credit transactions; registration of voters; payment of taxes; other relevant Government services;</li> </ul>	
Malaysia	National Registration Act	An Act to provide for the registration of persons in Malaysia, for the issue of identity cards and for purposes connected with it.	

Jurisdiction	Legislation	Provisions	Comments
		<ul style="list-style-type: none"> <li>• Establishes a Director-General and Deputy Director-General of national registration under the control of a Minister of government;</li> <li>• Registration is mandatory for every person within the country;</li> <li>• Power is conferred on the Minister to make regulations for every aspect of the work of the Director-General;</li> <li>• A register of registered persons to be kept by the Director-General;</li> </ul>	
Sierra Leone	National Registration Act	<p>Being an Act to provide for the compulsory registration of citizens and non citizens resident in Sierra Leone and the issue of Identity Cards to such persons and for the use of public bodies; and to provide for other related matters.</p> <ul style="list-style-type: none"> <li>• Establishes a national register of every citizen and non-citizen resident in the country;</li> <li>• Both paper and electronic version of the register;</li> <li>• Chief Registrar appointed by Public Service Commission and establishment of national registration secretariat;</li> <li>• Every registered person to be issued an identity card that is satisfactory evidence for the purpose of election laws;</li> <li>• Much of the provisions to do with the operation of</li> </ul>	

Jurisdiction	Legislation	Provisions	Comments
		the registration and issue of identity card is by regulations made by the Minister;	
Uganda	Citizenship and Immigration Control Act	<p>Part IV: Registration of Citizens and Issue of National Identification Numbers and National Identity Cards.</p> <ul style="list-style-type: none"> <li>• Registration is mandatory for every citizen and national identification number assigned on registration;</li> <li>• Parents have statutory duty to register children below the age of sixteen while eighteen and over have a duty to apply to be registered;</li> <li>• Civil registration authority under a duty to provide information to Board to facilitate registration;</li> <li>• Registered persons over eighteen to apply to Board for issue of national identification card;</li> <li>• Cards only to be issued to citizens;</li> <li>• Criminal offence not to register or apply for identification card. Liable for a fine or three months imprisonment or both;</li> <li>• Other operational provisions are provided for by regulations</li> </ul>	<p>There is no provision for the mandatory use of the card or identification number in order to access government services.</p> <p>The conduct of the whole process is done by immigration officers and other public officers</p>
India	National Identification Authority of India Bill	A Bill to provide for the establishment of the National Identification Authority of India for the purpose of issuing identification numbers to individuals residing in India and to certain other classes of individuals and manner of	<p>The law has not been enacted in India however, the provisions of the Bill have been brought into effect by executive order.</p> <p>It is estimated that the</p>

Jurisdiction	Legislation	Provisions	Comments
		<p>authentication of such individuals to facilitate access to benefits and services to such individuals to which they are entitled and for matters connected therewith or incidental thereto.</p> <ul style="list-style-type: none"> <li>• Establishes the National identification Authority of India, a statutory body;</li> <li>• The Authority's head is the Chairperson appointed by Central Government;</li> <li>• The day to day affairs of the Authority is under the Chief Executive Officer;</li> <li>• Every resident to register and receive an identification number;</li> <li>• Demographic and biometric information to be collected;</li> <li>• Number is to be a unique random number bearing no identity data;</li> <li>• Issue of the number does not, by itself, confer any right of citizenship or proof of domicile of card holder;</li> <li>• Establishes the Central Identities Data Repository;</li> <li>• No information about race, religion, caste, ethnicity, language, income or health is to be collected;</li> <li>• The Authority able to enter into MOUs with other government agencies in relation to collection, storing, securing or processing of information;</li> <li>• Fund to be established from income of Authority to meet Authority's operating expenses;</li> <li>• Establishes a Identity</li> </ul>	<p>total population of over 1.2 Billion will be registered within the next three years.</p> <p>There is no provision mandating the use of the card in order to access government services.</p>

Jurisdiction	Legislation	Provisions	Comments
		<p>Review Committee to monitor the extent and pattern of usage of the national identification number and to give recommendations;</p> <ul style="list-style-type: none"> <li>• Authority to ensure security and confidentiality of information about individuals;</li> <li>• A citizen may request access to his identity information;</li> <li>• The operational provisions are to be by regulations.</li> </ul>	
Singapore	National Registration Act	<p>An Act for the registration of persons in Singapore for the issue of identity cards and for purposes connected therewith.</p> <ul style="list-style-type: none"> <li>• Minister appoints a Commissioner, Deputy Commissioner and Assistant Commissioner of National Registration;</li> <li>• The Commissioner to create and maintain register of registered persons;</li> <li>• Mandatory registration by all persons lawfully resident;</li> <li>• Identification card to be issued to all registered persons;</li> <li>• Any person who changes his place of residence must inform the registration officer within 28 days of such change;</li> <li>• Birth certificate must be presented by all citizens who are citizens by birth;</li> <li>• Regulations to be made by the Minister providing for the procedure for registration; taking of</li> </ul>	

Jurisdiction	Legislation	Provisions	Comments
		<p>biometrics; the issue of identity cards; maintenance of the identity register;</p> <ul style="list-style-type: none"> <li>• Mandatory registration for persons <b>fifteen years</b> and over;</li> <li>• Returning residents to register within one years of returning to live in the country;</li> <li>• Two kinds of identity cards- pink for citizens and blue for other lawful residents;</li> <li>• Within seven days of death of a card holder, the card is to be delivered either to the Registrar of Births and Deaths or a registration officer by any person in possession of the card;</li> <li>• Card to be surrendered by a person who intends to migrate, ceases to be a citizen or whose entry permit has been cancelled;</li> <li>• Hotel, hostel or boarding house not to accommodate any person who is not in possession of identity card; Fact of a person seeking accommodation and not in possession of card is to be reported to police;</li> </ul>	

## **New Legislation Required to Support the NIDS**

### **Data Protection Legislation:**

The writer has been informed by the Ministry of Science, Technology, Energy and Mining that policy is being developed for data protection legislation, however it is very likely that the NIDS legislation will be presented to the Parliament ahead of the data protection legislation.

It is therefore recommended that provisions consistent with the internationally accepted principles of data protection and the protection of individual privacy be included in the NIDS legislation. In that regard relevant provisions of the Personal Information Act of British Columbia (Canada) and the Privacy Act of Canada (Federal) are proposed as a model<sup>7</sup>.

### **The Legal Implications of the ICT design for the NIDS**

The ICT detailed system design<sup>8</sup> is prepared on the basis that a system of data linkages between relevant agencies will be required, particularly for the purposes of online identity vetting. This emphasises the need for data sharing policies specific to the needs of the NIDS to be developed in the short term and for that policy to be reflected in the NIDS legislation.

The issue of data protection is also raised by the interlinking of the data banks of these agencies. How will the examination of whether the information being sought by another agency is appropriate to be shared, for example, the birth

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<sup>7</sup> Extracts from these Acts in Appendix

<sup>8</sup> Design and Development of the ICT Architecture for the Planned Implementation of a National identification System for Jamaica; Project QCII #2013/NRU/001. Prepared by Henry Dreifus, ICT project Executive, June 23, 2014



parents of an adopted child where under normal circumstances the RGD does not disclose that information on the birth certificate issued from the adoption register.

The design also states that identification cards are to be issued to minors but will be physically differentiated from those issued to adults. It is not clear whether the cards issued to children will bear personal information and if so how much personal information? Will call categories of information be collected from the child at the point of registration (such as biometric) and stored in the database for inclusion on the identity card when the child is an adult?

The provision for back-up data storage needs to be further developed to allow for an examination of the legal implications, particularly where the off-site back-up is in another jurisdiction. The implications of the data being subject to the data protection legislation of another jurisdiction would then have to be explored.

Consideration needs to be given as to the protocols that are required to be developed for the collection and storage of the biometric information and whether those protocols should be provided for in legislation. Notwithstanding that the EOJ is now collecting biometrics without the need for such protocols, the expanded collection and use of biometrics by the NIDS requires that it be given particular attention. It is important to recognise that countries that have established national identification systems have other laws that provide for many of the related technology and information management issues raised by the ICT needs of the NIDS.

Further clarification is needed as to the point at which the NIN is generated and by whom is it generated. Given that personal information data is required for

the generation of NIN<sup>9</sup> this clarification will allow for consideration of the legal implications of disclosure of the required information if the generation is done (for example, by the GovNet).

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<sup>9</sup> See page 25 of the Detailed Design System document

### **The Registrar-General's Department and the NIDS**

The NIDS will not be able to achieve its objectives in respect of the registration and cross checking of personal data unless there is access to the RGD's database at the commencement of the implementation of the NIDS. This means that a clear policy needs to be agreed that will guide the inter-agency working relationship.

The 1982 Advisory Committee<sup>10</sup> appointed to recommend legislation for the National registration System as it was then conceived, noted in its report at page 45 raised the issue of the nature of the relationship between the two entities when the entity to administer the national registration system is established. It posed the question "...should the two units remain as separate entities or should the national registration system embrace the functions of the Registrar-General's Department?"

The Registrar-General in written communication with the NIDS Project in March 2015 gave compelling evidence of its capability to carry out the registrarial functions of the NIDS and pointed to significant revenue implications if the NIDS were to establish a registry that provided services to the public that removed the need for applications to be made for the certificates that it now issue.

There are therefore, administrative, logistic as well as financial considerations arising from the establishment of the NIDS in respect of its impact on existing agencies. The functions of the RGD are not inimical to that if the NIDS and it cannot be argued that a successful NIDS is reliant on a modern, efficient and cost effective RGD.

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<sup>10</sup> Ibid at page 10

In consultations with the RGD the view was expressed that the two entities should fall under the same umbrella, so in the event that a national registration commission is established to administer the NIDS, it would in the best interest of the proper functioning of the NIDS if the same Commission was also to have the RGD as a part of its jurisdiction. The result would be two separate agencies administered by the same Commission. This proposal was accepted by the RGD as one that would facilitate its modernisation and would serve to ensure a smooth symbiotic relationship between itself and the NIDS.

The merger of the RGD with the entity then being considered to administer the national registration system (then the Electoral Office of Jamaica) was recommended in a 1993 Submission to Cabinet seeking approval for the drafting of legislation to establish the system. At paragraph 21.3 it recommended to the cabinet that: *"...as a long term objective, administration of the National Registration System should be integrated with that of the Electoral System and placed under the responsibility of a single governing body with two functional organisational sub-structures..."*<sup>11</sup>

The Electoral Commission has since moved on to establish its own procedures for collecting the personal information it requires for electoral purposes and is no longer being asked to administer the national registration system. It is the considered view of the writer that, as the NIDS is now to be established to undertake that function, the recommendation made in 1993 can be applied to the present proposals.

There are of course legal implications that arise from the establishment of such a structure. The status of the RGD as an Executive Agency would have to be examined and if the merger is approved, its status as an executive agency may require review. An amendment to the Executive Agencies Act and its

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<sup>11</sup> Extracted from documents in files in the Legal reform Department

regulations to remove the RGD as an executive agency may also be an option for consideration.

## **Policy Guidelines for the NIDS legislation**

### **1. Registration**

The registration of all citizens, whether naturalized or by birth and of non-citizens who are ordinarily resident in Jamaica as well as for the storage of the information obtained in a secure database to facilitate its subsequent retrieval is at the heart of the NIDS project.

The first challenge that presents itself is to determine the systems that are required and the sources from whence information required for registration may be acquired.

The NIDS will have to rely on existing Ministries, Departments and Agencies that are concerned with the collection of personal information, civil registration and vital statistics to data. This data is important to assist in the verification of information obtained directly from each person during the registration process.

While the system of civil registration operated and managed by the Registrar-General captures persons who are citizens by birth, there is no such system for the registration of non-nationals who are 'ordinarily resident in Jamaica' or persons who acquire citizenship by naturalization save and except for the records maintained by the Passport, Immigration and Citizenship Agency.

The NIDS is seeking to capture all citizens and persons ordinarily resident in Jamaica and if successful it will for the first time establish a database containing the personal, demographic and biometric information ('the national identification database or the NID') of all the above-mentioned categories.

The Registrar-General ('the RGD') operates a significantly large database of persons born, deceased, married or adopted in Jamaica. It will be a vital resource for the NID and it is expected that a symbiotic relationship will be established between the RGD and the agency to be responsible for the NIDS (National registration Commission?) that will facilitate the flow of data between the two agencies.

It is to be noted that a large portion of the birth, death and marriage records kept in the RGD's registers are not yet part of their electronic database and as such information about citizens prior to the start date for the electronic database may not be easily acquired for entering into the NID.

There is also concern about the reporting of deaths. The RGD is reliant on family members of a deceased person or the registry of medical institutions to report deaths. It is often at the point when an attempt is made by the personal representative of a deceased to dispose of property belonging to the deceased's estate that the need for registration of the death is recognised and appreciated.

The Registration (Births and Deaths) Act explicitly prohibits the burial of any deceased person where a certificate or an order for burial has not been issued by the Registrar-General, and the Cremation Act provides that a Coroner or the relevant Constabulary officer is to report a cremation to the Registrar-General. Notwithstanding those provisions, it may be that the mechanism for ensuring that all such deaths are reported to the Registrar-General needs strengthening to ensure that under-reporting of burials and cremations is not occurring.

Data concerning the death of nationals who die overseas should also be collected for the NID however that category may pose a challenge

particularly as there is no formal mechanism for the reporting of such deaths in Jamaica.

The NID requires, in addition to the report of a birth or a death, information on marriages and divorces. The Marriage Act places obligation to register marriages on the Registrar-General and the appointment and regulation of marriage officers is also done by the Registrar-General in conjunction with the Ministry of Health.

In the case of a female, the practice to adopt the surname of the spouse means that the NID needs to record the name change as well as the fact of the marital link between the two parties. In some cases, it may well be that a marriage has taken place in Jamaica but one or neither of the parties are citizens. In such a case the marriage is only of interest to the NID in as far as a citizen was a party.

In the case of divorces, it is the practice for some female divorcees to simply revert to using their maiden name without any registration of their name change. The fact of the divorce and the discontinuation of the legal relationship between the parties is also relevant information for the NID. This is perhaps the greatest registrarial challenge for the NID because there is no statutory requirement for the Registrar-General to receive information about divorces. There is therefore no official register of divorces. The divorce proceedings are conducted by the Supreme Court and as such an official record of the divorce can only be acquired from the Registrar of that Court.

While STATIN acquires data on divorces, information shared with STATIN is statistical in nature and would be inadequate for NIDS purposes. The NIDS would need to enter into a data sharing agreement with the Chief Justice



for the receipt of the information about divorces until a regime for registration by the Registrar-General of that information is put in place.

It is worthy of consideration for the Matrimonial Causes Act to be amended to provide for the registration of decrees absolute and the issue of a certificate of divorce by the Registrar-General accordingly.

## 2. **Data Storage and Management**

Having registered relevant persons, the storage of the data collected during that process and on an on-going basis as changes occur as well as the retrieval mechanism is largely a technical matter. Legislative authority to store and share the data will be necessary as no existing law sufficiently authorises the data storage requirements of the NID.

The need to ensure that the fullest possible protection is implemented to protect the NID from unauthorised and unlawful use will be a statutory obligation and a registered person will have a legal remedy in the event that the obligation is breached. Particular authority to collect the fingerprints of registered persons will have to be given to the NIDS and safe-guards implemented to ensure the restricted use of that information are also important. Notwithstanding the lack of data protection legislation, the NIDS legislation will include provisions to criminalize the misuse of the NIDS data.

The design for the ICT architecture for the NIDS is still being designed and as such a complete determination of what needs to be provided in legislation to ensure that all aspects of the conduct of the NID has been enabled will not be determined until that exercise is completed.

## 3. **Data Sharing**

The sharing of data between GOJ ministries, departments and agencies will be important for the NIDS project. This will be necessary to the NIDS achieving its policy objectives and making the contribution it is expected to make to the conduct of business and governance.

For example, in order for the NID to authenticate and verify data it receives from a registered person it must have a platform for accessing the registers kept by the RGD, and in turn it can assist the RGD in its efforts to verify the data in its registers. The same would be the case for the sharing of information stored in the Passport and Immigration Agency.

The agencies and departments with which it is going to seek to share information have been identified in the project design documents and the legislation will facilitate this by ensuring that the NIDS has the legal authority to request and receive as well as send out data.

#### 4. **An appropriate regulatory Vehicle**

A regulatory vehicle on the level of the Electoral Commission is being recommended for the NIDS. The management of the functions to be carried out are of sufficient sensitivity and national importance that the regulatory body will require powers to not only conduct the day to day affairs of the NIDS but to also make regulations that will prescribe the manner of registering relevant persons, the protocols for data sharing, the procedures for storing and retrieving data, the screening of staff employed, procedures for making changes to data stored about a registered person.

There are two perspectives to examine:

- (a) the legal status of the entity to manage the NIDS is to be determined. Consideration may be given as to whether it should be

made a Commission of Parliament. Placing the NIDS regulatory body on this level would ensure that on-going parliamentary scrutiny is exercised over its operations as well as guidance on issues that may arise concerning its operations can be provided in a non partisan manner;

- (b) the need to insulate the NIDS against any perception by the public of the likelihood of control by political interests has to be acknowledged. At the same time it may be argued that making the entity a commission of Parliament would be placing it too close to the party political interests. Public perception may be that decisions concerning its operations and by extension the use for which the information collected and stored in the NID ought to be as distant as possible from political influence.

Considering both perspectives and bearing in mind that the structure in place for the use of personal information by the Electoral Commission has not so far met any popular disapproval, the NIDS can secure the same measure of public confidence if its operations are conducted within a similar construct. Accordingly, the recommendation for the entity is that of an independent commission, preferably one that is answerable to the Parliament.

## 5. **The Numerical Identifier**

The NIDS policy document indicates that a numerical identifier (Unique Person Identifier) is to be created using an approved algorithm. This will be a sequence of numbers that will be assigned to one registered person for the duration of their lives. The national identification number or NIN will be one of the products to be used by the NIDS to carry out its mandate. The creation and assignment of this numerical identifier to all registered

persons as well as its permitted use will be authorised in the legislation. The technical aspects of the creation and assignment of NIN are to be finalized and the final determination about the legislative provisions required to facilitate that activity will then be made. As such assumptions will be made at this stage subject to the finalization of the technical design.

## 6. **The Identification Card**

Each registered person who is at the specified age is to be issued an identification card that will exhibit the identification number (the Unique Person Identifier) assigned to them as well as other specified personal information. The card is valid for a specified period of years after which it must be renewed in the same manner that a driver's licence is first issued and then renewed. The legislation is to specify the age at which a registered person is to be issued the card and the procedure for the distribution of the card. It should also provide for the card to be evidence of the registration of the person to whom it was issued and of the validity of the information printed thereon.

The policy intent is for the card to be used extensively for accessing public services and most importantly in all situations where verification of identity is required. The legislation will not stipulate the general use of the card except to make it lawful for it to be used. It is expected that the legislative recognition of the card as a public document will engender confidence in its validity and ultimately public confidence will result in the card being regarded as a conclusive identification document.

The legislation will not mandate the carrying of the card by a registered person. The carrying of the card will be completely voluntary and the issuer of the card is the only entity that can mandate that it be submitted

to them. This is important to minimize public apprehension about unconstitutional monitoring of their personal affairs by the state. It is expected that as the card gains acceptance it will eventually become a requirement for accessing some public services. The need to present the card for these purposes should result in the voluntary carrying of the card as and when a registered person determines that it will be needed.

## 7. **Privacy**

Perhaps the most significant factor in the achievement of public confidence in the NIDS will be the effectiveness of its privacy protocols. The protection of the privacy of each registered person is to be very strongly provided for in the legislation. The overriding obligation to keep the information in the database free from abuse and misuse will be legislatively assigned to the managing entity as well as any person directly or indirectly connected with the functions of the NIDS.

Notwithstanding the seal on the misuse and abuse of the information, the legislation will provide for limited permitted disclosure of the information in as far as it is required by a specified public entity.

Disclosure of information therefore is one of the most sensitive and difficult aspects of the legislation. Just how much should be allowed? Is there sufficient justification for allowing the disclosure to those it is allowed? In the answer to those questions Chapter III of the Constitution will be consulted. The public interest is permitted to be considered and determined in order to determine how far to go in permitting disclosures, as constitutional protection cannot be waived on any other basis. However, disclosure to a registered person of information stored in the database about himself/herself is to be permitted under the legislation.

Notwithstanding the limited disclosures to be permitted under the legislation, there are internationally accepted guidelines that should be followed so that the sanctity of the privacy of the registered person can be preserved. These guidelines are replicated below:

(a) **International Guidelines on Protection of Personal Information**

In 1980 the OECD published Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and at the time was the first internationally agreed upon statement of core information privacy principles that reflected the diverse views and perspectives of countries around the world. The Guidelines are described by the OECD as "...a carefully crafted compromise that reflects the differing views of the members of the Expert Group on these and other potentially contentious issues." The guidelines are summarized in seven core principles that are regarded as a watermark in the protection of information privacy.

The OECD's seven principles<sup>12</sup> are:

- (a) the collection limitation principle: this requires that reasonable limits be placed on the collection of personal data;
- (b) The data quality principle: this requires that Personal data should be relevant to the purposes for which they are to be used, and, to the extent necessary for those purposes, should be accurate, complete and kept up-to-date;
- (c) the purpose specification principle: this requires that the purposes for which personal data are collected should be specified not later than at the time of data collection and the subsequent use limited to the fulfilment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose;

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<sup>12</sup> <http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf>

- (d) the use limitation principle: this requires that personal data should not be disclosed, made available or otherwise used for purposes other than those specified except with the consent of the data subject; or by the authority of law;
- (e) the security safeguards principle: this requires that personal data should be protected by reasonable security safeguards against such risks as loss or unauthorised access, destruction, use, modification or disclosure of data:
- (f) the openness principle: this requires that there should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller;
- (g) the individual participation principle: this requires that the right of an individual to obtain access to the information stored by a data controller about them within a reasonable time and in a form that is readily intelligible to them;
- (h) the accountability principle: this requires that a data controller should be accountable for complying with measures which give effect to the principles stated above.

In 1990 the United Nations published its Guidelines for the Regulation of Computerized Personal Data Files. The guidelines are consistent with the principles underpinning Article 12 of the Universal Declaration of Human Rights “... *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

The guidelines are intended to be applied to personal data in the control of governmental organisations and the enshrining of the principles in national legislation is strongly recommended by the UN. The following are the UN principles<sup>13</sup> that should be guaranteed in national legislation:

### **1. Principle of lawfulness and fairness**

Information about persons should not be collected or processed in unfair or unlawful ways, nor should it be used for ends contrary to the purposes and principles of the Charter of the United Nations.

### **2. Principle of accuracy**

Persons responsible for the compilation of files or those responsible for keeping them have an obligation to conduct regular checks on the accuracy and relevance of the data recorded and to ensure that they are kept as complete as possible in order to avoid errors of omission and that they are kept up to date regularly or when the information contained in a file is used, as long as they are being processed.

### **3. Principle of the purpose-specification**

The purpose which a file is to serve and its utilization in terms of that purpose should be specified, legitimate and, when it is established, receive a certain amount of publicity or be brought to the attention of the person concerned, in order to make it possible subsequently to ensure that:

- (a) All the personal data collected and recorded remain relevant and adequate to the purposes so specified;
- (b) None of the said personal data is used or disclosed, except with the consent of the person concerned, for purposes incompatible with those specified;

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<sup>13</sup> <http://www.refworld.org/docid/3ddcafaac.html>



(c) The period for which the personal data are kept does not exceed that which would enable the achievement of the purposes so specified.

#### **4. Principle of interested-person access**

Everyone who offers proof of identity has the right to know whether information concerning him is being processed and to obtain it in an intelligible form, without undue delay or expense, and to have appropriate rectifications or erasures made in the case of unlawful, unnecessary or inaccurate entries and, when it is being communicated, to be informed of the addressees.

Provision should be made for a remedy, if need be with the supervisory authority specified in principle 8 below. The cost of any rectification shall be borne by the person responsible for the file. It is desirable that the provisions of this principle should apply to everyone, irrespective of nationality or place of residence.

#### **5. Principle of non-discrimination**

Subject to cases of exceptions restrictively envisaged under principle 6, data likely to give rise to unlawful or arbitrary discrimination, including information on racial or ethnic origin, colour, sex life, political opinions, religious, philosophical and other beliefs as well as membership of an association or trade union, should not be compiled.

#### **6. Power to make exceptions**

Departures from principles 1 to 4 may be authorized only if they are necessary to protect national security, public order, public health or morality, as well as, *inter alia*, the rights and freedoms of others, especially persons being persecuted (humanitarian clause) provided that such departures are expressly specified in a

law or equivalent regulation promulgated in accordance with the internal legal system which expressly states their limits and sets forth appropriate safeguards.

Exceptions to principle 5 relating to the prohibition of discrimination, in addition to being subject to the same safeguards as those prescribed for exceptions to principles 1 and 4, may be authorized only within the limits prescribed by the International Bill of Human Rights and the other relevant instruments in the field of protection of human rights and the prevention of discrimination.

## **7. Principle of security**

Appropriate measures should be taken to protect the files against both natural dangers, such as accidental loss or destruction and human dangers, such as unauthorized access, fraudulent misuse of data or contamination by computer viruses."

## **8. Supervision and sanctions**

The law of every country shall designate the authority which, in accordance with its domestic legal system, is to be responsible for supervising observance of the principles set forth above.

This authority shall offer guarantees of impartiality, independence vis-à-vis persons or agencies responsible for processing and establishing data, and technical competence.

In the event of violation of the provisions of the national law implementing the aforementioned principles, criminal or other penalties should be envisaged together with the appropriate individual remedies.

## **9. Transborder data flows**

When the legislation of two or more countries concerned by a transborder data flow offers comparable safeguards for the protection of privacy, information should be able to circulate as freely as inside each of the territories concerned.

If there are no reciprocal safeguards, limitations on such circulation may not be imposed unduly and only in so far as the protection of privacy demands.

Based on the literature gleaned concerning the policy direction Jamaica intends to pursue, the above quoted principles are expected to be observed in the proposed Data Protection Act.

## PART IV

### **EXAMPLE OF APPROPRIATE DRAFTING INSTRUCTIONS FOR THE NATIONAL REGISTRATION AND IDENTIFICATION BILL<sup>14</sup>**

These example provisions are set out to guide the preparation of drafting instructions when required.

1. Terms to be defined (other terms may be identified as well)

The following terms are some of the terms used in the legislation and should be defined:

**biometric information**

**citizen**

**Commissioner**

**computer contaminant**

**database**

**demographic information**

**identity information**

**national identification number**

**national identity database**

**national identification card**

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<sup>14</sup> Title of the legislation is to be determined by the NIDS, this title is a suggested one

**ordinarily resident** should be defined within the meaning of ordinarily resident in Jamaica from paragraph 3-6 of Part of the First Schedule to the Representation of the People Act<sup>15</sup>

**registered person**

**Registrar**

**registrable**

**National Registration Commission**

### 3. Scope of the Act

The Act should apply to all citizens of Jamaica and persons ordinarily resident in Jamaica.

### 4. The Establishment of the National Registration Commission<sup>16</sup>

The legislation will create the National Registration Commission as the body responsible for implementing the registration and identification requirements as follows:

4.1 The Act will establish the National Registration Commission which is to be a body corporate to which the provisions of Section 28 of the Interpretation Act is to apply;

4.2 Membership of the Commission:

The membership of the Commission is seven commissioners of which three are to be *ex officio* and the four to be appointed by the Governor

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<sup>15</sup> This may require further consideration. The term is not satisfactorily defined in the ROPA and a more fulsome definition may need to be developed.

<sup>16</sup> The Delaware Report at Paragraph 7.2.2 recommended the establishment of the Commission

General after consultation with the Prime Minister and the Leader of the Opposition as follows<sup>17</sup>:

- (a) the Chairman of the Electoral Commission of Jamaica to be an *ex officio* member
- (b) the *CEO of the Registrar-General's Department* to be an *ex officio* member
- (c) the Director General of the Statistical Institute of Jamaica to be an *ex officio* member
- (d) a representative from the Jamaica Council of Churches
- (e) a representative of the Minister of Health
- (f) a representative of eGov Jamaica Limited
- (g) a representative of the Minister of National Security

Where there is provision for a representative to be appointed, the Act should provide that only a public officer or an officer of a portfolio agency is eligible for selection.

The following is a list of ineligible members of the Commission:

- (a) is not a citizen of Jamaica
- (b) is under eighteen years of age
- (c) has been adjudged to be of unsound mind
- (d) has been adjudged a bankrupt
- (e) has been convicted of an offence that is a felony or involving corruption
- (f) is a Member of Parliament

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<sup>17</sup> The principle guiding the proposed composition of the Commission is the need to include the departments of Government concerned with civil registration and vital statistics as well as civil society organisations. The membership proposed above can be adjusted to include a representative from entities such as the Planning Institute of Jamaica or the Council of Voluntary Social Services.

- 4.3 The members of the Commission are to nominate a member to be appointed by the Governor General to act as Chairman within two weeks of the Constitution of the Commission. If the members do not nominate a Chairman within the time specified, the Governor-General may appoint a Chairman from among the members after consultation with the Prime Minister and the Leader of the Opposition.<sup>18</sup>
- 4.4 The Chairman and other members except for the *ex officio* members are to hold office for a period of seven years and shall be eligible for re-appointment.<sup>19</sup>
- 4.5 The Governor General may appoint any person to act temporarily where a member is unable to act for a period of time.
- 4.6 A member is to cease to hold office if:
- (i) he resigns from office
  - (ii) he becomes of unsound mind
  - (iii) he is convicted of a felony or an offence involving dishonesty or corruption
  - (iv) he is deemed to be incapable of carrying out his duties due to protracted illness
  - (v) he has been adjudged a bankrupt
  - (v) if his appointment is revoked by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition<sup>20</sup>

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<sup>18</sup> Taken from the National Registration Bill, 2000

<sup>19</sup> *ibid*

<sup>20</sup> From the National Identity Management Commission Act, Nigeria

- 4.7 A member (except for an *ex officio* member) is to be permitted to resign at any time by instrument in writing addressed to the Governor-General and transmitted to the Governor-General through the Chairman. The resignation is to take effect on receipt of the instrument of resignation by the Governor-General.<sup>21</sup>

Where a member dies, resigns or is removed before the expiration of the term for which he was appointed, the Governor-General is to be empowered to appoint any other person who is qualified to be appointed, for the unexpired period of the term of the departed member.

#### 4.8 Remuneration of Commissioners

The remuneration for members is to be as may be approved by the House of Representatives.

#### 4.9 Meetings of the Commission

- (i) The Commission is to meet as often as may be necessary or expedient for the performance of its functions.
- (ii) The Chairman is to preside at all meetings of the Commission save and except that where the Chairman is absent from a meeting the members present may elect a member to preside as Chairman.
- (iv) The quorum for the meetings of the Commission is to be three excluding the Chairman.
- (v) The Commission is to be authorized to regulate its own proceedings

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<sup>21</sup> National Registration Bill, 2000



- (vi) decisions of the Commission are to be taken by a majority of votes and the Chairman is to have a casting vote
- (vii) the validity of the proceedings of the Commission is not to be affected by a vacancy among the members or a defect in the appointment of a member.

#### 4.10 Indemnification of Members

Members of the Commission are to be immune from any action, suit, prosecution or other proceedings for acts done or default omitted to be done in good faith in pursuance of the functions of the Commission.

### 5. Functions of the Commission

The Commission is to carry out the following functions<sup>22</sup>:

- (i) establish policies in respect of the NIDS, for the registration and identification of citizens and persons ordinarily resident in Jamaica in accordance with the provisions of the legislation;
- (ii) give directions to the Registrar of the NID in the performance of his functions;
- (iii) establish, maintain and operate a national identity database of registered persons;
- (iv) establish policies and procedures for the verification of the identity of registered persons;
- (v) specify personal, demographic and biometric information required for registration of persons required to be registered under the legislation;

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<sup>22</sup> If the proposal for the Commission to also administer the RGD the list of functions will be required to be extended to cover that responsibility

- (vi) establish policies for the generation and assignment of a unique identification number to each registered person and for the incorporation of the identification number into other existing identity databases or registers in Government agencies in respect of which identity information relating to the registered person has been registered and stored;
- (vii) establish policies for the manufacture and distribution of identification cards and the information required to be printed on such cards;
- (viii) establish policies for the permitted access to the information stored in the database in keeping with prescribed restrictions;
- (ix) implement and maintain technically appropriate programmes and systems for the safe and secure storage and retrieval of information stored in the national identity database;
- (x) establish standards and technical specifications for Information Communication Technology links and other forms of collaboration between the Commission and other Government agencies;
- (xi) establish programmes for the conduct of research and monitoring of technological developments in identity management;
- (xii) ensure the preservation, protection, sanctity and security of any information or data collected, obtained, maintained or stored in respect of the NID;
- (xiii) establish and maintain secured communication links with any existing relevant identity related database or agency;
- (xiv) maintain secure communication links with end-users in any public or private organisation, agency or body including card acceptance devices or Government service centres;

- (xv) collaborate with relevant bodies and agencies in the setting of standards and technical specifications for telecommunication links between organisations and for the devices utilised for such communications;
- (xvi) perform such other duties which, in the opinion of the Commission are necessary or expedient for the discharge of its functions under the legislation.

## 5.1 Powers of the Commission

The Commission is to be empowered to<sup>23</sup>:

- (i) request for any information or data from any person on matters relating to its functions;
- (ii) impose and collect fees for services provided as prescribed by regulation;
- (iii) enter into any form of agreement with any private or public sector entity as it deems necessary for the better carrying out of its functions;
- (iv) employ such staff as it deems necessary and fix the terms and conditions of employment of employees;
- (v) do anything and enter into any transaction which in the opinion of the Commission is necessary to ensure the performance of its functions;
- (vi) delegate its functions as it deems necessary to agencies of Government concerned with registration and identification;

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<sup>23</sup> If the RGD is being administered by the Commission, its powers will have to be expanded to include giving direction to the Registrar-General

6. Staff of the Commission

- 6.1 A director-general is to be appointed by the Governor-General on the advice of the Commission who is to be the responsible for:
- (a) the day to day operations and administration of the offices of the Commission;
  - (b) the carrying out of the policies and decisions of the Commission;
  - (c) keep proper records of the proceedings of the Commission
  - (d) preparing revenue and expenditure statements and the management of the annual approved budget.
- 6.2 The Commission is to be empowered to appoint a Registrar/Deputy registrars who is to be answerable to the Director-General and who is to be responsible for the all aspects of the registration of registrable persons and the collection of related information that is to be contained in the National Identity Database. The Commission may also appoint district and deputy registrars as it deems necessary for ensuring that the purposes of the legislation are carried out.
- 6.3 The Commission is to be empowered to appoint and employ at such remuneration and on such terms as it deems fit, officers, district registrars, agents and other employees as it thinks necessary to assist the director-general to carry out his duties. The remuneration offered to employees must not be in excess of the prescribed rates that are approved by the Minister of Finance from time to time.
- 6.3 The Commission is to be empowered to delegate to the director-general power to appoint such categories of staff as the Commission may from time to time specify.
- 6.4 Every person having any duty or is employed to carry out any function under the legislation is to be required to regard as secret and confidential

all documents, data stored in any database, information and records belonging to the Commission and the national identity database.

- 6.4 Every member of the Commission and every person employed by the Commission must, before assuming duties, be required to take and subscribe an oath of secrecy similar to the oath quoted below:

*Oath to be taken<sup>24</sup>*

*I..... do solemnly and sincerely declare and affirm that I understand and am aware that I must not divulge any information gained by me as a result of my office/employment with the National registration and Identification Commission to any unauthorized person, whether orally, in writing, or by any other means without the previous sanction of the Chairman of the Commission or other appropriate authority. I understand also that this undertaking shall apply not only during the period of my office/employment but also after my office/employment with the Commission has ceased.*

- 6.5 provision is to be made for a breach of the secrecy provisions to be an offence for which the maximum penalty is to be One Million dollars [\$1,000,000] or in default of payment, a term of imprisonment for a term not exceeding two years.

## 7. Resources of the Commission

- 7.1 The funds and resources of the Commission are to consist of:
- (a) such sums that may be placed at its disposal by Parliament by time to time;
  - (b) fees imposed by the Commission for the provision of services

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<sup>24</sup> Adapted from the Second Schedule to the National Registration Bill, 2000

- (c) any other sums or property that may be paid to or be vested in the Commission.

## 8. Ministerial Oversight<sup>25</sup>

The Commission is to be answerable to the Minister and must keep the Minister fully informed of all the activities of the Commission. The Minister is answerable to the Parliament for matters concerning the activities of the Commission.

## 9. The National Identity Database

- 9.1 The legislation is to establish a National Identity Database ( the NID) which is to contain registered information and personal data relating to nationals of Jamaica and ordinarily resident Commonwealth citizens and other non-nationals in Jamaica.

The objectives of the database are to:

- (a) provide a secure and reliable facility for obtaining, maintaining and preserving identification information;
- (b) store all information and data collected about nationals and persons ordinarily resident in Jamaica;
- (c) enable the Commission to generate identification cards with relevant information from the database printed thereon;
- (d) enable the harmonisation of existing identification repositories with the NID;
- (e) enable the identification verification and authentication of nationals of Jamaica and persons ordinarily resident in Jamaica;

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<sup>25</sup> This is an unsettled issue as it is also being considered whether to seek to have the Commission be a Commission of the Parliament

## 9.2 Contents of the Database

The information that may be stored in the NID in respect of a registered person are:

Personal information:

- (a) full names (including any name by which the person is or has been known)
- (b) date of birth/ name of parents
- (c) place of birth
- (d) gender
- (e) principal place of residence and any other occasional place of residence
- (f) occupation
- (g) nationality
- (h) length of time that person has been resident in Jamaica (if a non-national)
- (i) employer
- (j) marital status/full name of spouse
- (j) date of death
- (k) place of death

Identifying Information:

- (a) photograph of head and shoulders<sup>26</sup>

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<sup>26</sup> To be consistent with Regulation 18 of the Passport Regulations made under Section 10 of the Passport Act: Wherever in these Regulations any photographs are required to be attached to any application such photographs shall not be accepted unless-

(a) they represent the applicant full-face and without a hat except where the applicant wears a head dress on the basis of his religious belief and his forehead, eyes and ears are clearly visible; and (6) they are not more than 6.25 cm x 5 cm and not less than 5 cm x 3.75 cm.

- (b) signature (for adults)
- (c) fingerprints or other biometric data

Reference numbers:

- (a) Taxpayer Registration number
- (b) driver's licence number
- (c) passport number
- (d) National insurance number
- (e) birth entry number (where appropriate)
- (f) the national identity number
- (g) electoral office identification card number

Registrarial history

- (a) particulars of every card issued
- (b) particulars of cancelled cards
- (c) particulars of recalled cards due to deprivation of citizenship
- (d) record of any information about a registered person that has been disclosed to a third party and the purpose for which it was requested.

9.3 The Commission is to be empowered to engage one or more entities to assist in the establishment and maintenance of the NID and to perform any other functions incidental thereto.

9.4 The information stored in the NID is to be authorised only to be used for the following purposes:

- (a) the provision of the national identification card to a registered person
- (b) to verify the identity of a registered person
- (c) to provide such demographic, quantitative or statistical data as may be requested by a public agency for compiling population statistics or for socio-economic planning and development.



## 10. Registration

The prescribed personal, biometric and demographic information ('relevant information') of all citizens and persons ordinarily resident in Jamaica, including Commonwealth citizens is to be collected using a registration process.

The registration of persons whose relevant information is to be entered and stored in the NID is to be conducted under the direction of the Registrar.

Registration may be effected by:

- (a) a person making an application for registration in the form to be specified and by so doing, providing the information required; and
- (b) information provided to the NID Registrar by Registrars of the identification registers and databases of other public entities;

For the purposes of carrying out the registration of all relevant persons, the Registrar may divide the Island into such districts as may be specified and delegate such registrarial functions and powers as may be necessary to the staff of each district.

### 10.1 Categories of Persons Required to Register

- (a) citizens of Jamaica (compulsory for citizens resident in Jamaica and non-compulsory for citizens resident outside of Jamaica) (naturalized citizens are required to register within 90 days of acquiring citizenship)

- (b) non-citizens who are ordinarily resident in Jamaica<sup>27</sup>

## 10.2 Application to be registered

- (a) citizens aged 18 or over must apply on their own behalf;
- (b) citizens under the age of 18, application by a parent or legal guardian;
- (c) adult citizens incapacitated by disability, application by person legally responsible for the disabled person's affairs;
- (d) adult citizens incarcerated in penal institutions, infirmaries, mental hospital or almshouse, application by the person in charge of the administration of the institution.
- (e) a person who acquires citizenship other than by birth is required to apply to be registered within [90] days of acquiring citizenship.

## 10.3 Registration Procedure

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<sup>27</sup> There is no statutory definition of ordinarily resident. The tax laws use the term but it is not defined in any tax law. The Representation of the People Act paragraph 3-6 of Part 1 of the First Schedule is the best statutory explanation of the term. The provision is as follows:

"...the question as to whether a person is or was ordinarily resident at any material period shall be determined by reference to all the facts of the case.

4. The place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation or home, whereof when away from there he intends to return. Specifically, when a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where the person sleeps.

5. Generally, a person's place of ordinary residence is where his family is; if he is living apart from it in another place, the place of ordinary residence of such person is such other place. Temporary absence from a place of ordinary residence does not cause the loss or change of place of ordinary residence: Provided that any person who has more than one place of ordinary residence may elect in respect of which place he desires to be registered and inform the enumerator accordingly in the form set out in the Schedule to these Rules.

6. Any person on actual service with or embodied in any unit of the regular Force in the Jamaica Defence Force shall be deemed to continue to ordinarily reside in the polling division in which he was ordinarily resident at the time that he entered upon such actual service or was embodied as the case may be, unless he has thereafter established some other ordinary residence in the Island. " The ROPA definition is consistent with the common law definition found in the case of *Shah v London Borough of Barnet* as follows: "...Ordinary residence is established if there is a regular habitual mode of life in a particular place "for the time being", "whether of short or short or long duration", the continuity of which has persisted apart from temporary or occasional absences. The only provisos are that the residence must be voluntary and adopted for "a settled purpose"...

- (a) An application to be registered is made by a person by providing the information required on the specified application form to the Registrar as directed by the Registrar;

The application form is to ask for:

- (a) full names (including any name by which the person is or has been known: to specify maiden name and name after marriage in the case of females; and name given at birth registration and name acquired in the case of a name change by deed poll)
- (b) date of birth
- (c) place of birth/country of birth
- (d) gender
- (e) place of residence and any other occasional place of residence
- (f) occupation
- (g) nationality (if not citizen by birth, how was citizenship acquired)
- (h) length of time that person has been resident in Jamaica (if a non-citizen)
- (i) employer
- (j) marital status/full name of spouse
- (k) street address/mailling address (to include email address)
- (l) name of parent(s)
- (m) occupation/place of employment/employer
- (n) Taxpayer Registration number
- (o) driver's licence number
- (p) passport number
- (q) National insurance number

- (r) birth entry number (where appropriate)
- (s) the national identity number
- (t) electoral office identification card number

#### 10.4 Taking of Biometric Information

In addition to collecting the specified information, the Registrar is also required to capture the fingerprint of each person. Fingerprint is to be within the meaning of the Fingerprints Act as in that Act it includes palm print and foot print. The procedure for the capture of fingerprints is to be as provided for the taking of fingerprints for electors under the Representation of People Act.

The Commission is to be at liberty to collect other biometric information as it deems necessary.

#### 10.5 Authentication of Information

The Registrar is to be empowered to require such documentary or other verification of the information provided by a person during the registration process. The Registrar is required to accept the following documents as evidence of the information contained therein:

- (a) birth certificate
- (b) marriage certificate
- (c) deed poll
- (d) an unexpired Passport
- (e) Driver's Licence
- (f) Taxpayer Registration Card
- (g) Duplicate Certificate of Title/Certified Copy of Tax Roll
- (h) Certification from Educational Institution (where relevant)

(i) National Insurance Card

10.6 The Registrar must require a registered person to inform him of changes to their demographic or biometric information as they may occur from time to time in such manner as specified by regulations and the Registrar shall take such steps as necessary to register such changes to that person's identity information as deemed necessary after the Registrar has authenticated the information provided by the registered person.

10.7 The Registrar may require a registered person to bring to his attention any inaccuracy in the information stored about that person in such manner as may be specified by regulations and the Registrar shall take such steps as necessary to correct the inaccurate information after the Registrar has authenticated the information provided by the registered person.

(10.8) The Registrar is to be empowered to request and obtain verification information as may be necessary from any GOJ Ministry agency or department.

11. The National Identification Number

11.1 The Registrar must, on receipt of the required information, as part of the registration process, assign to every person a unique identification number.

11.2 The identification number shall be a computer generated random number and shall bear no attributes or identity of the person to whom the number is assigned.

11.3 An identification number, once issued to a person, shall not be re-issued to any other person.

- 11.4 The identification number so issued shall be displayed on the national identification card issued by the Commission to the registered person to whom the number has been assigned.
- 11.5 The identification number assigned to a registered person is required to be provided by the registered person when conducting business with a GOJ agency at the request of an officer.
- 11.6 The Commission is to be empowered to delegate and authorize the head of any public entity to assign identification numbers as deemed necessary
- 12. National Identification Card<sup>28</sup>

A National Identification Card is to be deemed to be a public document for the purposes of the Section 22 of the Evidence Act.

- 12.1 A national identification card (NIC) is issued by the Commission to a registered person on completion of the registrarial process for persons above the age stipulated below and on the application of a registered person who has attained the age of [16 years].
- 12.2 Identification cards issued to registered persons are to be valid for five year periods and a registered person is required to apply for the renewal of the NIC in the prescribed manner and on payment of the prescribed fees<sup>29</sup>.

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<sup>28</sup> By deeming the card to be a document under the Forgery Act, the provisions of the Act will apply to the card and the offences and penalties will also apply.

<sup>29</sup> The five year validity period was recommended at paragraph 7.2.4 of the Delaware Report. Consideration could be given to using a person's birth date as the renewal date as is done for driver's licences.

- 12.3 Identification cards must have the following information about the cardholder:
- (a) name
  - (b) gender
  - (c) residential address
  - (d) nationality/
  - (e) national identification number
  - (f) photographic image
  - (g) signature
  - (h) date/place of issue
  - (i) expiry date
  - (j) date of birth
- 12.4 A card issued to a registered person is to remain the property of the Commission and the Commission or any other person authorised by the Commission may at any time require that the cardholder produce the card.
- 12.5 A registered person must report to the Commission the loss, mutilation or destruction of a card issued to them and where possible return a mutilated card to the Commission promptly.
- 12.6 A person who finds or comes into possession of a card that was not issued to him must promptly return the card to the Commission.
- 12.7 Nothing in the legislation is to be interpreted to mean that a registered person is required to carry the card on their person at all times.
- 12.8 The Commission must cancel a card where:

- (a) the card was issued in reliance on information whether provided by the registered person or not that later shown to be:
  - (i) a misrepresentation or concealment of material facts
  - (ii) inaccurate or incomplete information was provided
  - (iii) fraudulent
  - (iv) multiple registrations by the same person resulted in more than one card being issued to that person
  - (v) based on forged documents submitted in verification of information provided by a registered person
- (b) the registered person to whom the card was issued has reported that the card have been lost, stolen, tampered with, damaged or destroyed
- (c) there has been a change to the information about the registered person displayed on the card
- (d) the registered person has been deprived of citizenship under Section 8 of the Jamaica Nationality Act

12.9 The Commission is empowered to require a registered person to surrender a card where:

- (a) the card was issued in error
- (b) the card has expired or is otherwise invalid
- (c) the Commission requests the card be returned to facilitate changes to the card design and for the re-issue of a new card
- (d) being a citizen of Jamaica by registration or naturalisation under the Jamaican Nationality Act and such citizenship has been



cancelled or renounced the validity of the national identification card issued has expired as at the effective date of such cancellation or renunciation

A person who is knowingly in possession of an identification card that was not issued to him and without the authority of the person to whom it was issued is to be obligated to surrender the card as soon as it is practicable to do so.

Failure to surrender an identification card when requested by the Commission to do is to be an offence

### 13. Protection of Information<sup>30</sup>

- 13.1 The Commission is to be under a duty to ensure the security and confidentiality of the identity information of registered persons and it is to be obligated to implement the security safeguards as appropriate to ensure that information stored in the NID is secured against loss, damage, unauthorised use, unauthorised disclosure and unauthorised access.
- 13.2 The Commission is to be authorised to only collect the information specified in the legislation and even if personal information not specified is received unsolicited such information is not to be retained and stored in the NID.

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<sup>30</sup> The Delaware Report at paragraph 7.3.6 states that “In an analysis of the comparative experience of other countries (notably the United Kingdom) it has been shown that the issue of the invasion of right to privacy has been a critical factor in the introduction, acceptance and survival of a national identification scheme.” While the preparatory work for data protection legislation is being carried out, data protection provisions are being proposed for the NIDS legislation so that regardless of whether the data protection law is in place the NIDS law will have adequate data protection provisions.

- 13.3 The Commission is to allow a registered person to access the identity information about them stored in the database and a procedure for applying for such access is to included in the legislation.
- 13.3 The Commission must not disclose information contained in the NID about a registered person to a third party or public agency except as specified under the legislation and where an application for the provision of the information is made:
- (a) at the request of or with the authority of the registered person
  - (b) pursuant to an order of the Court
- 13.4 The Commission is allowed to disclose demographic information about a registered person to the National Planning Institute of Jamaica, and the Statistical Institute of Jamaica solely for the purpose of assisting those agencies to carry out its functions provided that no personal identity information may be disclosed.
- 13.5 The Commission is allowed to disclose identity information about a registered person without the consent of the registered person to a public office or agency to which the Commission has delegated any of its registrarial functions, such as, the Registrar General and the Electoral Commission of Jamaica. The disclosure is allowed solely for facilitating the authentication or verification of identity information about that registered person.
- 13.6 The Commission is allowed to disclose identity information about a registered person without the consent of the registered person where the disclosure is made:

- (a) to the Passport Officer in charge of the Passport Immigration and Citizenship Agency;
- (b) to the Minister of National Security where such disclosure is deemed necessary for the prevention or detection of crime and national security.

13.7 The Commission may disclose personal, demographic and biometric information concerning registered persons to a company or public agency that provides services of information storage, information management and security and such other services as may be necessary solely for the purpose of facilitating the Commission carrying out its functions.

In the event of such disclosure, the entity to which such information has been disclosed is to execute a confidentiality agreement barring any disclosure of information to which the entity may have had access to a third party.

13.8 the Commission is to be allowed to disclose identity information about a registered person without the consent of the registered person where the disclosure is made to the Commissioner-General of Tax Administration provided that only information strictly necessary to assist the Commissioner-General to identify the registered person as a taxpayer may be disclosed. No demographic or biometric information may be disclosed.

13.9 The Commission and any person carrying out any duties on its behalf shall take the appropriate steps to ensure that the permitted disclosure of

information is carried out with the strictest observance of the principles of protection of personal information as enunciated by the OECD in its Guidelines for the Protection of Privacy and Transborder Flow of Personal Data <sup>31</sup> and the United Nations Guidelines for the Regulation of Computerized Personal Data Files<sup>32</sup>

13.8 The Commission may impose such fees and it deems necessary for the provision of information<sup>33</sup>.

13.9 Permitted use of the NID by the Registered Person<sup>34</sup>

The NID is to be usable by the registered person to whom the card has been issued for the purposes of verifying their identity as may be necessary in the conduct of their daily lives.

The national identification number displayed on the card may be used by the registered person to whom the number has been assigned, for the conduct of business generally as may be required and specifically when conducting business, carrying out a transaction or when accessing the services of any public agency.

14. Evidential Status of National Identification Card and National Identification number

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<sup>31</sup> <http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf>

<sup>32</sup> <http://www.refworld.org/docid/3ddcafaac.html>

<sup>33</sup> The protection of information needs to be strongly worded. The Protection of Personal Information Act of British Columbia and the Privacy Act of Canada are at Appendix A and B for reference in that regard

<sup>34</sup> Provisions for the sharing of personal information between GOJ entities are to be inserted. The Privacy Act of Canada contains provisions that may prove useful in that regard. See it at Appendix B

A provision similar to Section 12 of the Jamaican Nationality Act is to be inserted to ensure the evidential status of the NIDS documents as follows:

*Every document purporting to be a notice, certificate, order or declaration, or an entry in a database made under this Act or under the provisions of Chapter 11 of the Constitution shall be received in evidence and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made.*

*(2) Prima facie evidence of any such document as aforesaid may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.*

*(3) Any entry in a database made under this Act or under the provisions of Chapter 11 of the Constitution shall be received as evidence of the matters stated in the entry*

#### 14. Fees

The Commission is to be empowered to impose fees for the provision of its services by making regulations approved by the Minister subject to affirmative resolution. However no fees are to be imposed for the submission of an application to be registered and for the issue of the first national identification card to a registered person.

#### 15. Offences and Penalties<sup>35</sup>

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<sup>35</sup> The language of Section 87 of the Representation of the People Act will include the NIC and persons could be prosecuted using that provision. The text of the provision is as follows:

87(1) Every person who-  
Unlawfully (a) obtains without lawful or reasonable cause (the proof of which shall be established by such person), the identification card of any other person or any other prescribed document establishing identity; (b) wilfully damages or destroys any identification card **or any other prescribed document establishing identity**, shall be

15.1 The offences related to unlawful access, modification manipulation, misuse, distortion or other acts of contamination of a computer database and the information stored therein under the Cybercrimes Act are to be applicable to this legislation.

15.1 The following actions are to constitute an offence under the Act:

- (a) knowingly be in possession of or have under his control a national identification card that was issued to another person without the knowledge or consent of the person to whom the card was issued. The offence is aggravated by the intention of using the identification card for impersonating or attempting to impersonate a registered person or for allowing or inducing another to use the card for impersonating a registered person
- (b) obtain or facilitate another to obtain identity information about a person purporting to be with the authority of the Commission
- (c) wilfully introduce or cause to be introduced into the NID any virus or other computer contaminant or otherwise disrupt the operations of the NID
- (d) falsely present himself as not having previously been registered with a view to obtaining an identification card
- (e) wilfully deceive the Registrar by providing false personal identity information with a view to obtaining an identification card
- (f) wilfully obstruct or impede the Registrar in the exercise of the Registrar's functions

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guilty of an offence and on summary conviction before a Resident Magistrate shall be liable to imprisonment with or without hard labour for a term not exceeding two years and in addition thereto to a fine not exceeding twenty thousand dollars or on conviction before a Court shall be liable to imprisonment with hard labour.

(2) Any person who by means of any statement which he either knows to be false or has no reasonable cause to believe to be true obtains or attempts to obtain any identification card **or any other prescribed document establishing identity** shall be guilty of an offence and on summary conviction before a Resident Magistrate shall be liable to imprisonment with or without hard labour for a term not exceeding two years and in addition thereto, to a fine not exceeding twenty thousand dollars, or on conviction before a Circuit Court shall be liable to imprisonment with hard labour for a term not exceeding five years.

- (g) part with possession of an identification card issued to him for an unlawful purpose
- (h) be in possession of any machinery, implement, utensil or material capable of being used or intended to be used for the manufacture and forgery of a national identification card
- (i) knowingly be in possession of and use for the purpose of falsely establishing identity an identification card that is a forgery<sup>36</sup> purporting it to be a national identification card

15.2 The offences quoted above should attract on conviction before a Resident Magistrate, a fine not exceeding one million dollars and/or imprisonment for a term not exceeding two years. Offences involving forgery will be as provided under the Forgery Act.

15.3 The Resident Magistrate is to be empowered to grant a warrant authorizing the entering and search of premises where it is reasonably suspected that implements or apparatus used for the unlawful manufacture of identification cards are kept and for the seizure of such material. Implements and apparatus so seized are forfeited to the Crown.

## 16. Regulations

The Minister is to be empowered to make regulations on the recommendations of the Commission and such regulations are to be subject to affirmative resolution.

Regulations may provide for:

- (a) the procedures and practices of be followed by the staff of the Commission in the collection and verification of information required for the registration of relevant persons;

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<sup>36</sup> Forgery is within the meaning of Section 3 of the forgery Act

- (b) the procedures and processes for the data storage, data management, security protocols and technological safeguards for information stored in the database;
- (c) the procedure for the generation of the unique identification number for each registered person;
- (d) procedures and processes for the manufacture and issue of identification cards;
- (e) processes for the verification and authentication of information and for the permitted access to such information;
- (f) the procedures for the receipt and processing of applications for the issue of identification cards as well as the surrender, cancellation and replacement of a card where the card has been lost, mutilated or destroyed;
- (g) procedures for the collection and registration of changes to the personal information of a registered person, the entry of such changed information into the national database and for the cancellation of the card previously issued and for the issue of a new card accordingly;
- (h) a tariff of fees for the delivery of services
- (i) any other matter required to be specified



## **PROPOSED AMENDMENTS TO STATUTES**

The following amendments to laws and related regulations are being proposed in order to facilitate:

- (1) The recognition and use of the national identification card and the national identification number alongside existing identification programmes;
- (2) The lawful sharing of personal, biometric and demographic information between relevant public entities.

### 1. Registration (Births and Deaths) Act<sup>37</sup>

- 1.1 Section 2 of the Act should define National Identification Number within the meaning of the NIDS legislation.
- 1.2 Amend by adding a new part to the Act that provides for:
  - (a) the Registrar-General being empowered to collect information for the purposes of the registration of births and deaths reported to that office being entered into the national identification database<sup>38</sup>;
  - (b) the data to be collected for the purposes of that registration is to be outlined and a corresponding schedule inserted;
- 1.3 Amend the regulations to insert National Identification Number in addition to Birth or Death Entry Number on a birth or death certificate issued under the Act.
- 1.4 Insert a provision expressly authorizing the Registrar-General to share information in the registers with the NIDS as the NIDS may require from time to time<sup>39</sup>.

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<sup>37</sup> The amendment to the Registration (births and Deaths) Act is to provide for the Registrar General being empowered to assign the national identification number to birth records.

<sup>38</sup> The assumption is that the Registrar-General will be given data entry and data search access to the NID in order for her to carry out this function.

## 2. Marriage Act

Section 38 empowers the Registrar-General to make rules for the registration of marriages so the amendments to the Schedules can be made under that power.

**38.** The Registrar-General may from time to time make, and when made revoke, add to and alter, rules for the carrying out of the registration provisions of this Act, and for the direction of officers connected with registration in the performance of duties under this Act. Such rules shall be subject to the approval of the Minister, who may allow, disallow, alter and add to, such rules or any of them

Section 31 provides that the information required to be collected for the registration of a marriage is at Schedule L. Accordingly, an amendment is to be made to Schedule L to insert a column for the insertion of the national identification number of the parties of the marriage. A similar amendment is to be made to Schedule M in the case of a marriage under Section 37 where one of the parties anticipates impending death.

No statutory form of the marriage certificate has been found in the schedules to the Act or the Regulations however it will be necessary for the marriage certificate issued by the Registrar General to show the national identification number of the parties to the marriage on the certificate.

## 3. Forgery Act

Amend the Act to insert a provision similar to Section 6 as follows:

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<sup>39</sup> The RGD has developed its own paper indicating extensive amendments that it proposes to the Act that would improve the collection of information and delivery of services. It is worth considering whether to incorporate this proposed schedule of amendments as part of the consequential amendments to the NID legislation

*The Forgery of any national identification card or the making by any person of a statement which is to his knowledge untrue for the purpose of procuring a national identification card, whether for himself or any other person, shall be a misdemeanour and punishable with imprisonment with hard labour for any term not exceeding two years.*

#### 4. Passport Act

Given that the policy for the widest use of the NIDS it will be necessary for the applicants for passports and seaman's certificate of nationality and identity to provide the national identification number to the passport office. Paragraph 9 of the Regulations made pursuant to Section 10 of the Passport Act empower an authorized officer to request the documents of identity that he requires to support an application for a passport. No amendment to the law or the regulations is necessary therefore for the national identification card to be included in the list of documents of identity required.

However, the prescribed form used as the application form for a passport will require amendment to reflect the requirement that an applicant produce the national identification card as well as the national identification number being written on the application form.

Paragraph 14 of the Regulations will require amendment in the case of the seaman's certificate of nationality and identity to require that among the facts required to be disclosed is the national identification number and also that the national identification card is required to be shown as a prerequisite to the application being accepted.

#### 5. Immigration (Commonwealth Citizens) Act

In order to place the National Identification card on the level of the Certificate of Identity and the Government of Jamaica Identification Cards issued by PICA under this Act the following amendments are proposed:

- (a) amend Section 7 to insert a proviso as follows:

Provided that the Chief Immigration officer need not issue a Certificate of Identity to a Commonwealth Citizen who belongs to Jamaica and to whom a National Identification card has been issued after the Chief Immigration Officer satisfies himself of the authenticity and validity of the said National Identification Card.

- (b) amend Section 24(3) of the Act to insert a provision for a Commonwealth citizen to present a national identification card as follows:

A person having in his possession a passport appearing to have been endorsed by an immigration officer under this Act or a certificate appearing to have been granted under this Act **[or a national identification card issued under the National Registration and Identification Act]** shall answer all questions put to him by an immigration officer or constable for the purpose of establishing his identity with the person named in the passport or certificate, **[or national identification card]** and shall, if so required by an immigration officer or constable, submit to his finger prints being taken for that purpose .

- (c) Amend Form E (Certificate of Identity) in respect of Regulation 8(1) as follows:

THE IMMIGRATION RESTRICTION (COMMONWEALTH CITIZENS) ACT

*Certificate of Identity*

It is certified that .....holding

passport No.. .....issued by.. .....

***[and where relevant, a national identification card issued under the National Registration and Identification Act] ]***having appeared before

..... for

the purpose of supplying the means of identification which are now specified herein, and having intimated that he/she is about to absent himself/herself from the Island of Jamaica for a period of ..... on a visit to

..... this document is issued to

.....and, subject to the conditions specified hereunder or endorsed hereon and to the verification of the marks of identification, will be accepted by the examining immigration officer without further evidence as proof of the identity of the said

..... on his/her return within a period of two years.

#### 6. Jamaican Nationality Act

It is under this Act that citizenship by registration may be conferred on persons not born in Jamaica and who is:

“(a) ordinarily resident in Jamaica; or

(b) in Crown service under the Government of Jamaica; or

(c) partly the one and partly the other,

throughout the period of five years ending with the date of his application, or such shorter period so ending as the Minister may in the special circumstances of any particular case accept”.

It is desirable for the NIDS database to be updated with the particulars of all persons who acquire citizenship by registration. It is therefore proposed to amend the Act as follows:

- (a) Insert a new section to provide that on the attainment of citizenship by registration, or by naturalization, a person shall take the necessary steps to comply with the registration procedure and provide the personal and biometric information prescribed under the National Registration and Identification Act. Failure to register as provided may result in the cancellation of the grant of citizenship in the manner set out in Section 8;
- (b) Amend Part III of the Regulations made under Section 13.
  - (i) Add a provision to paragraph 12 to provide that where an order has been made depriving a person who is a citizen of Jamaica by registration of that citizenship, his name shall be removed from the register of citizens of Jamaica in which it is entered [***and a notice shall be sent to the National Identification Commission by the Chief Immigration officer advising of such removal from the register of citizens of Jamaica***].
  - (ii) In the Third Schedule in Regulation 10 and Regulation 13A concerning the application and declaration of renunciation of citizenship insert in the form of application and order of renunciation a requirement that the national registration number be stated on the application and the order where the person concerned had been registered under the NIDS.

## 7. Representation of the People Act

In order to facilitate the recognition of the National Identification Card and the National Identification Number as part of the process for establishing identity under this Act it is proposed to amend as follows:

- (a) amend Section 34 to provide in sub-section 7 to provide that an elector who has not produced his identification card issued by the Electoral Commission may submit his national identification card and the card will be accepted by the Chief Electoral Officer as evidence of that elector's identity without prejudice to the power to the Chief Electoral Office to make enquiries to satisfy himself of the validity of the identification information being provided by an elector under sub-section 8.
- (b) amend Section 36(1) to permit an elector in whose name a person has already voted purporting to be that elector to submit a national identification card in addition to taking the oath of identity also to add in sub-section (2) that the national identification card was presented by the elector. Similar amendments are required to be made to the Third, Fourth and Fifth Schedules in respect of voting procedures for the police, military and Election Worker voters. The intention is that such an elector may submit his national identification card and it be accepted as evidence of the identity of the elector.
- (c) In order to permit the sharing of data between the NIDS and the Electoral Office, a provision varying the provisions of Section 114 is required:  
*114.-(1) Any fingerprint recorded on a fingerprint card shall not be used for any purpose except in relation to the registration of any*

*person enumerated under this Act or for the purpose of that person voting at a polling station.*

Insert a provision in the Act that provides that notwithstanding the provisions of Section 114 of the Act the information obtained by the Chief Electoral Officer in respect of an enumerated elector may be entered into the National Identification Database established under the National Registration and Identification Act provided that any information so entered shall be used for the purpose of establishing identity for the carrying out of the purposes of the Representation of the Peoples Act and the National Registration and Identification Act.

8. Revenue Administration Act

The application Form for registration as a taxpayer FORM 1 should be amended to insert a requirement for the national identification number to be included in the information to be provided by a taxpayer in order to be registered in the TRN register.

9. Access to Information Act

In order to protect the security of the personal information stored by the NIDS, the exclusion of all such information needs to be inserted into this Act. At Section 22 :

22.-(1) Subject to the provisions of this section, a public authority shall not grant access to an official document if it would involve the **unreasonable disclosure** of information relating to the personal affairs of any person, whether living or dead.



This is supplemented by Regulation 18:

18.-(1) In any case where the personal privacy of a person may be affected by the grant of access to an official document\_ the responsible officer shall consult, if possible with that person or his representative to determine whether access would involve unreasonable disclosure of information relating to that person.

(2) Where it is determined that access is to be granted to an official document. in circumstances where the personal privacy of a person may be affected by the grant of access such person, or his representative is to be entitled to a copy of the document to which access has been granted.

It is not clear what circumstances would be regarded as an unreasonable disclosure. It is therefore necessary for a sub-section to be inserted that makes it certain and clear that in the case of the NIDS there is an absolute bar to the disclosure of the personal information of any registered person by a public entity save and except as public entities concerned with the registration of persons for the NIDS may share information between them solely for the carrying out of the purposes of the NIDS.

## **APPENDICES**

## Appendix A

### The Personal Information Protection Act of British Columbia

#### Part 1 — Introductory Provisions

##### Definitions

1 In this Act:

**"commissioner"** means the commissioner appointed under section 37 (1) or 39 (1) of the *Freedom of Information and Protection of Privacy Act*;

**"contact information"** means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

**"credit report"** has the same meaning as "report" in section 106 of the *Business Practices and Consumer Protection Act*;

**"credit reporting agency"** has the same meaning as "reporting agency" in section 106 of the *Business Practices and Consumer Protection Act*;

**"day"** does not include a holiday or a Saturday;

**"document"** includes

- (a) a thing on or by which information is stored, and
- (b) a document in electronic or similar form;

**"domestic"** means related to home or family;

**"employee"** includes a volunteer;

**"employee personal information"** means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;

**"employment"** includes working under an unpaid volunteer work relationship;

**"federal Act"** means the *Personal Information Protection and Electronic Documents Act* (Canada);

**"investigation"** means an investigation related to

- (a) a breach of an agreement,
- (b) a contravention of an enactment of Canada or a province,
- (c) a circumstance or conduct that may result in a remedy or relief being available under an enactment, under the common law or in equity,
- (d) the prevention of fraud, or
- (e) trading in a security as defined in section 1 of the *Securities Act* if the investigation is conducted by or on behalf of an organization recognized by the British Columbia Securities Commission to be appropriate for carrying out investigations of trading in securities,

if it is reasonable to believe that the breach, contravention, circumstance, conduct, fraud or improper trading practice in question may occur or may have occurred;

**"organization"** includes a person, an unincorporated association, a trade union, a trust or a not for profit organization, but does not include

- (a) an individual acting in a personal or domestic capacity or acting as an employee,
- (b) a public body,
- (c) the Provincial Court, the Supreme Court or the Court of Appeal,

- (d) the Nisga'a Government, as defined in the Nisga'a Final Agreement, or
- (e) a private trust for the benefit of one or more designated individuals who are friends or members of the family of the settlor;

**"personal information"** means information about an identifiable individual and includes employee personal information but does not include

- (a) contact information, or
- (b) work product information;

**"proceeding"** means a civil, a criminal or an administrative proceeding that is related to the allegation of

- (a) a breach of an agreement,
- (b) a contravention of an enactment of Canada or a province, or
- (c) a wrong or a breach of a duty for which a remedy is claimed under an enactment, under the common law or in equity;

**"public body"** means

- (a) a ministry of the government of British Columbia,
- (b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2 of the [Freedom of Information and Protection of Privacy Act](#), or
- (c) a local public body as defined in the [Freedom of Information and Protection of Privacy Act](#);

**"work product information"** means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

## Purpose

2 The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

## Application

3 (1) Subject to this section, this Act applies to every organization.

(2) This Act does not apply to the following:

- (a) the collection, use or disclosure of personal information, if the collection, use or disclosure is for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information and for no other purpose;
- (b) the collection, use or disclosure of personal information, if the collection, use or disclosure is for journalistic, artistic or literary purposes and for no other purpose;
- (c) the collection, use or disclosure of personal information, if the federal Act applies to the collection, use or disclosure of the personal information;
- (d) personal information if the [Freedom of Information and Protection of Privacy Act](#) applies to the personal information;
- (e) personal information in
  - (i) a court document,
  - (ii) a document of a judge of the Court of Appeal, Supreme Court or Provincial Court, or a document relating to support services provided to a judge of those courts,
  - (iii) a document of a master of the Supreme Court,
  - (iv) a document of a justice of the peace, or
  - (v) a judicial administration record as defined in Schedule 1 of the [Freedom of Information and Protection of Privacy Act](#);

- (f) personal information in a note, communication or draft decision of the decision maker in an administrative proceeding;
- (g) the collection, use or disclosure by a member or officer of the Legislature or Legislative Assembly of personal information that relates to the exercise of the functions of that member or officer;
- (h) a document related to a prosecution if all proceedings related to the prosecution have not been completed;
- (i) the collection of personal information that has been collected on or before this Act comes into force.
- (3) Nothing in this Act affects solicitor-client privilege.
- (4) This Act does not limit the information available by law to a party to a proceeding.
- (5) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless another Act expressly provides that the other enactment, or a provision of it, applies despite this Act.

## **Part 2 — General Rules Respecting Protection of Personal Information by Organizations**

### **Compliance with Act**

- 4 (1) In meeting its responsibilities under this Act, an organization must consider what a reasonable person would consider appropriate in the circumstances.
- (2) An organization is responsible for personal information under its control, including personal information that is not in the custody of the organization.
- (3) An organization must designate one or more individuals to be responsible for ensuring that the organization complies with this Act.
- (4) An individual designated under subsection (3) may delegate to another individual the duty conferred by that designation.
- (5) An organization must make available to the public
  - (a) the position name or title of each individual designated under subsection (3) or delegated under subsection (4), and
  - (b) contact information for each individual referred to in paragraph (a).

### **Policies and practices**

- 5 An organization must
  - (a) develop and follow policies and practices that are necessary for the organization to meet the obligations of the organization under this Act,
  - (b) develop a process to respond to complaints that may arise respecting the application of this Act, and
  - (c) make information available on request about
    - (i) the policies and practices referred to in paragraph (a), and
    - (ii) the complaint process referred to in paragraph (b).

## **Part 3 — Consent**

### **Consent required**

- 6 (1) An organization must not
  - (a) collect personal information about an individual,
  - (b) use personal information about an individual, or
  - (c) disclose personal information about an individual.
- (2) Subsection (1) does not apply if
  - (a) the individual gives consent to the collection, use or disclosure,

- (b) this Act authorizes the collection, use or disclosure without the consent of the individual, or
- (c) this Act deems the collection, use or disclosure to be consented to by the individual.

### **Provision of consent**

- 7 (1) An individual has not given consent under this Act to an organization unless
- (a) the organization has provided the individual with the information required under section 10 (1), and
  - (b) the individual's consent is provided in accordance with this Act.
- (2) An organization must not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information beyond what is necessary to provide the product or service.
- (3) If an organization attempts to obtain consent for collecting, using or disclosing personal information by
- (a) providing false or misleading information respecting the collection, use or disclosure of the information, or
  - (b) using deceptive or misleading practices
- any consent provided in those circumstances is not validly given.

### **Implicit consent**

- 8 (1) An individual is deemed to consent to the collection, use or disclosure of personal information by an organization for a purpose if
- (a) at the time the consent is deemed to be given, the purpose would be considered to be obvious to a reasonable person, and
  - (b) the individual voluntarily provides the personal information to the organization for that purpose.
- (2) An individual is deemed to consent to the collection, use or disclosure of personal information for the purpose of his or her enrollment or coverage under an insurance, pension, benefit or similar plan, policy or contract if he or she
- (a) is a beneficiary or has an interest as an insured under the plan, policy or contract, and
  - (b) is not the applicant for the plan, policy or contract.
- (3) An organization may collect, use or disclose personal information about an individual for specified purposes if
- (a) the organization provides the individual with a notice, in a form the individual can reasonably be considered to understand, that it intends to collect, use or disclose the individual's personal information for those purposes,
  - (b) the organization gives the individual a reasonable opportunity to decline within a reasonable time to have his or her personal information collected, used or disclosed for those purposes,
  - (c) the individual does not decline, within the time allowed under paragraph (b), the proposed collection, use or disclosure, and
  - (d) the collection, use or disclosure of personal information is reasonable having regard to the sensitivity of the personal information in the circumstances.
- (4) Subsection (1) does not authorize an organization to collect, use or disclose personal information for a different purpose than the purpose to which that subsection applies.

### **Withdrawal of consent**

- 9 (1) Subject to subsections (5) and (6), on giving reasonable notice to the organization, an individual may withdraw consent to the collection, use or disclosure of personal information about the individual at any time.
- (2) On receipt of notice referred to in subsection (1), an organization must inform the individual of the likely consequences to the individual of withdrawing his or her consent.

(3) An organization must not prohibit an individual from withdrawing his or her consent to the collection, use or disclosure of personal information related to the individual.

(4) Subject to section 35, if an individual withdraws consent to the collection, use or disclosure of personal information by an organization, the organization must stop collecting, using or disclosing the personal information unless the collection, use or disclosure is permitted without consent under this Act.

(5) An individual may not withdraw consent if withdrawing the consent would frustrate the performance of a legal obligation.

(6) An individual may not withdraw a consent given to a credit reporting agency in the circumstances described in section 12 (1) (g) or 15 (1) (g).

## **Part 4 — Collection of Personal Information**

### **Required notification for collection of personal information**

10 (1) On or before collecting personal information about an individual from the individual, an organization must disclose to the individual verbally or in writing

(a) the purposes for the collection of the information, and

(b) on request by the individual, the position name or title and the contact information for an officer or employee of the organization who is able to answer the individual's questions about the collection.

(2) On or before collecting personal information about an individual from another organization without the consent of the individual, an organization must provide the other organization with sufficient information regarding the purpose of the collection to allow that other organization to determine whether the disclosure would be in accordance with this Act.

(3) This section does not apply to a collection described in section 8 (1) or (2).

### **Limitations on collection of personal information**

11 Subject to this Act, an organization may collect personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that

(a) fulfill the purposes that the organization discloses under section 10 (1), or

(b) are otherwise permitted under this Act.

### **Collection of personal information without consent**

12 (1) An organization may collect personal information about an individual without consent or from a source other than the individual, if

(a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way,

(b) the collection is necessary for the medical treatment of the individual and the individual is unable to give consent,

(c) it is reasonable to expect that the collection with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding,

(d) the personal information is collected by observation at a performance, a sports meet or a similar event

(i) at which the individual voluntarily appears, and

(ii) that is open to the public,

(e) the personal information is available to the public from a source prescribed for the purposes of this paragraph,

(f) the collection is necessary to determine the individual's suitability

(i) to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary, or

(ii) to be selected for an athletic or artistic purpose,

- (g) the organization is a credit reporting agency that collects the personal information to create a credit report and the individual consents at the time the original collection takes place to the disclosure for this purpose,
  - (h) the collection is required or authorized by law,
  - (i) the information was disclosed to the organization under sections 18 to 22,
  - (j) the personal information is necessary to facilitate
    - (i) the collection of a debt owed to the organization, or
    - (ii) the payment of a debt owed by the organization,
  - (k) the personal information is collected for the purposes of the organization providing legal services to a third party and the collection is necessary for the purposes of providing those services, or
  - (l) the personal information is collected for the purposes of the organization providing services to a third party if
    - (i) the third party is an individual acting in a personal or domestic capacity,
    - (ii) the third party is providing the information to the organization, and
    - (iii) the information is necessary for the purposes of providing those services.
- (2) An organization may collect personal information from or on behalf of another organization without consent of the individual to whom the information relates, if
- (a) the individual previously consented to the collection of the personal information by the other organization, and
  - (b) the personal information is disclosed to or collected by the organization solely
    - (i) for the purposes for which the information was previously collected, and
    - (ii) to assist that organization to carry out work on behalf of the other organization.

### **Collection of employee personal information**

- 13 (1) Subject to subsection (2), an organization may collect employee personal information without the consent of the individual.
- (2) An organization may not collect employee personal information without the consent of the individual unless
- (a) section 12 allows the collection of the employee personal information without consent, or
  - (b) the collection is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.
- (3) An organization must notify an individual that it will be collecting employee personal information about the individual and the purposes for the collection before the organization collects the employee personal information without the consent of the individual.
- (4) Subsection (3) does not apply to employee personal information if section 12 allows it to be collected without the consent of the individual.

## **Part 5 — Use of Personal Information**

### **Limitations on use of personal information**

- 14 Subject to this Act, an organization may use personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that
- (a) fulfill the purposes that the organization discloses under section 10 (1),
  - (b) for information collected before this Act comes into force, fulfill the purposes for which it was collected, or
  - (c) are otherwise permitted under this Act.

### **Use of personal information without consent**

- 15 (1) An organization may use personal information about an individual without the consent of the individual, if



- (a) the use is clearly in the interests of the individual and consent cannot be obtained in a timely way,
- (b) the use is necessary for the medical treatment of the individual and the individual does not have the legal capacity to give consent,
- (c) it is reasonable to expect that the use with the consent of the individual would compromise an investigation or proceeding and the use is reasonable for purposes related to an investigation or a proceeding,
- (d) the personal information is collected by observation at a performance, a sports meet or a similar event
  - (i) at which the individual voluntarily appears, and
  - (ii) that is open to the public,
- (e) the personal information is available to the public from a source prescribed for the purposes of this paragraph,
- (f) the use is necessary to determine suitability
  - (i) to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary, or
  - (ii) to be selected for an athletic or artistic purpose,
- (g) the personal information is used by a credit reporting agency to create a credit report if the individual consented to the disclosure for this purpose,
- (h) the use is required or authorized by law,
- (h.1) the personal information was collected by the organization under section 12 (1) (k) or
- (l) and is used to fulfill the purposes for which it was collected,
- (i) the personal information was disclosed to the organization under sections 18 to 22,
- (j) the personal information is needed to facilitate
  - (i) the collection of a debt owed to the organization, or
  - (ii) the payment of a debt owed by the organization,
- (k) a credit reporting agency is permitted to collect the personal information without consent under section 12 and the information is not used by the credit reporting agency for any purpose other than to create a credit report, or
- (l) the use is necessary to respond to an emergency that threatens the life, health or security of an individual.
- (2) An organization may use personal information collected from or on behalf of another organization without the consent of the individual to whom the information relates, if
  - (a) the individual consented to the use of the personal information by the other organization, and
  - (b) the personal information is used by the organization solely
    - (i) for the purposes for which the information was previously collected, and
    - (ii) to assist that organization to carry out work on behalf of the other organization.

### **Use of employee personal information**

- 16 (1) Subject to subsection (2), an organization may use employee personal information without the consent of the individual.
- (2) An organization may not use employee personal information without the consent of the individual unless
- (a) section 15 allows the use of the employee personal information without consent, or
  - (b) the use is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.
- (3) An organization must notify an individual that it will be using employee personal information about the individual and the purposes for the use before the organization uses the employee personal information without the consent of the individual.
- (4) Subsection (3) does not apply to employee personal information if section 15 allows it to be used without the consent of the individual.

## **Part 6 — Disclosure of Personal Information**

### **Limitations on disclosure of personal information**

17 Subject to this Act, an organization may disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances and that

- (a) fulfill the purposes that the organization discloses under section 10 (1),
- (b) for information collected before this Act comes into force, fulfill the purposes for which it was collected, or
- (c) are otherwise permitted under this Act.

### **Disclosure of personal information without consent**

18 (1) An organization may only disclose personal information about an individual without the consent of the individual, if

- (a) the disclosure is clearly in the interests of the individual and consent cannot be obtained in a timely way,
- (b) the disclosure is necessary for the medical treatment of the individual and the individual does not have the legal capacity to give consent,
- (c) it is reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or a proceeding,
- (d) the personal information is collected by observation at a performance, a sports meet or a similar event
  - (i) at which the individual voluntarily appears, and
  - (ii) that is open to the public,
- (e) the personal information is available to the public from a source prescribed for the purposes of this paragraph,
- (f) the disclosure is necessary to determine suitability
  - (i) to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary, or
  - (ii) to be selected for an athletic or artistic purpose,
- (g) the disclosure is necessary in order to collect a debt owed to the organization or for the organization to repay an individual money owed to them by the organization,
- (h) the personal information is disclosed in accordance with a provision of a treaty that
  - (i) authorizes or requires its disclosure, and
  - (ii) is made under an enactment of British Columbia or Canada,
- (i) the disclosure is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of personal information,
- (j) the disclosure is to a public body or a law enforcement agency in Canada, concerning an offence under the laws of Canada or a province, to assist in an investigation, or in the making of a decision to undertake an investigation,
  - (i) to determine whether the offence has taken place, or
  - (ii) to prepare for the laying of a charge or the prosecution of the offence,
- (k) there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual and if notice of disclosure is mailed to the last known address of the individual to whom the personal information relates,
- (l) the disclosure is for the purpose of contacting next of kin or a friend of an injured, ill or deceased individual,
- (m) the disclosure is to a lawyer who is representing the organization,
- (n) the disclosure is to an archival institution if the collection of the personal information is reasonable for research or archival purposes,
- (o) the disclosure is required or authorized by law, or
- (p) the disclosure is in accordance with sections 19 to 22.

(2) An organization may disclose personal information to another organization without consent of the individual to whom the information relates, if

(a) the individual consented to the collection of the personal information by the organization, and

(b) the personal information is disclosed to the other organization solely

(i) for the purposes for which the information was previously collected, and

(ii) to assist the other organization to carry out work on behalf of the first organization.

(3) An organization may disclose personal information to another organization without consent of the individual to whom the information relates, if the organization was authorized by section 12 (2) to collect the personal information from or on behalf of the other organization.

(4) An organization may disclose personal information to another organization, or to a public body, without consent of the individual to whom the information relates, if

(a) the personal information was collected by an organization under section 12 (1) (k) or (l),

(b) the disclosure between the organizations, or between the organization and the public body, is for the purposes for which the information was collected,

(c) the disclosure is necessary for those purposes, and

(d) for each disclosure under this subsection, the third party referred to in section 12 (1) (k) or (l), as applicable, consents to the disclosure.

### **Disclosure of employee personal information**

19 (1) Subject to subsection (2), an organization may disclose employee personal information without the consent of the individual.

(2) An organization may not disclose employee personal information without the consent of the individual unless

(a) section 18 allows the disclosure of the employee personal information without consent, or

(b) the disclosure is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.

(3) An organization must notify an individual that it will be disclosing employee personal information about the individual and the purposes for the disclosure before the organization discloses employee personal information about the individual without the consent of the individual.

(4) Subsection (3) does not apply to employee personal information if section 18 allows it to be disclosed without the consent of the individual.

### **Transfer of personal information in the sale of an organization or its business assets**

20 (1) In this section:

**"business transaction"** means the purchase, sale, lease, merger or amalgamation or any other type of acquisition, disposal or financing of an organization or a portion of an organization or of any of the business or assets of an organization;

**"party"** means a person or another organization that proceeds with the business transaction.

(2) An organization may disclose personal information about its employees, customers, directors, officers or shareholders without their consent, to a prospective party, if

(a) the personal information is necessary for the prospective party to determine whether to proceed with the business transaction, and

- (b) the organization and prospective party have entered into an agreement that requires the prospective party to use or disclose the personal information solely for purposes related to the prospective business transaction.
- (3) If an organization proceeds with a business transaction, the organization may disclose, without consent, personal information of employees, customers, directors, officers and shareholders of the organization to a party on condition that
  - (a) the party must only use or disclose the personal information for the same purposes for which it was collected, used or disclosed by the organization,
  - (b) the disclosure is only of personal information that relates directly to the part of the organization or its business assets that is covered by the business transaction, and
  - (c) the employees, customers, directors, officers and shareholders whose personal information is disclosed are notified that
    - (i) the business transaction has taken place, and
    - (ii) the personal information about them has been disclosed to the party.
- (4) A prospective party may collect and use personal information without the consent of the employees, customers, directors, officers and shareholders of the organization in the circumstances described in subsection (2) if the prospective party complies with the conditions applicable to that prospective party under that subsection.
- (5) A party may collect, use and disclose personal information without the consent of the employees, customers, directors, officers and shareholders of the organization in the circumstances described in subsection (3) if the party complies with the conditions applicable to that party under that subsection.
- (6) If a business transaction does not proceed or is not completed, a prospective party must destroy or return to the organization any personal information the prospective party collected under subsection (2) about the employees, customers, directors, officers and shareholders of the organization.
- (7) This section does not authorize an organization to disclose personal information to a party or prospective party for purposes of a business transaction that does not involve substantial assets of the organization other than this personal information.
- (8) A party or prospective party is not authorized by this section to collect, use or disclose personal information that an organization disclosed to it in contravention of subsection (7).

### **Disclosure for research or statistical purposes**

- 21 (1) An organization may disclose, without the consent of the individual, personal information for a research purpose, including statistical research, only if
- (a) the research purpose cannot be accomplished unless the personal information is provided in an individually identifiable form,
  - (b) the disclosure is on condition that it will not be used to contact persons to ask them to participate in the research,
  - (c) linkage of the personal information to other information is not harmful to the individuals identified by the personal information and the benefits to be derived from the linkage are clearly in the public interest,
  - (d) the organization to which the personal information is to be disclosed has signed an agreement to comply with the following:
    - (i) this Act;

- (ii) the policies and procedures relating to the confidentiality of personal information of the organization that collected the personal information;
  - (iii) security and confidentiality conditions;
  - (iv) a requirement to remove or destroy individual identifiers at the earliest reasonable opportunity;
  - (v) prohibition of any subsequent use or disclosure of that personal information in individually identifiable form without the express authorization of the organization that disclosed the personal information, and
  - (e) it is impracticable for the organization to seek the consent of the individual for the disclosure.
- (2) Subsection (1) does not authorize an organization to disclose personal information for market research purposes.

### **Disclosure for archival or historical purposes**

22 An organization may disclose, without the consent of the individual, personal information for archival or historical purposes if

- (a) a reasonable person would not consider the personal information to be too sensitive to the individual to be disclosed at the proposed time,
- (b) the disclosure is for historical research and is in accordance with section 21,
- (c) the information is about someone who has been dead for 20 or more years, or
- (d) the information is in a record that has been in existence for 100 or more years.

## **Part 7 — Access to and Correction of Personal Information**

### **Access to personal information**

23 (1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:

- (a) the individual's personal information under the control of the organization;
- (b) information about the ways in which the personal information referred to in paragraph (a) has been and is being used by the organization;
- (c) the names of the individuals and organizations to whom the personal information referred to in paragraph (a) has been disclosed by the organization.

(2) An organization that

- (a) is a credit reporting agency, and
- (b) receives a request under subsection (1)

must also provide the individual with the names of the sources from which it received the personal information unless it is reasonable to assume the individual can ascertain those sources.

(3) An organization is not required to disclose personal information and other information under subsection (1) or (2) in the following circumstances:

- (a) the information is protected by solicitor-client privilege;
- (b) the disclosure of the information would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the organization;
- (c) the information was collected or disclosed without consent, as allowed under section 12 or 18, for the purposes of an investigation and the investigation and associated proceedings and appeals have not been completed;
- (d) [Repealed 2004-67-23.]
- (e) the information was collected or created by a mediator or arbitrator in the conduct of a mediation or arbitration for which he or she was appointed to act
  - (i) under a collective agreement,
  - (ii) under an enactment, or
  - (iii) by a court;

(f) the information is in a document that is subject to a solicitor's lien.

(3.1) A credit reporting agency is not required to disclose the names of the individuals and organizations to whom the personal information was last disclosed by the agency in a credit report more than 12 months before the request under subsection (1) was made.

(4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances:

(a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;

(b) the disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request;

(c) the disclosure would reveal personal information about another individual;

(d) the disclosure would reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to disclosure of his or her identity.

(5) If an organization is able to remove the information referred to in subsection (3) (a), (b) or (c) or (4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection (3) (a), (b) or (c) or (4) is removed.

### **Right to request correction of personal information**

24 (1) An individual may request an organization to correct an error or omission in the personal information that is

(a) about the individual, and

(b) under the control of the organization.

(2) If an organization is satisfied on reasonable grounds that a request made under subsection (1) should be implemented, the organization must

(a) correct the personal information as soon as reasonably possible, and

(b) send the corrected personal information to each organization to which the personal information was disclosed by the organization during the year before the date the correction was made.

(3) If no correction is made under subsection (2), the organization must annotate the personal information under its control with the correction that was requested but not made.

(4) When an organization is notified under subsection (2) of a correction of personal information, the organization must correct the personal information under its control.

## **Part 8 — Administration**

### **Definition**

25 In this Part, "**applicant**" means an individual who makes a request under section 27.

### **Circumstances in which request may be made**

26 An individual may make a request of an organization as permitted under sections 23 or 24.

### **How to make a request**

27 For an individual to obtain access to his or her personal information or to request a correction of his or her personal information, the individual must make a written request that provides sufficient detail to enable the organization, with a reasonable effort, to identify the individual and the personal information or correction being sought.

### **Duty to assist individual**

**28** An organization must make a reasonable effort

- (a) to assist each applicant,
- (b) to respond to each applicant as accurately and completely as reasonably possible, and
- (c) unless section 23 (3), (3.1) or (4) applies, to provide each applicant with
  - (i) the requested personal information, or
  - (ii) if the requested personal information cannot be reasonably provided, with a reasonable opportunity to examine the personal information.

### **Time limit for response**

**29** (1) Subject to this section, an organization must respond to an applicant not later than

- (a) 30 days after receiving the applicant's request, or
  - (b) the end of an extended time period if the time period is extended under section 31.
- (2) If an organization asks the commissioner under section 37 for authorization to disregard a request, the 30 days referred to in subsection (1) of this section does not include the period from the start of the day the request is made under section 37 to the end of the day a decision is made by the commissioner with respect to that application.
- (3) If an applicant asks the commissioner under section 46 to review a fee estimate, the 30 days referred to in subsection (1) of this section does not include the period from the start of the day the applicant asks for the review to the end of the day the commissioner makes a decision.

### **Content of response**

**30** (1) In a response under section 28, if access to all or part of the personal information requested by the applicant is refused, the organization must tell the applicant

- (a) the reasons for the refusal and the provision of this Act on which the refusal is based,
  - (b) the name, position title, business address and business telephone number of an officer or employee of the organization who can answer the applicant's questions about the refusal, and
  - (c) that the applicant may ask for a review under section 47 within 30 days of being notified of the refusal.
- (2) Despite subsection (1) (a), the organization may refuse in a response to confirm or deny the existence of personal information collected as part of an investigation.

### **Extending the time limit for response**

**31** (1) An organization may extend the time for responding to a request under section 23 for up to an additional 30 days or, with the commissioner's permission, for a longer period if

- (a) the applicant does not give enough detail to enable the organization to identify the personal information requested,
- (b) a large amount of personal information is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the organization, or
- (c) more time is needed to consult with another organization or public body before the organization is able to decide whether or not to give the applicant access to a requested document.

(2) If the time is extended under subsection (1), the organization must tell the applicant

- (a) the reason for the extension,
- (b) the time when a response from the organization can be expected, and
- (c) the rights of the applicant to complain about the extension and request that an order be made under section 52 (3) (b).

### **Fees**

**32** (1) An organization must not charge an individual a fee respecting employee personal information concerning the individual.

(2) An organization may charge an individual who makes a request under section 23 a minimal fee for access to the individual's personal information that is not employee personal information concerning the individual.

(3) If an individual is required by an organization to pay a fee for services provided to the individual to enable the organization to respond to a request under section 23, the organization

- (a) must give the applicant a written estimate of the fee before providing the service, and
- (b) may require the applicant to pay a deposit for all or part of the fee.

## **Part 9 — Care of Personal Information**

### **Accuracy of personal information**

33 An organization must make a reasonable effort to ensure that personal information collected by or on behalf of the organization is accurate and complete, if the personal information

- (a) is likely to be used by the organization to make a decision that affects the individual to whom the personal information relates, or
- (b) is likely to be disclosed by the organization to another organization.

### **Protection of personal information**

34 An organization must protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks.

### **Retention of personal information**

35 (1) Despite subsection (2), if an organization uses an individual's personal information to make a decision that directly affects the individual, the organization must retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

(2) An organization must destroy its documents containing personal information, or remove the means by which the personal information can be associated with particular individuals, as soon as it is reasonable to assume that

- (a) the purpose for which that personal information was collected is no longer being served by retention of the personal information, and
- (b) retention is no longer necessary for legal or business purposes.

## **Part 10 — Role of Commissioner**

### **General powers of commissioner**

36 (1) In addition to the commissioner's powers and duties under Part 11 with respect to reviews, the commissioner is responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may do any of the following:

- (a) whether a complaint is received or not, initiate investigations and audits to ensure compliance with any provision of this Act, if the commissioner is satisfied there are reasonable grounds to believe that an organization is not complying with this Act;
- (b) make an order described in section 52 (3), whether or not a review is requested;
- (c) inform the public about this Act;
- (d) receive comments from the public about the administration of this Act;
- (e) engage in or commission research into anything affecting the achievement of the purposes of this Act;
- (f) comment on the implications for protection of personal information of programs proposed by organizations;



- (g) comment on the implications of automated systems for the protection of personal information;
  - (h) comment on the implications for protection of personal information of the use or disclosure of personal information held by organizations for document linkage;
  - (i) authorize the collection of personal information by an organization from sources other than the individual to whom the personal information relates;
  - (j) bring to the attention of an organization any failure of the organization to meet the obligations established by this Act;
  - (k) exchange information with any person who, under legislation of another province or of Canada, has powers and duties similar to those of the commissioner;
  - (l) enter into information-sharing agreements for the purposes of paragraph (k) and into other agreements with the persons referred to in that paragraph for the purpose of coordinating their activities and providing for mechanisms for handling complaints.
- (2) Without limiting subsection (1), the commissioner may investigate and attempt to resolve complaints that
- (a) a duty imposed under this Act has not been performed,
  - (b) an extension of time for responding to a request is not in accordance with section 29,
  - (c) a fee required by an organization under this Act is not reasonable,
  - (d) a correction of personal information requested under section 24 has been refused without justification, and
  - (e) personal information has been collected, used or disclosed by an organization in contravention of this Act.

#### **Power to authorize organization to disregard requests**

- 37 If asked by an organization, the commissioner may authorize the organization to disregard requests under section 23 or 24 that
- (a) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the requests, or
  - (b) are frivolous or vexatious.

#### **Powers of commissioner in conducting investigations, audits or inquiries**

- 38 (1) For the purposes of conducting an investigation or an audit under section 36 or an inquiry under section 50, the commissioner may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the commissioner to answer questions on oath or affirmation, or in any other manner;
  - (b) produce for the commissioner a document in the custody or under the control of the person, including a document containing personal information.
- (1.1) The commissioner may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (1), or
  - (b) directing any directors and officers of a person to cause the person to comply with an order made under subsection (1).
- (2) The commissioner may
- (a) examine any information in a document, including personal information, and obtain copies or extracts of documents containing information
    - (i) found in any premises entered under paragraph (c), or
    - (ii) provided under this Act, and
  - (b) [Repealed 2007-9-96.]
  - (c) at any reasonable time, enter any premises, other than a personal residence, occupied by an organization, after satisfying any reasonable security requirements of the organization relating to the premises.
- (3) If information to which solicitor-client privilege applies is disclosed by a person to the commissioner at the request of the commissioner, or obtained by or disclosed to the

commissioner under subsection (1) or (2) (a), the solicitor-client privilege is not affected by the way in which the commissioner has received the information.

(4) The commissioner may require an individual to attempt to resolve the individual's dispute with an organization in the way directed by the commissioner before the commissioner begins or continues a review or investigation under this Act of an applicant's complaint against the organization.

(5) Despite any other enactment or any privilege afforded by the law of evidence, an organization must provide to the commissioner any document, or a copy of any document, required under subsection (1) or (2) (a)

(a) if the commissioner does not specify a period for the purpose, within 10 days of the date of the commissioner's request for the document, or

(b) if the commissioner specifies a period, within the period specified.

(6) If an organization is required to produce a document under subsection (1) or (2) (a) and it is not practicable to make a copy of the document, the organization must provide access for the commissioner to examine the document at its site.

(7) Subject to subsection (8), after completing a review, investigating a complaint, or conducting an audit, the commissioner must return a document, or a copy of a document, produced by the individual or organization.

(8) On request from an individual or an organization, the commissioner must return a document, or a copy of a document, produced by the individual or organization within 10 days of the date on which the commissioner receives the request.

### **Maintenance of order at hearings**

**38.1** (1) At an oral hearing, the commissioner may make orders or give directions that he or she considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the commissioner may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the commissioner, by order, may

(a) impose restrictions on a person's continued participation in or attendance at a hearing, and

(b) exclude a person from further participation in or attendance at a hearing until the commissioner orders otherwise.

### **Contempt proceeding for uncooperative person**

**38.2** (1) The failure or refusal of a person subject to an order under section 38 to do any of the following makes the person, on application to the Supreme Court by the commissioner, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

(a) attend before the commissioner;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce documents in the person's custody or under their control.

(2) The failure or refusal of a person subject to an order or direction under section 38.1 to comply with the order or direction makes the person, on application to the Supreme Court by the commissioner, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the Supreme Court.

### **Evidence in proceedings**

39 (1) The commissioner and anyone acting for or under the direction of the commissioner must not give or be compelled to give evidence in a court or in any other proceedings in respect of any information obtained in performing their duties or exercising their powers or functions under this Act, except

- (a) in a prosecution for perjury in respect of sworn testimony,
- (b) in a prosecution for an offence under this Act, or
- (c) in an application for judicial review or an appeal from a decision with respect to that application.

(2) Subsection (1) applies also in respect of evidence of the existence of proceedings conducted before the commissioner.

### **Protection against libel or slander actions**

40 Anything said, any information supplied or any record produced by a person during an investigation or inquiry by the commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court.

### **Restrictions on disclosure of information by commissioner and staff**

41 (1) The commissioner and anyone acting for or under the direction of the commissioner must not disclose any information obtained in performing their duties or exercising their powers and functions under this Act, except as provided in subsections (2) to (6).

(2) The commissioner may disclose, or may authorize anyone acting on behalf of or under the direction of the commissioner to disclose, information that is necessary to

- (a) conduct an investigation, audit or inquiry under this Act, or
- (b) establish the grounds for findings and recommendations contained in a report under this Act.

(3) In conducting an investigation, audit or inquiry under this Act and in a report under this Act, the commissioner and anyone acting for or under the direction of the commissioner must take every reasonable precaution to avoid disclosing and must not disclose

- (a) any personal information an organization would be required or authorized to refuse to disclose if it were contained in personal information requested under section 27, or
- (b) whether information exists, if an organization in refusing to provide access does not indicate whether the information exists.

(4) The commissioner may disclose to the Attorney General information relating to the commission of an offence against an enactment of British Columbia or Canada if the commissioner considers there is evidence of an offence.

(5) The commissioner may disclose, or may authorize anyone acting for or under the direction of the commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 39.

(6) The commissioner may disclose, or may authorize anyone acting for or under the direction of the commissioner to disclose, information in accordance with an information-sharing agreement entered into under section 36 (1) (l).

### **Protection of commissioner and staff**

42 No proceedings lie against the commissioner, or against a person acting on behalf of or under the direction of the commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a duty, power or function under this Part or Part 11.

### **Delegation by commissioner**

43 (1) The commissioner may delegate to any person any duty, power or function of the commissioner under this Act, except the power to delegate under this section.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the commissioner considers appropriate.

### **Annual report of commissioner**

**44** (1) The commissioner must report annually to the Speaker of the Legislative Assembly on the work of the commissioner's office under this Act.

(2) The Speaker must lay the annual report before the Legislative Assembly as soon as possible.

## **Part 11 — Reviews and Orders**

### **Definitions**

**45** In this Part:

**"complaint"** means a complaint referred to in section 36 (2);

**"inquiry"** means an inquiry under section 50;

**"request"** means a request made in writing to the commissioner under section 46 to

(a) resolve a complaint, or

(b) conduct a review;

**"review"** means a review of a decision, act or failure to act of an organization

(a) respecting access to or the correction of personal information about the individual who requests the review, and

(b) referred to in the request for the review.

### **Asking for a review**

**46** (1) An individual who has asked an organization for access to or the correction of their personal information may ask the commissioner to conduct a review of the resulting decision, act or failure to act of the organization.

(2) An individual may make a complaint to the commissioner.

(3) If the commissioner is satisfied that section 38 (4) applies to an individual who has made a request, the commissioner may defer beginning or adjourn the review to allow an attempt to be made under that section to resolve the dispute.

### **How to ask for a review or make a complaint**

**47** (1) An individual may ask for a review or make a complaint by delivering a request to the commissioner.

(2) A request must be delivered within

(a) 30 days of the date on which the person making the request is notified of the circumstances on which the request is based, or

(b) a longer period allowed by the commissioner.

(3) The time limit in subsection (2) (a) does not apply to a request respecting

(a) a failure by an organization to respond within a required time period established by this Act, or

(b) a complaint.

### **Notifying others of review**

**48** (1) On receiving a request for a review, the commissioner must give a copy of the request to

(a) the organization concerned, and

(b) any other person that the commissioner considers appropriate.

(2) The commissioner may act under subsection (1) on receiving a request respecting a complaint.

### **Mediation may be authorized**

49 The commissioner may authorize a mediator to investigate and to try to settle the matter on which a request is based.

### **Inquiry by commissioner**

50 (1) If a matter is not referred to a mediator or is not settled under section 49, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

(2) An inquiry may be conducted in private.

(3) The individual who makes a request, the organization concerned and any person given a copy of the request must be given an opportunity to make representations to the commissioner during the inquiry.

(4) The commissioner may decide

(a) whether representations are to be made verbally or in writing, and

(b) whether a person is entitled to be present during, to have access to or to comment on representations made to the commissioner by another person.

(5) The individual who makes a request, the organization concerned and any person given a copy of the request may be represented at the inquiry by counsel or by an agent.

(6) If the matter on which a complaint is based is referred under section 49 to a mediator and is not settled by the mediation, the inquiry respecting the complaint must be completed within 30 days of the day on which the mediation ends.

(7) If a complaint is not referred under section 49 to a mediator and the commissioner decides to hold an inquiry respecting the review, the inquiry must be completed within 30 days of the day on which the request is delivered under section 47 (1).

(8) An inquiry respecting a review must be completed within 90 days of the day on which the request is delivered under section 47 (1), unless the commissioner

(a) specifies a later date, and

(b) notifies

(i) the individual who made the request,

(ii) the organization concerned, and

(iii) any person given a copy of the request  
of the date specified under paragraph (a).

(9) The period of an adjournment under section 46 (3) must not be included for the purpose of calculating a deadline under subsection (7) or (8) of this section.

### **Burden of proof**

51 At an inquiry into a decision to refuse an individual

(a) access to all or part of an individual's personal information,

(b) information respecting the use or disclosure of the individual's personal information, or

(c) the names of the sources from which a credit reporting agency received personal information about the individual,

it is up to the organization to prove to the satisfaction of the commissioner that the individual has no right of access to his or her personal information or no right to the information requested respecting the use or disclosure of the individual's personal information or no right to the names of the sources from which a credit reporting agency received personal information about the individual.

### **Commissioner's orders**

52 (1) On completing an inquiry under section 50, the commissioner must dispose of the issues by making an order under this section.

(2) If the inquiry is into a decision of an organization to give or to refuse to give access to all or part of an individual's personal information, the commissioner must, by order, do one of the following:

(a) require the organization

- (i) to give the individual access to all or part of his or her personal information under the control of the organization,
  - (ii) to disclose to the individual the ways in which the personal information has been used,
  - (iii) to disclose to the individual names of the individuals and organizations to whom the personal information has been disclosed by the organization, or
  - (iv) if the organization is a credit reporting agency, to disclose to the individual the names of the sources from which it received personal information about the individual,
- if the commissioner determines that the organization is not authorized or required to refuse access by the individual to the personal information;
- (b) either confirm the decision of the organization or require the organization to reconsider its decision, if the commissioner determines that the organization is authorized to refuse the individual access to his or her personal information;
  - (c) require the organization to refuse the individual access to all or part of his or her personal information, if the commissioner determines that the organization is required to refuse that access.
- (3) If the inquiry is into a matter not described in subsection (2), the commissioner may, by order, do one or more of the following:
- (a) confirm that a duty imposed under this Act has been performed or require that a duty imposed under this Act be performed;
  - (b) confirm or reduce the extension of a time limit under section 31;
  - (c) confirm, excuse or reduce a fee, or order a refund, in the appropriate circumstances;
  - (d) confirm a decision not to correct personal information or specify how personal information is to be corrected;
  - (e) require an organization to stop collecting, using or disclosing personal information in contravention of this Act, or confirm a decision of an organization to collect, use or disclose personal information;
  - (f) require an organization to destroy personal information collected in contravention of this Act.
- (4) The commissioner may specify any terms or conditions in an order made under this section.
- (5) The commissioner must give a copy of an order made under this section to all of the following:
- (a) the individual who made the request;
  - (b) the organization concerned;
  - (c) any person given notice under section 48;
  - (d) the minister responsible for this Act.

### **Duty to comply with orders**

- 53 (1) Not later than 30 days after being given a copy of an order of the commissioner, the organization concerned must comply with the order unless an application for judicial review of the order is brought before that period ends.
- (2) If an application for judicial review is brought before the end of the period referred to in subsection (1), the order of the commissioner is stayed from the date the application is brought until a court orders otherwise.

## **Part 12 — General Provisions**

### **Protection**

- 54 An organization must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee of the organization, or deny that employee a benefit, because
- (a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the commissioner that the organization or any other person has contravened or is about to contravene this Act,

- (b) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene this Act,
- (c) the employee, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of this Act, or
- (d) the organization believes that an employee will do anything described in paragraph (a), (b) or (c).

### **Non-retaliation**

55 A person who has reasonable grounds to believe that an organization has contravened or is about to contravene a provision of this Act or the regulations and who, in good faith, notifies the commissioner of the particulars of the matter, whether or not the person makes a complaint under section 46 (2), may request that the commissioner keep the person's identity confidential with respect to the notification.

### **Offences and penalties**

- 56 (1) Subject to subsection (2), an organization or person commits an offence if the organization or person
- (a) uses deception or coercion to collect personal information in contravention of this Act,
  - (b) disposes of personal information with an intent to evade a request for access to the personal information,
  - (c) obstructs the commissioner or an authorized delegate of the commissioner in the performance of his or her duties or powers under this Act,
  - (d) knowingly makes a false statement to the commissioner, or knowingly misleads or attempts to mislead the commissioner, in the course of the commissioner's performance of his or her duties or powers under this Act,
  - (e) contravenes section 54, or
  - (f) fails to comply with an order made by the commissioner under this Act.
- (2) An organization or person that commits an offence under subsection (1) is liable,
- (a) if an individual, to a fine of not more than \$10 000, and
  - (b) if a person other than an individual, to a fine of not more than \$100 000.
- (3) A person or organization is not liable to prosecution for an offence against this or any other Act because the person or organization complies with a requirement of the commissioner under this Act.
- (4) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

### **Damages for breach of Act**

- 57 (1) If the commissioner has made an order under this Act against an organization and the order has become final as a result of there being no further right of appeal, an individual affected by the order has a cause of action against the organization for damages for actual harm that the individual has suffered as a result of the breach by the organization of obligations under this Act.
- (2) If an organization has been convicted of an offence under this Act and the conviction has become final as a result of there being no further right of appeal, a person affected by the conduct that gave rise to the offence has a cause of action against the organization convicted of the offence for damages for actual harm that the person has suffered as a result of the conduct.

### **Power to make regulations**

- 58 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing procedures to be followed in making and responding to requests under this Act;
  - (a.1) permitting prescribed categories of applicants to make requests under this Act orally instead of in writing;
  - (b) authorizing the disclosure of personal information relating to the mental or physical health of individuals to medical or other experts to determine, for the purposes of section 23, if disclosure of that information could reasonably be expected to result in grave and immediate harm to the safety of or the mental or physical health of those individuals;
  - (c) prescribing procedures to be followed or restrictions considered necessary with respect to the disclosure and examination of information referred to in paragraph (b);
  - (d) prescribing special procedures for giving individuals access to personal information about their mental or physical health;
  - (e) prescribing the classes of individuals who may act for minors, incompetents, deceased persons or any other individuals under this Act and regulating the manner in which, and the extent to which, any rights or powers of individuals under this Act may be exercised on their behalf;
  - (f) respecting fees, including circumstances in which fees
    - (i) are not payable, or
    - (ii) must not be above a prescribed amount or percentage;
  - (g) prescribing sources of personal information for the purposes of section 12 (1) (e), 15 (1) (e) or 18 (1) (e);
  - (h) for any other purpose contemplated by this Act.
- (3) A regulation under subsection (2) (b) may
- (a) specify categories of experts to whom personal information relating to the mental or physical health of individuals may be disclosed to assess whether its disclosure to other persons could reasonably be expected to result in grave and immediate harm to the safety of or the mental or physical health of those individuals;
  - (b) impose on members of a category of experts obligations respecting the use and disclosure of personal information obtained to make an assessment described in paragraph (a);
  - (c) provide differently for different categories of experts.
- (4) A regulation made under subsection (1) or (2) may provide differently for different organizations, individuals, classes of organizations or classes of individuals.

### **Review of Act**

- 59 (1) Within 3 years after January 1, 2004, a special committee of the Legislative Assembly must begin a comprehensive review of this Act and must submit a report respecting this Act to the Legislative Assembly within one year after the date of the appointment of the special committee.
- (2) At least once every 6 years, a special committee of the Legislative Assembly must act as described in subsection (1).
- (3) A report submitted under subsection (1) or (2) may include any recommended amendments to this Act or any other Act.
- (4) For the purposes of subsection (2), the first 6 year period begins on the submission of the report under subsection (1) to the Legislative Assembly.

### **Commencement**

- 60 This Act comes into force on January 1, 2004.



## Appendix B

### Privacy Act of Canada

An Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves

#### SHORT TITLE

Short title

**1.** This Act may be cited as the *Privacy Act*.

#### PURPOSE OF ACT

Purpose

**2.** The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.

#### INTERPRETATION

Definitions

**3.** In this Act,

“administrative purpose”

« *fins administratives* »

“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;

“alternative format”

« *support de substitution* »

“alternative format”, with respect to personal information, means a format that allows a person with a sensory disability to read or listen to the personal information;

“Court”

« *Cour* »

“Court” means the Federal Court;

“designated Minister”

« *ministre désigné* »

“designated Minister” means a person who is designated as the Minister under subsection 3.1(1);

“government institution”

« *institution fédérale* »

“government institution” means

- (a) any department or ministry of state of the Government of Canada, or any body or office, listed in the schedule, and
- (b) any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of [section 83](#) of the *Financial Administration Act*;

“head”

« responsable d’institution fédérale »

“head”, in respect of a government institution, means

- (a) in the case of a department or ministry of state, the member of the Queen’s Privy Council for Canada who presides over the department or ministry, or
- (b) in any other case, either the person designated under subsection 3.1(2) to be the head of the institution for the purposes of this Act or, if no such person is designated, the chief executive officer of the institution, whatever their title;

“personal information”

« renseignements personnels »

“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, colour, 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 personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
- (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual,
- (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) 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, but, for the purposes of [sections 7, 8 and 26](#) and [section 19](#) of the [Access to Information Act](#), does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and responsibilities of the position held by the individual,

(iv) the name of the individual on a document prepared by the individual in the course of employment, and

(v) the personal opinions or views of the individual given in the course of employment,

(k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,

(l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and

(m) information about an individual who has been dead for more than twenty years;

"personal information bank"

« *fichier de renseignements personnels* »

"personal information bank" means a collection or grouping of personal information described in section 10;

"Privacy Commissioner"

« *Commissaire à la protection de la vie privée* »

"Privacy Commissioner" means the Commissioner appointed under section 53;

"sensory disability"

« *déficience sensorielle* »

"sensory disability" means a disability that relates to sight or hearing.

For greater certainty

**3.01 (1)** For greater certainty, any provision of this Act that applies to a government institution that is a parent Crown corporation applies to

any of its wholly-owned subsidiaries within the meaning of [section 83](#) of the *Financial Administration Act*.

For greater certainty

(2) For greater certainty, the Canadian Race Relations Foundation and the Public Sector Pension Investment Board are parent Crown corporations for the purposes of this Act.

2006, c. 9, s. 182.

## DESIGNATION

Power to designate Minister

**3.1 (1)** The Governor in Council may designate a member of the Queen's Privy Council for Canada to be the Minister for the purposes of any provision of this Act.

Power to designate head

(2) The Governor in Council may, by order, designate a person to be the head of a government institution, other than a department or ministry of state, for the purposes of this Act.

2006, c. 9, s. 182.

## COLLECTION, RETENTION AND DISPOSAL OF PERSONAL INFORMATION

Collection of personal information

**4.** No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.

Personal information to be collected directly

**5. (1)** A government institution shall, wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise or where personal information may be disclosed to the institution under subsection 8(2).

Individual to be informed of purpose

(2) A government institution shall inform any individual from whom the institution collects personal information about the individual of the purpose for which the information is being collected.

Exception

(3) Subsections (1) and (2) do not apply where compliance therewith might

(a) result in the collection of inaccurate information; or

(b) defeat the purpose or prejudice the use for which information is collected.

Retention of personal information used for an administrative purpose

**6. (1)** Personal information that has been used by a government institution for an administrative purpose shall be retained by the institution for such period of time after it is so used as may be prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information.

Accuracy of personal information

**(2)** A government institution shall take all reasonable steps to ensure that personal information that is used for an administrative purpose by the institution is as accurate, up-to-date and complete as possible.

Disposal of personal information

**(3)** A government institution shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the designated minister in relation to the disposal of that information.

## PROTECTION OF PERSONAL INFORMATION

Use of personal information

**7.** Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except

- (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or
- (b) for a purpose for which the information may be disclosed to the institution under subsection 8(2).

Disclosure of personal information

**8. (1)** Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal information may be disclosed

**(2)** Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

- (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;
- (b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;
- (c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of

complying with rules of court relating to the production of information;

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;

(f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation — as defined in [subsection 2\(1\) of the \*First Nations Jurisdiction over Education in British Columbia Act\*](#) —, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;

(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;

(i) to the Library and Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching

or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(/l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

- (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
- (ii) disclosure would clearly benefit the individual to whom the information relates.

Personal information disclosed by Library and Archives of Canada

(3) Subject to any other Act of Parliament, personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.

Copies of requests under paragraph (2)(e) to be retained

(4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.

Notice of disclosure under paragraph (2)(m)

(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

Definition of "Indian band"

(6) In paragraph (2)(k), "Indian band" means

- (a) a band, as defined in the *Indian Act*;
- (b) a band, as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984;
- (c) the Band, as defined in the *Sechelt Indian Band Self-Government Act*, chapter 27 of the Statutes of Canada, 1986; or

(d) a first nation named in Schedule II to the *Yukon First Nations Self-Government Act*.

Definition of “aboriginal government”

- (7) The expression “aboriginal government” in paragraph (2)(k) means
- (a) Nisga’a Government, as defined in the Nisga’a Final Agreement given effect by the *Nisga’a Final Agreement Act*;
  - (b) the council of the Westbank First Nation;
  - (c) the Tlicho Government, as defined in section 2 of the *Tlicho Land Claims and Self-Government Act*;
  - (d) the Nunatsiavut Government, as defined in section 2 of the *Labrador Inuit Land Claims Agreement Act*;
  - (e) the council of a participating First Nation as defined in subsection 2(1) of the *First Nations Jurisdiction over Education in British Columbia Act*;
  - (f) the Tsawwassen Government, as defined in subsection 2(2) of the *Tsawwassen First Nation Final Agreement Act*;
  - (g) a Maanulth Government, within the meaning of subsection 2(2) of the *Maanulth First Nations Final Agreement Act*; or
  - (h) Sioux Valley Dakota Oyate Government, within the meaning of subsection 2(2) of the *Sioux Valley Dakota Nation Governance Act*.

Definition of “council of the Westbank First Nation”

- (8) The expression “council of the Westbank First Nation” in paragraphs (2)(f) and (7)(b) means the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the *Westbank First Nation Self-Government Act*.

Record of disclosures to be retained

**9. (1)** The head of a government institution shall retain a record of any use by the institution of personal information contained in a personal information bank or any use or purpose for which that information is disclosed by the institution where the use or purpose is not included in the statements of uses and purposes set forth pursuant to subparagraph 11(1)(a)(iv) and subsection 11(2) in the index referred to in section 11, and shall attach the record to the personal information.

Limitation

(2) Subsection (1) does not apply in respect of information disclosed pursuant to paragraph 8(2)(e).

Record forms part of personal information

(3) For the purposes of this Act, a record retained under subsection



(1) shall be deemed to form part of the personal information to which it is attached.

#### Consistent uses

(4) Where personal information in a personal information bank under the control of a government institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not included in the statement of consistent uses set forth pursuant to subparagraph 11(1)(a)(iv) in the index referred to in section 11, the head of the government institution shall

- (a) forthwith notify the Privacy Commissioner of the use for which the information was used or disclosed; and
- (b) ensure that the use is included in the next statement of consistent uses set forth in the index.

### PERSONAL INFORMATION BANKS

#### Personal information to be included in personal information banks

**10. (1)** The head of a government institution shall cause to be included in personal information banks all personal information under the control of the government institution that

- (a) has been used, is being used or is available for use for an administrative purpose; or
- (b) is organized or intended to be retrieved by the name of an individual or by an identifying number, symbol or other particular assigned to an individual.

#### Exception for Library and Archives of Canada

(2) Subsection (1) does not apply in respect of personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes.

### PERSONAL INFORMATION INDEX

#### Index of personal information

**11. (1)** The designated Minister shall cause to be published on a periodic basis not less frequently than once each year, an index of

- (a) all personal information banks setting forth, in respect of each bank,
  - (i) the identification and a description of the bank, the registration number assigned to it by the designated

Minister pursuant to paragraph 71(1)(b) and a description of the class of individuals to whom personal information contained in the bank relates,

(ii) the name of the government institution that has control of the bank,

(iii) the title and address of the appropriate officer to whom requests relating to personal information contained in the bank should be sent,

(iv) a statement of the purposes for which personal information in the bank was obtained or compiled and a statement of the uses consistent with those purposes for which the information is used or disclosed,

(v) a statement of the retention and disposal standards applied to personal information in the bank, and

(vi) an indication, where applicable, that the bank was designated as an exempt bank by an order under section 18 and the provision of section 21 or 22 on the basis of which the order was made; and

(b) all classes of personal information under the control of a government institution that are not contained in personal information banks, setting forth in respect of each class

(i) a description of the class in sufficient detail to facilitate the right of access under this Act, and

(ii) the title and address of the appropriate officer for each government institution to whom requests relating to personal information within the class should be sent.

Statement of uses and purposes

(2) The designated Minister may set forth in the index referred to in subsection (1) a statement of any of the uses and purposes, not included in the statements made pursuant to subparagraph (1)(a)(iv), for which personal information contained in any of the personal information banks referred to in the index is used or disclosed on a regular basis.

Index to be made available

(3) The designated Minister shall cause the index referred to in subsection (1) to be made available throughout Canada in conformity with the principle that every person is entitled to reasonable access to the index.

## ACCESS TO PERSONAL INFORMATION

### Right of Access

#### Right of access

**12. (1)** Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of [subsection 2\(1\)](#) of the *Immigration and Refugee Protection Act* has a right to and shall, on request, be given access to

- (a) any personal information about the individual contained in a personal information bank; and
- (b) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

#### Other rights relating to personal information

**(2)** Every individual who is given access under paragraph (1)(a) to personal information that has been used, is being used or is available for use for an administrative purpose is entitled to

- (a) request correction of the personal information where the individual believes there is an error or omission therein;
- (b) require that a notation be attached to the information reflecting any correction requested but not made; and
- (c) require that any person or body to whom that information has been disclosed for use for an administrative purpose within two years prior to the time a correction is requested or a notation is required under this subsection in respect of that information
  - (i) be notified of the correction or notation, and
  - (ii) where the disclosure is to a government institution, the institution make the correction or notation on any copy of the information under its control.

#### Extension of right of access by order

**(3)** The Governor in Council may, by order, extend the right to be given access to personal information under subsection (1) to include individuals not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate.

### Requests for Access

#### Request for access under paragraph 12(1)(a)

**13. (1)** A request for access to personal information under paragraph 12(1)(a) shall be made in writing to the government institution that has control of the personal information bank that contains the information and shall identify the bank.

Request for access under 12(1)(b)

**(2)** A request for access to personal information under paragraph 12(1)(b) shall be made in writing to the government institution that has control of the information and shall provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

1980-81-82-83, c. 111, Sch. II "13".

Notice where access requested

**14.** Where access to personal information is requested under subsection 12(1), the head of the government institution to which the request is made shall, subject to section 15, within thirty days after the request is received,

- (a) give written notice to the individual who made the request as to whether or not access to the information or a part thereof will be given; and
- (b) if access is to be given, give the individual who made the request access to the information or the part thereof.

Extension of time limits

**15.** The head of a government institution may extend the time limit set out in section 14 in respect of a request for

- (a) a maximum of thirty days if
  - (i) meeting the original time limit would unreasonably interfere with the operations of the government institution, or
  - (ii) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or
- (b) such period of time as is reasonable, if additional time is necessary for translation purposes or for the purposes of converting the personal information into an alternative format,

by giving notice of the extension and the length of the extension to the individual who made the request within thirty days after the request is received, which notice shall contain a statement that the individual has a right to make a complaint to the Privacy Commissioner about the extension.

Where access is refused

**16. (1)** Where the head of a government institution refuses to give access to any personal information requested under subsection 12(1), the head of the institution shall state in the notice given under paragraph 14(a)

- (a) that the personal information does not exist, or
- (b) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the information existed,

and shall state in the notice that the individual who made the request has a right to make a complaint to the Privacy Commissioner about the refusal.

Existence not required to be disclosed

(2) The head of a government institution may but is not required to indicate under subsection (1) whether personal information exists.

Deemed refusal to give access

(3) Where the head of a government institution fails to give access to any personal information requested under subsection 12(1) within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

## Access

Form of access

**17. (1)** Subject to any regulations made under paragraph 77(1)(o), where an individual is to be given access to personal information requested under subsection 12(1), the government institution shall

(a) permit the individual to examine the information in accordance with the regulations; or

(b) provide the individual with a copy thereof.

Language of access

(2) Where access to personal information is to be given under this Act and the individual to whom access is to be given requests that access be given in a particular one of the official languages of Canada,

(a) access shall be given in that language, if the personal information already exists under the control of a government institution in that language; and

(b) where the personal information does not exist in that language, the head of the government institution that has control of the personal information shall cause it to be translated or interpreted for the individual if the head of the institution considers a translation or interpretation to be necessary to enable the individual to understand the information.

Access to personal information in alternative format

(3) Where access to personal information is to be given under this Act and the individual to whom access is to be given has a sensory disability and requests that access be given in an alternative format, access shall be given in an alternative format if

- (a) the personal information already exists under the control of a government institution in an alternative format that is acceptable to the individual; or
- (b) the head of the government institution that has control of the personal information considers the giving of access in an alternative format to be necessary to enable the individual to exercise the individual's right of access under this Act and considers it reasonable to cause the personal information to be converted.

## EXEMPTIONS

### Exempt Banks

Governor in Council may designate exempt banks

**18. (1)** The Governor in Council may, by order, designate as exempt banks certain personal information banks that contain files all of which consist predominantly of personal information described in section 21 or 22.

Disclosure may be refused

**(2)** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is contained in a personal information bank designated as an exempt bank under subsection (1).

Contents of order

**(3)** An order made under subsection (1) shall specify

- (a) the section on the basis of which the order is made; and
- (b) where a personal information bank is designated that contains files that consist predominantly of personal information described in subparagraph 22(1)(a)(ii), the law concerned.

## Responsibilities of Government

Personal information obtained in confidence

**19. (1)** Subject to subsection (2), the head of a government institution shall refuse to disclose any personal information requested under subsection 12(1) that was obtained in confidence from

- (a) the government of a foreign state or an institution thereof;
- (b) an international organization of states or an institution thereof;
- (c) the government of a province or an institution thereof;

- (d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government;
- (e) the council, as defined in the *Westbank First Nation Self-Government Agreement* given effect by the *Westbank First Nation Self-Government Act*; or
- (f) the council of a participating First Nation as defined in subsection 2(1) of the *First Nations Jurisdiction over Education in British Columbia Act*.

Where disclosure authorized

- (2) The head of a government institution may disclose any personal information requested under subsection 12(1) that was obtained from any government, organization or institution described in subsection (1) if the government, organization or institution from which the information was obtained
  - (a) consents to the disclosure; or
  - (b) makes the information public.

Federal-provincial affairs

**20.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs.

1980-81-82-83, c. 111, Sch. II "20".

International affairs and defence

**21.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada, as defined in subsection 15(2) of the *Access to Information Act*, or the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities, as defined in subsection 15(2) of the *Access to Information Act*, including, without restricting the generality of the foregoing, any such information listed in paragraphs 15(1)(a) to (i) of the *Access to Information Act*.

Law enforcement and investigation

- 22. (1)** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1)
  - (a) that was obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to

- (i) the detection, prevention or suppression of crime,
- (ii) the enforcement of any law of Canada or a province, or
- (iii) activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*,

if the information came into existence less than twenty years prior to the request;

(b) the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

- (i) relating to the existence or nature of a particular investigation,
- (ii) that would reveal the identity of a confidential source of information, or
- (iii) that was obtained or prepared in the course of an investigation; or

(c) the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

Policing services for provinces or municipalities

(2) The head of a government institution shall refuse to disclose any personal information requested under subsection 12(1) that was obtained or prepared by the Royal Canadian Mounted Police while performing policing services for a province or municipality pursuant to an arrangement made under *section 20* of the *Royal Canadian Mounted Police Act*, where the Government of Canada has, on the request of the province or municipality, agreed not to disclose such information.

Definition of "investigation"

(3) For the purposes of paragraph (1)(b), "investigation" means an investigation that

- (a) pertains to the administration or enforcement of an Act of Parliament;
- (b) is authorized by or pursuant to an Act of Parliament; or
- (c) is within a class of investigations specified in the regulations.

Information obtained by Privacy Commissioner

**22.1 (1)** The Privacy Commissioner shall refuse to disclose any personal information requested under this Act that was obtained or created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by, or under the authority of, the Commissioner.



Exception

(2) However, the Commissioner shall not refuse under subsection (1) to disclose any personal information that was created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by, or under the authority of, the Commissioner once the investigation and all related proceedings, if any, are finally concluded.

Public Sector Integrity Commissioner

**22.2** The Public Sector Integrity Commissioner shall refuse to disclose any personal information requested under subsection 12(1) that was obtained or created by him or her or on his or her behalf in the course of an investigation into a disclosure made under the *Public Servants Disclosure Protection Act* or an investigation commenced under section 33 of that Act.

*Public Servants Disclosure Protection Act*

**22.3** The head of a government institution shall refuse to disclose personal information requested under subsection 12(1) that was created for the purpose of making a disclosure under the *Public Servants Disclosure Protection Act* or in the course of an investigation into a disclosure under that Act.

Security clearances

**23.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that was obtained or prepared by an investigative body specified in the regulations for the purpose of determining whether to grant security clearances

(a) required by the Government of Canada or a government institution in respect of individuals employed by or performing services for the Government of Canada or a government institution, individuals employed by or performing services for a person or body performing services for the Government of Canada or a government institution, individuals seeking to be so employed or seeking to perform those services, or

(b) required by the government of a province or a foreign state or an institution thereof,

if disclosure of the information could reasonably be expected to reveal the identity of the individual who furnished the investigative body with the information.

Individuals sentenced for an offence

**24.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that was collected or obtained by the Correctional Service of Canada or the Parole Board of Canada while the individual who made the request was under sentence for

an offence against any Act of Parliament, if the disclosure could reasonably be expected to

- (a) lead to a serious disruption of the individual's institutional, parole or statutory release program; or
- (b) reveal information about the individual originally obtained on a promise of confidentiality, express or implied.

Safety of individuals

**25.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to threaten the safety of individuals.

### Personal Information

Information about another individual

**26.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

### Solicitor-Client Privilege

Solicitor-client privilege

**27.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is subject to solicitor-client privilege.

### Medical Records

Medical record

**28.** The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that relates to the physical or mental health of the individual who requested it where the examination of the information by the individual would be contrary to the best interests of the individual.

## COMPLAINTS

Receipt and investigation of complaints

**29. (1)** Subject to this Act, the Privacy Commissioner shall receive and investigate complaints

- (a) from individuals who allege that personal information about themselves held by a government institution has been used or disclosed otherwise than in accordance with section 7 or 8;
- (b) from individuals who have been refused access to personal information requested under subsection 12(1);

- (c) from individuals who allege that they are not being accorded the rights to which they are entitled under subsection 12(2) or that corrections of personal information requested under paragraph 12(2)(a) are being refused without justification;
- (d) from individuals who have requested access to personal information in respect of which a time limit has been extended pursuant to section 15 where they consider the extension unreasonable;
- (e) from individuals who have not been given access to personal information in the official language requested by the individuals under subsection 17(2);
- (e.1) from individuals who have not been given access to personal information in an alternative format pursuant to a request made under subsection 17(3);
- (f) from individuals who have been required to pay a fee that they consider inappropriate;
- (g) in respect of the index referred to in subsection 11(1); or
- (h) in respect of any other matter relating to
  - (i) the collection, retention or disposal of personal information by a government institution,
  - (ii) the use or disclosure of personal information under the control of a government institution, or
  - (iii) requesting or obtaining access under subsection 12(1) to personal information.

Complaints submitted on behalf of complainants

(2) Nothing in this Act precludes the Privacy Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized 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 authorized.

Privacy Commissioner may initiate complaint

(3) Where the Privacy Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Act, the Commissioner may initiate a complaint in respect thereof.

Written complaint

**30.** A complaint under this Act shall be made to the Privacy Commissioner in writing unless the Commissioner authorizes otherwise.

#### INVESTIGATIONS

Notice of intention to investigate

**31.** Before commencing an investigation of a complaint under this Act, the Privacy Commissioner shall notify the head of the government institution concerned of the intention to carry out the investigation and shall inform the head of the institution of the substance of the complaint.

#### Regulation of procedure

**32.** Subject to this Act, the Privacy Commissioner may determine the procedure to be followed in the performance of any duty or function of the Commissioner under this Act.

#### Investigations in private

**33. (1)** Every investigation of a complaint under this Act by the Privacy Commissioner shall be conducted in private.

#### Right to make representation

**(2)** In the course of an investigation of a complaint under this Act by the Privacy Commissioner, the person who made the complaint and the head of the government institution 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.

#### Powers of Privacy Commissioner in carrying out investigations

**34. (1)** The Privacy Commissioner has, in relation to the carrying out of the investigation of any complaint under this Act, power

- (a) to summon and enforce the appearance of persons before the Privacy 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 Privacy 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 government institution on satisfying any security requirements of the institution 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 authority of the Privacy 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.

#### Access to information

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Privacy Commissioner may, during the investigation of any complaint under this Act, examine any information recorded in any form under the control of a government institution, other than a confidence of the Queen's Privy Council for Canada to which subsection 70(1) applies, and no information that the Commissioner may examine under this subsection may be withheld from the Commissioner on any grounds.

#### Evidence in other proceedings

(3) Except in a prosecution of a person for an offence under [section 131](#) of the *Criminal Code* (perjury) in respect of a statement made under this Act, in a prosecution for an offence under this Act or in a review before the Court under this Act or an appeal therefrom, evidence given by a person in proceedings under this Act and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceedings.

#### Witness fees

(4) Any person summoned to appear before the Privacy Commissioner pursuant to this section is entitled in the discretion of the Commissioner to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

#### Return of documents, etc.

(5) Any document or thing produced pursuant to this section by any person or government institution shall be returned by the Privacy Commissioner within ten days after a request is made to the Commissioner by that person or government institution, but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section.

#### Findings and recommendations of Privacy Commissioner

**35. (1)** If, on investigating a complaint under this Act in respect of personal information, the Privacy Commissioner finds that the complaint is well-founded, the Commissioner shall provide the head of the government institution 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.

#### Report to complainant

(2) The Privacy 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.

#### Matter to be included in report to complainant

(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.

#### Access to be given

(4) Where, pursuant to a request under paragraph (1)(b), the head of a government institution gives notice to the Privacy Commissioner that access to personal information will be given to a complainant, the head of the institution shall give the complainant access to the information forthwith on giving the notice.

#### Right of review

(5) Where, following the investigation of a complaint relating to a refusal to give access to personal information under this Act, access is not given to the complainant, the Privacy Commissioner shall inform the complainant that the complainant has the right to apply to the Court for a review of the matter investigated.

## REVIEW OF EXEMPT BANKS

#### Investigation of exempt banks

**36. (1)** The Privacy Commissioner may, from time to time at the discretion of the Commissioner, carry out investigations of the files contained in personal information banks designated as exempt banks under section 18.

Sections 31 to 34 apply

(2) Sections 31 to 34 apply, where appropriate and with such modifications as the circumstances require, in respect of investigations carried out under subsection (1).

Report of findings and recommendations

(3) If, following an investigation under subsection (1), the Privacy Commissioner considers that any file contained in a personal information bank should not be contained therein within the terms of the order designating the bank as an exempt bank, the Commissioner shall provide the head of the government institution that has control of the bank with a report containing

(a) the findings of the Commissioner 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 or reasons why no such action has been or is proposed to be taken.

Reports to be included in annual or special reports to Parliament

(4) Any report made by the Privacy Commissioner under subsection (3), together with any notice given to the Commissioner in response thereto, may be included in a report made pursuant to section 38 or 39.

Review of exempt banks by Court

(5) Where the Privacy Commissioner requests a notice under paragraph (3)(b) in respect of any file contained in a personal information bank designated under section 18 as an exempt bank and no notice is received 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 Privacy Commissioner may make an application to the Court under section 43.

## REVIEW OF COMPLIANCE WITH SECTIONS 4 TO 8

Investigation in respect of sections 4 to 8

**37. (1)** The Privacy Commissioner may, from time to time at the discretion of the Commissioner, carry out investigations in respect of personal information under the control of government institutions to ensure compliance with sections 4 to 8.

Sections 31 to 34 apply

(2) Sections 31 to 34 apply, where appropriate and with such

modifications as the circumstances require, in respect of investigations carried out under subsection (1).

#### Report of findings and recommendations

**(3)** If, following an investigation under subsection (1), the Privacy Commissioner considers that a government institution has not complied with sections 4 to 8, the Commissioner shall provide the head of the institution with a report containing the findings of the investigation and any recommendations that the Commissioner considers appropriate.

#### Reports to be included in annual or special reports

**(4)** Any report made by the Privacy Commissioner under subsection (3) may be included in a report made pursuant to section 38 or 39.

## REPORTS TO PARLIAMENT

#### Annual report

**38.** The Privacy Commissioner shall, within three months after the termination of each financial year, submit an annual report to Parliament on the activities of the office during that financial year.

#### Special reports

**39. (1)** The Privacy Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 38.

#### Where investigation made

**(2)** Any report made pursuant to subsection (1) that relates to an investigation under this Act shall be made only after the procedures set out in section 35, 36 or 37 have been followed in respect of the investigation.

#### Transmission of reports

**40. (1)** Every report to Parliament made by the Privacy Commissioner under section 38 or 39 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.

#### Reference to Parliamentary committee

**(2)** Every report referred to in subsection (1) shall, after it is



transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

## REVIEW BY THE FEDERAL COURT

Review by Federal Court where access refused

**41.** Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

Privacy Commissioner may apply or appear

**42.** The Privacy Commissioner may

- (a) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose personal information requested under subsection 12(1) in respect of which an investigation has been carried out by the Privacy Commissioner, if the Commissioner has the consent of the individual who requested access to the information;
- (b) appear before the Court on behalf of any individual who has applied for a review under section 41; or
- (c) with leave of the Court, appear as a party to any review applied for under section 41.

Application respecting files in exempt banks

**43.** In the circumstances described in subsection 36(5), the Privacy Commissioner may apply to the Court for a review of any file contained in a personal information bank designated as an exempt bank under section 18.

Hearing in summary way

**44.** An application made under section 41, 42 or 43 shall be heard and determined in a summary way in accordance with any special rules made in respect of such applications pursuant to [section 46](#) of the *Federal Courts Act*.

Access to information

**45.** Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Court may, in the course of any proceedings before the Court arising from an application under section 41, 42 or 43, examine any information recorded in any form under the control of a government

institution, other than a confidence of the Queen's Privy Council for Canada to which subsection 70(1) applies, and no information that the Court may examine under this section may be withheld from the Court on any grounds.

Court to take precautions against disclosing

- 46. (1)** In any proceedings before the Court arising from an application under section 41, 42 or 43, the Court shall take every reasonable precaution, including, when appropriate, receiving representations *ex parte* and conducting hearings *in camera*, to avoid the disclosure by the Court or any person of
- (a) any information or other material that the head of a government institution would be authorized to refuse to disclose if it were requested under subsection 12(1) or contained in a record requested under the [Access to Information Act](#); or
  - (b) any information as to whether personal information exists where the head of a government institution, in refusing to disclose the personal information under this Act, does not indicate whether it exists.

Disclosure of offence authorized

- (2)** The Court may disclose to the appropriate authority information relating to the commission of an offence against a law of Canada or a province by a director, an officer or an employee of a government institution if, in the Court's opinion, there is evidence of such an offence.

Burden of proof

- 47.** In any proceedings before the Court arising from an application under section 41, 42 or 43, the burden of establishing that the head of a government institution is authorized to refuse to disclose personal information requested under subsection 12(1) or that a file should be included in a personal information bank designated as an exempt bank under section 18 shall be on the government institution concerned.

Order of Court where no authorization to refuse disclosure found

- 48.** Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of a provision of this Act not referred to in section 49, the Court shall, if it determines that the head of the institution is not authorized under this Act to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

Order of Court where reasonable grounds of injury not found

**49.** Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of section 20 or 21 or paragraph 22(1)(b) or (c) or 24(a), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

Order to remove file from exempt bank

**50.** Where the Privacy Commissioner makes an application to the Court under section 43 for a review of a file contained in a personal information bank designated as an exempt bank under section 18, the Court shall, if it determines

(a) in the case of a file contained in the bank on the basis of personal information described in paragraph 22(1)(a) or subsection 22(2), that the file should not be included therein, or

(b) in the case of a file contained in the bank on the basis of personal information described in section 21 or paragraph 22(1)(b) or (c), that reasonable grounds do not exist on which to include the file in the bank,

order the head of the government institution that has control of the bank to remove the file from the bank or make such other order as the Court deems appropriate.

Actions relating to international affairs and defence

**51. (1)** Any application under section 41 or 42 relating to personal information that the head of a government institution has refused to disclose by reason of paragraph 19(1)(a) or (b) or section 21, and any application under section 43 in respect of a file contained in a personal information bank designated as an exempt bank under section 18 to contain files all of which consist predominantly of personal information described in section 21, shall be heard and determined by the Chief Justice of the Federal Court or by any other judge of the Court that the Chief Justice may designate to hear the applications.

Special rules for hearings

**(2)** An application referred to in subsection (1) or an appeal brought in respect of such application shall

(a) be heard *in camera*; and

(b) on the request of the head of the government institution concerned, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*.

*Ex parte* representations

(3) During the hearing of an application referred to in subsection (1) or an appeal brought in respect of such application, the head of the government institution concerned shall, on the request of the head of the institution, be given the opportunity to make representations *ex parte*.

Costs

**52.** (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

*Idem*

(2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

## OFFICE OF THE PRIVACY COMMISSIONER

### Privacy Commissioner

Appointment

**53.** (1) The Governor in Council shall, by commission under the Great Seal, appoint a Privacy Commissioner after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

Tenure

(2) Subject to this section, the Privacy Commissioner holds office during good behaviour for a term of seven years, but may be removed for cause by the Governor in Council at any time on address of the Senate and House of Commons.

Further terms

(3) The Privacy Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

Interim appointment

(4) In the event of the absence or incapacity of the Privacy Commissioner, or if that office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding

office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

Rank, powers and duties generally

**54. (1)** The Privacy Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Privacy Commissioner under this Act or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

Salary and expenses

**(2)** The Privacy Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament.

Pension benefits

**(3)** The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Privacy Commissioner, except that a person appointed as Privacy Commissioner from outside the public service, as defined in the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Privacy Commissioner from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.

Other benefits

**(4)** The Privacy Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under [section 9](#) of the *Aeronautics Act*.

Information Commissioner may be appointed as Privacy Commissioner

**55. (1)** The Governor in Council may appoint as Privacy Commissioner under section 53 the Information Commissioner appointed under the *Access to Information Act*.

Salary

**(2)** In the event that the Information Commissioner is appointed in accordance with subsection (1) as Privacy Commissioner, the Privacy Commissioner shall, notwithstanding subsection 54(2), be paid the

salary of the Information Commissioner but not the salary of the Privacy Commissioner.

### Assistant Privacy Commissioner

#### Appointment of Assistant Privacy Commissioner

**56. (1)** The Governor in Council may, on the recommendation of the Privacy Commissioner, appoint one or more Assistant Privacy Commissioners.

#### Tenure of office and removal of Assistant Privacy Commissioner

**(2)** Subject to this section, an Assistant Privacy Commissioner holds office during good behaviour for a term not exceeding five years.

#### Further terms

**(3)** An Assistant Privacy Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding five years.

#### Duties generally

**57. (1)** An Assistant Privacy Commissioner shall engage exclusively in such duties or functions of the office of the Privacy Commissioner under this Act or any other Act of Parliament as are delegated by the Privacy Commissioner to that Assistant Privacy Commissioner and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

#### Salary and expenses

**(2)** An Assistant Privacy Commissioner is entitled to be paid a salary to be fixed by the Governor in Council and such travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament as the Privacy Commissioner considers reasonable.

#### Pension benefits

**(3)** The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to an Assistant Privacy Commissioner.

#### Other benefits

**(4)** An Assistant Privacy Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under [section 9](#) of the *Aeronautics Act*.

### Staff

#### Staff of the Privacy Commissioner

**58. (1)** Such officers and employees as are necessary to enable the Privacy Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the *Public Service Employment Act*.

#### Technical assistance

**(2)** The Privacy Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

### Delegation

#### Delegation by Privacy Commissioner

**59. (1)** Subject to subsection (2), the Privacy Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this Act except

- (a) in any case other than a delegation to an Assistant Privacy Commissioner, the power to delegate under this section; and
- (b) in any case, the powers, duties or functions set out in sections 38 and 39.

#### Delegations of investigations relating to international affairs and defence

**(2)** The Privacy Commissioner may not, nor may an Assistant Privacy Commissioner, delegate

- (a) the investigation of any complaint resulting from a refusal by the head of a government institution to disclose personal information by reason of paragraph 19(1)(a) or (b) or section 21, or
- (b) the investigation under section 36 of files contained in a personal information bank designated under section 18 as an exempt bank on the basis of personal information described in section 21

except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting those investigations.

#### Delegation by Assistant Privacy Commissioner

**(3)** An Assistant Privacy Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Assistant Privacy Commissioner may specify, any of the powers, duties or functions of the Privacy Commissioner under this Act that the

Assistant Privacy Commissioner is authorized by the Privacy Commissioner to exercise or perform.

## Special Studies

### Special studies

**60. (1)** The Privacy Commissioner shall carry out or cause to be carried out such studies as may be referred to the Commissioner by the Minister of Justice

- (a) relating to the privacy of individuals,
- (b) concerning the extension of the rights to which individuals are entitled under this Act in respect of personal information about themselves, and
- (c) relating to the collection, retention, disposal, use or disclosure of personal information by persons or bodies, other than government institutions, that come within the legislative authority of Parliament,

and the Privacy Commissioner shall report thereon to the Minister of Justice from time to time.

### Reports to be tabled

**(2)** The Minister of Justice shall cause each report by the Privacy Commissioner under subsection (1) to be laid before Parliament on any of the first fifteen days after receipt thereof that either House of Parliament is sitting.

## General

### Principal office

**61.** The principal office of the Privacy Commissioner shall be in the National Capital Region described in the schedule to the *National Capital Act*.

### Security requirements

**62.** The Privacy 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 access to and 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

**63.** Subject to this Act, the Privacy 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 the performance of their duties and functions under this Act.



## Disclosure authorized

**64. (1)** The Privacy Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(a) that, in the opinion of the Commissioner, is necessary to

(i) carry out an investigation under this Act, or

(ii) establish the grounds for findings and recommendations contained in any report under this Act; or

(b) in the course of a prosecution for an offence under this Act, a prosecution for an offence under [section 131](#) of the *Criminal Code* (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

## Disclosure of offence authorized

**(2)** The Privacy Commissioner may disclose to the Attorney General of Canada information relating to the commission of an offence against a law of Canada or a province by a director, an officer or an employee of a government institution if, in the Commissioner's opinion, there is evidence of such an offence.

## Information not to be disclosed

**65.** In carrying out an investigation under this Act, in notifying an individual of a disclosure under subsection 8(5) and in any report made to Parliament under section 38 or 39, the Privacy Commissioner and every person acting on behalf or under the direction of the Privacy Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,

(a) any information that the head of a government institution would be authorized to refuse to disclose if it were requested under subsection 12(1) or contained in a record requested under the [Access to Information Act](#); or

(b) any information as to whether personal information exists where the head of a government institution, in refusing to disclose the personal information under this Act, does not indicate whether it exists.

## No summons

**66.** The Privacy Commissioner or any person acting on behalf or under the direction of the Commissioner is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act

during an investigation, in any proceeding other than a prosecution for an offence under this Act, a prosecution for an offence under [section 131](#) of the *Criminal Code* (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

#### Protection of Privacy Commissioner

**67. (1)** No criminal or civil proceedings lie against the Privacy 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 or performance of any power, duty or function of the Commissioner under this Act.

#### Libel or slander

**(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 Privacy Commissioner under this Act is privileged; and  
 (b) any report made in good faith by the Privacy Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

### OFFENCES

#### Obstruction

**68. (1)** No person shall obstruct the Privacy Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.

#### Offence and punishment

**(2)** Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

### EXCLUSIONS

#### Act does not apply to certain materials

**69. (1)** This Act does not apply to  
 (a) library or museum material preserved solely for public reference or exhibition purposes; or  
 (b) material placed in the Library and Archives of Canada, the National Gallery of Canada, the Canadian Museum of History, the Canadian Museum of Nature, the National Museum of Science and Technology, the Canadian Museum for Human Rights or the

Canadian Museum of Immigration at Pier 21 by or on behalf of persons or organizations other than government institutions.

Sections 7 and 8 do not apply to certain information

(2) Sections 7 and 8 do not apply to personal information that is publicly available.

Canadian Broadcasting Corporation

**69.1** This Act does not apply to personal information that the Canadian Broadcasting Corporation collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.

Confidences of the Queen's Privy Council for Canada

**70. (1)** This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing, any information contained in

- (a) memoranda the purpose of which is to present proposals or recommendations to Council;
- (b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;
- (c) agenda of Council or records recording deliberations or decisions of Council;
- (d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d); and
- (f) draft legislation.

Definition of "Council"

(2) For the purposes of subsection (1), "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

Exception

(3) Subsection (1) does not apply to

- (a) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or
- (b) discussion papers described in paragraph (1)(b)

- (i) if the decisions to which the discussion papers relate have been made public, or
- (ii) where the decisions have not been made public, if four years have passed since the decisions were made.

Certificate under [Canada Evidence Act](#)

**70.1 (1)** Where a certificate under [section 38.13](#) of the [Canada Evidence Act](#) prohibiting the disclosure of personal information of a specific individual is issued before a complaint is filed by that individual under this Act in respect of a request for access to that information, the provisions of this Act respecting that individual's right of access to his or her personal information do not apply to the information that is subject to the certificate.

Certificate following filing of complaint

**(2)** Notwithstanding any other provision of this Act, where a certificate under [section 38.13](#) of the [Canada Evidence Act](#) prohibiting the disclosure of personal information of a specific individual is issued in respect of personal information after the filing of a complaint under this Act in relation to a request for access to that information,

- (a) all proceedings under this Act in respect of that information, including an investigation, audit, appeal or judicial review, are discontinued;
- (b) the Privacy Commissioner shall not disclose the information and shall take all necessary precautions to prevent its disclosure; and
- (c) the Privacy Commissioner shall, within 10 days after the certificate is published in the [Canada Gazette](#), return the information to the head of the government institution that controls the information.

Information not to be disclosed

**(3)** The Privacy Commissioner and every person acting on behalf or under the direction of the Privacy Commissioner, in carrying out their functions under this Act, shall not disclose information subject to a certificate issued under [section 38.13](#) of the [Canada Evidence Act](#) and shall take every reasonable precaution to avoid the disclosure of that information.

Limited power of delegation

**(4)** The Privacy Commissioner may not, nor may an Assistant Privacy Commissioner, delegate the investigation of any complaint respecting information subject to a certificate issued under [section 38.13](#) of the [Canada Evidence Act](#) except to one of a maximum of four officers or

employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting that investigation.

## GENERAL

### Duties and functions of designated Minister

- 71. (1)** Subject to subsection (2), the designated Minister shall
- (a) cause to be kept under review the manner in which personal information banks are maintained and managed to ensure compliance with the provisions of this Act and the regulations relating to access by individuals to personal information contained therein;
  - (b) assign or cause to be assigned a registration number to each personal information bank;
  - (c) prescribe such forms as may be required for the operation of this Act and the regulations;
  - (d) cause to be prepared and distributed to government institutions directives and guidelines concerning the operation of this Act and the regulations; and
  - (e) prescribe the form of, and what information is to be included in, reports made to Parliament under section 72.

### Exception for Bank of Canada

- (2)** Anything that is required to be done by the designated Minister under paragraph (1)(a) or (d) shall be done in respect of the Bank of Canada by the Governor of the Bank of Canada.

### Review of existing and proposed personal information banks

- (3)** Subject to subsection (5), the designated Minister shall cause to be kept under review the utilization of existing personal information banks and proposals for the creation of new banks, and shall make such recommendations as he considers appropriate to the heads of the appropriate government institutions with regard to personal information banks that, in the opinion of the designated Minister, are under-utilized or the existence of which can be terminated.

### Establishment and modification of personal information banks

- (4)** Subject to subsection (5), no new personal information bank shall be established and no existing personal information banks shall be substantially modified without approval of the designated Minister or otherwise than in accordance with any term or condition on which such approval is given.

### Application of subsections (3) and (4)

- (5)** Subsections (3) and (4) apply only in respect of personal

information banks under the control of government institutions that are departments as defined in [section 2](#) of the *Financial Administration Act*.

#### Delegation to head of government institution

**(6)** The designated Minister may authorize the head of a government institution to exercise and perform, in such manner and subject to such terms and conditions as the designated Minister directs, any of the powers, functions and duties of the designated Minister under subsection (3) or (4).

#### Report to Parliament

**72. (1)** The head of every government institution shall prepare for submission to Parliament an annual report on the administration of this Act within the institution during each financial year.

#### Tabling of report

**(2)** Every report prepared under subsection (1) shall be laid before each House of Parliament within three months after the financial year in respect of which it is made or, if that House is not then sitting, on any of the first fifteen days next thereafter that it is sitting.

#### Reference to Parliamentary committee

**(3)** Every report prepared under subsection (1) shall, after it is laid before the Senate and the House of Commons, under subsection (2), be referred to the committee designated or established by Parliament for the purpose of subsection 75(1).

#### Delegation by the head of a government institution

**73.** The head of a government institution may, by order, designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act that are specified in the order.

#### Protection from civil proceeding or from prosecution

**74.** Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against the head of any government institution, or against any person acting on behalf or under the direction of the head of a government institution, and no proceedings lie against the Crown or any government institution, for the disclosure in good faith of any personal information pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act if reasonable care is taken to give the required notice.

#### Permanent review of this Act by Parliamentary committee

**75. (1)** The administration of this Act shall be reviewed on a permanent basis by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

Review and report to Parliament

**(2)** The committee designated or established by Parliament for the purpose of subsection (1) shall, not later than July 1, 1986, undertake a comprehensive review of the provisions and operation of this Act, and shall, within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes the committee would recommend.

Binding on Crown

**76.** This Act is binding on Her Majesty in right of Canada.

Regulations

**77. (1)** The Governor in Council may make regulations

- (a) specifying government institutions or parts of government institutions for the purpose of paragraph (e) of the definition "personal information" in section 3;
- (b) prescribing the period of time for which any class of personal information is to be retained under subsection 6(1);
- (c) prescribing the circumstances and the manner in which personal information under the control of a government institution is to be disposed of under subsection 6(3);
- (d) specifying investigative bodies for the purposes of paragraph 8(2)(e) and sections 22 and 23;
- (e) prescribing the circumstances in which and the conditions under which personal information may be disclosed under subsection 8(3);
- (f) prescribing the period of time for which copies of requests received under paragraph 8(2)(e) and records of information disclosed pursuant to the requests are to be retained under subsection 8(4);
- (g) specifying persons or bodies for the purpose of paragraph 8(2)(h);
- (h) prescribing procedures to be followed in making and responding to a request for access to personal information under paragraph 12(1)(a) or (b);
- (i) prescribing procedures to be followed by an individual or a government institution where the individual requests under subsection 12(2) a correction of personal information or a

notation of a correction requested, including the period of time within which the correction or notation must be made;

(j) prescribing any fees, or the manner of calculating any fees, to be paid for being given access to personal information requested under subsection 12(1) or for the making of copies of such personal information;

(k) prescribing the procedures to be followed by the Privacy Commissioner and any person acting on behalf or under the direction of the Privacy Commissioner in examining or obtaining copies of records relevant to an investigation of a complaint in respect of a refusal to disclose personal information under paragraph 19(1)(a) or (b) or section 21;

(l) specifying classes of investigations for the purpose of paragraph 22(3)(c);

(m) prescribing the class of individuals who may act on behalf of minors, incompetents, deceased persons or any other individuals under this Act and regulating the manner in which any rights or actions of individuals under this Act may be exercised or performed on their behalf;

(n) authorizing the disclosure of information relating to the physical or mental health of individuals to duly qualified medical practitioners or psychologists in order to determine whether disclosure of the information would be contrary to the best interests of the individuals, and prescribing any procedures to be followed or restrictions deemed necessary with regard to the disclosure and examination of the information; and

(o) prescribing special procedures for giving individuals access under subsection 12(1) to personal information relating to their physical or mental health and regulating the way in which that access is given.

Additions to schedule

(2) The Governor in Council may, by order, amend the schedule by adding thereto any department, ministry of state, body or office of the Government of Canada.



## **APPENDIX C**

### **STAKEHOLDER ISSUES AND COMMENTS**

#### 1. The vehicle to operate the NIDS

The main issue is whether a new entity should be created to operate the NIDS or whether an existing entity should assume responsibility for it.

The arguments in favour of the NIDS being operated by an existing agency were:

- the agency already specialist in operating national civil registry should be considered;
- in comparative jurisdictions, the national identification system operated out of the national registry responsible for the maintenance of civil data- records from birth to death;
- The cost benefit analysis of a new entity *vis-a- vis* establishing NIDS within an existing entity, such as the RGD, was looked at. RGD has the legacy documents; it does not suffer from a bad reputation, particularly internationally; and,
- NIDS could benefit from the RGD's good will.

The arguments against the RGD operating the NIDS were:

- NIDS will have to meet a number of requirements- registration of nationals and certain non-nationals; the expected pervasive use of the identity card that will require NIDS to have a presence beyond registration.

- Operationally, NIDS can reside anywhere, with its governance mechanism being a separate entity.
- To have the RGD meet such a demand would require a redefinition and a restructuring of the RGD. RGD would lose its core focus and become in essence the Commission!

2. How will information about adopted children be linked with that of their biological parents?

- It was pointed out that after a child has been adopted all records of their birth parents and place of birth are sealed and the adoption register contains only information about the person(s) who adopted the child.
- It is common for a child's name to be completely changed on adoption and the adoption register will only contain the new name.
- The issue is that the NID should have information about the name given to the child by the birth parents.
- The birth parents and the names given at birth are important aspects of a person's identity and as such, should be included in the NIDS database.

3. The sensitive nature of information about protected witnesses needs to be examined:

- Further examination is needed about the disclosure of identification information of persons in the witness protection programme. Particularly those persons who are given a new identity.
- The information is highly sensitive and disclosure may pose a danger to such persons.

4. The legislative framework for the protection of information stored on databases is inadequate:
  - While there is a Cybercrimes Act it requires strengthening;
  - Legislation on data sharing is vital and must be advanced
5. The principles enunciated in the United Nations Convention on the Rights of the Child for a child's identity needs to be established in Jamaica:
  - Article 7 and 8 needs to be closely examined
  - Protocols for the assignment of the national identification number to newborns need to be developed
  - protocols for the establishment of the identities of children who are shut-ins needs to be developed
  - protocols for how to treat with marginalized youths are necessary as they could present challenges in the registration process
6. Who will own the data or records stored by the NIDS?

## **APPENDIX D**

### **GOVERNMENT OF JAMAICA / INTER-AMERICAN DEVELOPMENT BANK**

## **TERMS OF REFERENCE**

CONSULTANCY SERVICE FOR THE PROVISION OF A LEGAL FRAMEWORK FOR THE IMPLEMENTATION OF THE NATIONAL IDENTIFICATION SYSTEM WHICH WILL SUPPORT THE CIVIL REGISTRATION AND VITAL STATISTICS (CRVS) AND THE GOVERNMENT NETWORK INFRASTRUCTURE (GovNet) PROJECTS.

### **1. BACKGROUND**

The Government of Jamaica (GOJ) has received funding from the Inter-American Development Bank (IDB) for three Technical Cooperation Agreements to (i) design and develop a National Identification System (NIDS Project) (ii) to modernize the civil registration and vital statistics process (CRVS Project) and (iii) to implement a Government Network infrastructure to facilitate joined-up government in the sharing of data and implementation of e-Government services (GovNet).

All three projects are at different phases of implementation with the design phase of the NIDS expected to be completed in April 2014. The CRVS completed phase one in June 2013 and the GovNet Project is currently completing the Request for Proposals (RFP).

The details of each Technical Cooperation can be accessed at the Inter-American Development Bank's website: [www.iadb.org](http://www.iadb.org)

It has been decided that there are major legal activities that can be removed from all three projects and expedited separately, in order to allow for the smooth and timely execution of each project as the legislative process can be quite lengthy and may negatively impact the timelines of the projects.

A joint Technical Committee has been established by PIOJ/OPM to provide technical support, guidance and oversight to this approach.

### **2. OBJECTIVES OF THE ASSIGNMENT**

- 1.1. To determine the best legislative approach to achieve the objectives of the three projects.
  - 1.2. Examine Ministry Paper #2407 in establishing a National Statistics Commission and consider the recommendation of the joint Technical Committee on the establishment of a National Registration Commission.
  - 1.3. To provide drafting instructions (with supporting research materials) to the Office of the Parliamentary Counsel in respect of legal recommendations.
- 1.4. To support the OPM-NRU in the implementation of the NIDS Policy.

### SCOPE OF WORK

This consultancy will be executed in two (2) phases. The specific tasks related to **Phase 1** of the Consultancy are as follows:

- 1.1. Conduct an in-depth review and analysis of Government of Jamaica policies, plans, programmes and laws (*i.e. existing laws and proposed Bills*) in relation to:
  - 3.1.1 Implementation of a National Identification System (NIDS), and the assignment of a National Identification Number (NIN) and the issue of a National Identification Card.
  - 3.1.2 Examine the recommendations from the CRVS Project and synchronize the legislative recommendations from all three projects.
  - 3.1.3 Examine the GovNet Project in relation to data sharing among Government entities.
- 1.2. The laws to be examined include but are not limited to the following:

Constitutional Law	1. Jamaica Constitution Order in Council 1962;
Human Rights Law	2. The Charter of Rights (Constitutional Amendment) Act;
Litigation Law	3. The Evidence Act;

Administrative/Public Laws	4. Aliens Act; 5. Coroners Act; 6. Passport Act; 7. The Immigration Restriction (Commonwealth Citizens) Act; 8. The Jamaican Nationality Act; 9. The Registration (Birth and Deaths) Act; 10. Representation of the People Act; 11. The Pensions Act; 12. National Insurance Act;
Criminal Laws	13. The Finger Prints Act; 14. The Forgery Act;
Civil Laws	15. The Child Care and Protection Act; 16. The Children (Adoption of) Act; 17. The Children (Guardianship and Custody) Act; 18. Marriage Act; 19. Electoral Office of Jamaica Act;
Commercial Law	20. Trade Act; 21. Companies Act;
Labour Laws	22. Foreign Nationals and Commonwealth Citizens (Employment) Act; 23. Recruiting of Workers Act;
Health Laws	24. The Mental Health Act; 25. National Health Services Act;
Tax Law	26. Revenue Administration Act;
Communication and Media Laws	27. Access to Information Act; 28. Telecommunications Act; 29. Cybercrimes Act; 30. Electronic Transactions Act;
Government Laws	31. Financial Administration and Audit Act (FAA); 32. Official Secrets Act; 33. Executive Agency Act; 34. Statistics Act; 35. Data Protection Act (Proposed); 36. Data Sharing Act (Proposed);

1.3. Propose a schedule of the sections of the relevant laws to be amended or repealed.

1.4. Consult with the Legal Reform Department of the Ministry of Justice on the existing and proposed laws relating but not limited to civil registration, data sharing, data protection, statistical systems and identity management, to support the effective implementation of the NIDS policy, all three projects and systems.

- 1.5. To provide detailed drafting instructions as per the schedule of laws in 3.3. (with supporting research materials) for submission to the Office of the Parliamentary Counsel in respect of legal recommendations.

The specific tasks related to **Phase 2** of the Consultancy are:

- 1.6. Conduct a comprehensive legal framework review to determine the interconnectivity and interoperability of a National Identification System, that will be supported by the use of information and communication technology in relation to:
  - 1.1.1. Civil registration and vital statistics; inter-agency data sharing, verification and validation; facilitating efficient inter-agency communication and private sector data access.
  - 1.1.2. Identifying the legal structure and best independent body to administer, manage and operate the implementation of the National Identification System (*for maximum privacy and security*) and to protect the integrity of the system, in keeping with internationally accepted standards by:
    - i. Clearly stating the roles and responsibilities of the independent body (Role and Responsibility Matrix) and legal status between public private entities in identity management, verification and data-sharing.
- 3.7 Develop legal provisions for the establishment and use of the National Identification number (NIN) by determining a legal definition for the NIN.
- 3.8 To examine the withdrawn National Registration Bill to ensure that the detailed drafting instructions of the new NIDS Bill addresses the concerns expressed by key stakeholders to include but not limited to the following legal provisions:
  - 1.1.1. Legal definition of an ordinarily resident individual; and citizen.
  - 1.1.2. Legality of using the National Identification Number (NIN) as a pre-requisite and requirement for conducting any business in Jamaica (*publicly and privately*), from birth to death.
  - 1.1.3. Legal definition and classification of categories of civil data, civil amendments and biometric identifiers (*i.e. for live birth, fetal death, other deaths, marriage, divorce, deed poll or gender change*).
  - 1.1.4. Legal review of the NIDS Policy.
  - 1.1.5. Legal review of the 'United Nation Convention on the Rights of a Child' for inclusion.
  - 1.1.6. Legal review of Jamaica's religious conventions.

1.9. Develop a Comparative Matrix Analysis of the legal provisions of a representative sample of Commonwealth jurisdictions, indicating if they have implemented a national system of identification for its citizens and highlighting at minimum: the country, national identification system, type of biometric captured, year implemented, type of identification card material and features. Reference can be made to the Harmonization of ICT Policies Legislation and Regulatory Procedures (HIPCAR) CARICOM Project; and any international treaties for national identification and the exchange of information.

1.10. Distinguish best practices from other jurisdictions and propose a suitable model for Jamaica.

1.11. Develop the enabling legal protection of NIDS as a highly secured national asset and infrastructure (*hardware and software*) owned by the state; with legal protection on the use of authorized computers; citizen's protection from information alteration; system hacking or interception of system signal, data and/or information.

1.12. Organize and convene:

1.1.1. One stakeholder consultation with the NIDS Technical and Steering Committees;

1.1.2. One specialized consultation with the Jamaica Bar Association and the General Legal Counsel.

This is in accordance with the Government of Jamaica's mandatory consultation code and provide required legal input, to include linkages with other projects impacting the implementation of a NIDS.

3.13 Develop detailed drafting instructions for the Regulations to the NIDS Bill stated in 3.9.

### **3. SCHEDULE OF DELIVERABLES**

#### **4.1 Phase One (1)**

1. Inception Report (Work Plan) outlining the resource allocation and milestones in Gantt chart format for phases 1 and 2, to be submitted 10 calendar days after contract signing.

2. Review Report to include scope of work 3.1 on the policies, plans, programmes, laws and proposed bills. To be submitted 60 calendar days after deliverable# 1.

3. Draft Final Report to include scope of work 3.2-3.6, submitted 70 calendar days after deliverable# 2.



4. Final Report to be submitted and presentation delivered 20 calendar days before the end of the consultancy to the Joint Technical and Steering Committees.

#### 4.2 Phase Two (2)

Phase two will commence immediately after Cabinet's approval of the NIDS Policy. The deliverables include:

1. Inception Report (Work Plan) revised from Phase 1, outlining the resource allocation and milestones in Gantt chart format to be submitted 10 calendar days after written approval by the NIDS Project to commence Phase 2.
2. Interim Report on the legal framework to include the scope of work 3.6-3.8; noting 3.4 from phase 1 and detailed drafting instructions for the NIDS Bill to be submitted 60 calendar days after deliverable # 1.
3. Conduct consultations within 30 calendar days after deliverable # 3.
4. Final Report and detailed drafting instructions for the Regulations to the NIDS Bill, to be submitted 10 calendar days after deliverable # 3.
5. After the end of the combined 10 months legal assignment, a condition of the assignment is to be on call to complete residual work by liaising with the Chief Parliamentary Council for the timely completion of the draft bill; be present for sittings of the Cabinet Office Legislation Committee and subsequent draft revisions; and if required, provide 'clause by clause' summary with explanatory comments.

#### 4.3 All submissions must be:

Three (3) hard copies of plans/reports/drafting instructions should be submitted along with electronic copies in Microsoft Word and English addressed to:

The Project Manager

National Registration Unit - National Identification System (NIDS) Project

Office of the Prime Minister

1 Devon Road,

Kingston 10.

Email: [nidsjamaica@opm.gov.jm](mailto:nidsjamaica@opm.gov.jm)

## 4. TRANSFER OF KNOWLEDGE

It is the policy of the Government of Jamaica that the transfer of knowledge and skills to the Project Team is an inherent part of external consultancy assignments, as far as is practical and appropriate. Therefore, the approach to the task must be participative.

The Legal Framework Consultancy must involve the National Identification System project team in all phases of the assignment, so as to practically and effectively transfer skills and secure 'buy-in' and ownership of the institutional systems and procedures developed.

All information, documents, reports and materials will become and remain the property of the Office of the Prime Minister and the Consultancy does not have any rights to copy, retain, reproduce, use or disseminate without the written approval of the Office of the Prime Minister - National Registration Unit.

## **5. RESPONSIBILITIES OF THE PROCURING ENTITY**

- 6.1 The Office of the Prime Minister is the Procuring Entity for the Consultancy service. As such, the Procuring Entity will furnish all relevant project documents as required.
- 6.2 All other expenses will be absorbed by the Consultancy to include: direct staff, office space and facilities, computer systems and software, telecommunication systems, travel expenses, delivery and any other incidentals.

## **6. REPORTING ARRANGEMENT**

- 7.1 The Consultant will report to the Project Manager for the National Registration Unit - National Identification System Project, who will have overall responsibility for ensuring the quality and timeliness of the deliverables of this Consultancy.
- 7.2 The Consultant will meet with the joint PIOJ/OPM Technical Committee, NIDS Technical and/or Steering Committee once per month for performance reviews against agreed scope of work, schedule of deliverables and acceptance of deliverables.
- 7.3 Participate in bi-monthly inter-consultancy fora to strengthen the key technical consultancies to streamline and share findings, activities and recommendations, to inform this consultancy.

## **7. DURATION**

- 8.1 The Consultancy shall commence immediately after signing of the contract and will be in two phases. Phase one (1) is expected to last for six (6) months and

Phase two (2) will begin immediately after Cabinet's approval of the NIDS Policy and is expected to last for four (4) months.

## **8. INSTITUTIONAL ARRANGEMENTS**

- 1.1. In addition to the profiles requested in the Request for Proposal (RFP); the Consultants must be experienced and professional and can demonstrate the competencies and track record to successfully manage the magnitude of the proposed work.
- 1.2. It is a condition of the Terms of Reference that the Consultancy must appoint a full time Team Leader to be responsible for the management and coordination of the project in-country, and reside in Jamaica for the term of the Consultancy.

## **9. QUALIFICATION, SKILLS AND EXPERIENCE**

- 10.1 The Consultant should possess the following minimum key professional competencies for the assignment:
  - i. Attorney at Law admitted to practice in Jamaica or any other Commonwealth jurisdiction.
  - ii. At least 5 years' experience drafting legislation or preparing detailed drafting instructions.
  - iii. Demonstrated record of accomplishment and good standings in their jurisdiction.
  - iv. Sound knowledge of local conditions in Jamaica; Commonwealth legislation; and jurisdictions that have successfully implemented a National Identification System.
  - v. Knowledge of national identity management, national card management, registration and statistical systems and national biometric systems.
  - vi. Excellent writing skills and command of the English Language (oral and written).
  - vii. Experience undertaking multilateral funded projects would be a distinct advantage.

## APPENDIX E

### THE NATIONAL REGISTRATION BILL 2000

#### BILL

ENTITLED

AN ACT to Provide for a system of compulsory national registration of individuals, to Provide for the establishment and functions of a body to be known as the National Registration Commission to oversee the administration of the system of compulsory national registration and for connected matters. .

BE IT ENACTED by The Queen's Most excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows : -

#### *Preliminary*

1. This Act may be cited as the National Registration Act, 2000 and shall come into operation on a day to be appointed by the Minister by Notice published in the *Gazette*.

2. In this Act unless the context otherwise requires-  
"civil data" means biographical information about individuals;

"Commission" means the National Registration Commission established under section 3;

"functions" includes powers and duties;

"National Register" means the National Register constituted under this Act.

*National Registration Commission*

3.-(1) There is hereby established for the purposes of this Act, a body to be called the National Registration Commission which shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

(2) The provisions of the First Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

4.-(1) The Commission shall administer and maintain a national registration system in accordance with the provisions of this Act and of any regulations made thereunder and without limiting the generality of the foregoing, shall-

(a) establish a reliable database on-

(i) citizens of Jamaica; and

(ii) other individuals,

ordinarily resident in Jamaica;

(b) issue each citizen of Jamaica or other individual ordinarily resident in Jamaica, an identification card and a lifetime registration number unique to such individual;

(c) establish, maintain and manage a programme, of co-operation with data users and data providers with a view to preparing an official record of all citizens of Jamaica and other individuals ordinarily resident in Jamaica;

(d) develop and implement policies and programmes to achieve a continuous and compulsory process of national registration of individuals;

(e) establish and maintain registration centres in such locations whether in Jamaica or abroad, as may be necessary to facilitate the gathering and processing of data for the purposes of this Act;

(f) facilitate the co-ordination of the activities of the main users of data for the identification of individuals and the providers of such data so as to enhance cost effectiveness in the gathering and processing of the required data, while having due regard for the privacy of individuals.

(2) For the purpose of discharging its functions under this Act, the Commission may, subject to the provisions of this Act, do anything and enter into any transaction which in the opinion of the

Commission, is necessary to ensure the performance of its functions.

5. The funds and resources of the Commission shall consist of—(a) such sums as may from time to time be placed at its disposition by Parliament for the purposes of this Act;
- (b) all sums representing fees imposed by the Commission for the provision of any facility or service;
- c) such other moneys or property as may become payable to or vested in the Commission in respect of any matter incidental to its functions.

6. Any agency, body or other person having authority over any matter in respect of which the Commission has functions to perform pursuant to this Act shall not, whether provisionally or finally, approve or determine such matter until the Commission has been consulted.

7.-(1) The Commission shall keep proper accounts and other records in relation to the business of the Commission and shall prepare annually a statement of accounts in a form which conforms with established accounting principles.

(2) The accounts of the Commission shall be audited by an auditor or auditors appointed annually by the Commission and approved by the Auditor-General.

(3) The Auditor-General shall be entitled at all times to examine the accounts of the Commission.

8.-(1) The Commission shall within six months after the end of each financial year, or such longer period as the Minister may in special circumstances allow, cause to be made, and transmit to the Minister a report dealing generally with the activities of the Commission during the preceding financial year together with the statement of accounts in respect of that year.

(2) The Minister shall cause copies of the report together with copies of the statement of accounts in respect of that year and the auditor's report thereon to be laid on the Table of the House of Representatives.

(3) The Commission shall in each year, before a date specified by the Minister, submit to the Minister for his approval, estimates of revenue and expenditure for the ensuing year.

9. No customs duty, general consumption tax or other similar impost shall be payable in respect of the importation into, taking out of bond in or, as the case may be, purchase in Jamaica of any article which the

Commission certifies to be required for use by the Commission in the performance of its functions under this Act.

10.-(1) The Commission shall be exempt from income tax, and all real property held by it shall be exempt from property tax.

(2) Instruments executed by or on behalf of the Commission shall be exempt from any stamp duty, registration or recording fees which would otherwise be payable in respect thereof.

(3) There shall be exempt from taxation under the Transfer Tax Act any transfer by the Commission of property belonging to it or any right or interest created in, over or otherwise with respect to any such property.

11. The Minister shall be responsible to Parliament for matters concerning the activities of the Commission and, accordingly, the Commission shall keep the Minister fully informed of all such matters, and shall furnish the Minister with such information as he may request with respect to any particular matter.

*Appointment of Director-General and Staff*

12.-(1) The Commission shall appoint a Director- General, at such remuneration and on such other terms and conditions as it thinks fit, who shall be in charge of the day-to-day management and operation of the functions of the Commission and who shall be responsible for the management of the National Register.

(2) The Commission may appoint and employ, at such remuneration and on such terms and conditions as it thinks fit such directors, field officers, registration officers, district registrars, other officers, employees and agents as it thinks necessary for the proper performance of the functions of the Commission, however, except with the prior approval of the Minister-

(a.) no salary in excess of the prescribed rate shall be assigned to any post;  
and

(b) no appointment shall be made to any post to which a salary in excess of the prescribed rate is assigned.

(3) In this section "prescribed rate" means five hundred thousand dollars or such higher rate as may be approved by order of the Minister.

(4) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any officer in the service of the Government, to the staff of the Commission and any officer so appointed shall during such appointment, in relation to pension, gratuity or other

allowances and in relation to other rights as a public officer, be treated as continuing in the service of the Government.

**13.** The Commission may-

- (a) enter into arrangements in respect of schemes, whether by way of insurance policies or not; and
- (b) with the approval of the Minister, make regulations,

for medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits, in respect of the employees of the Commission and such arrangements or regulations may include provisions for the grant of benefits to the dependents and legal personal representatives of such employees.

**14.** Every member of the Commission and every member of staff shall, before he initially performs functions assigned to him by virtue of this Act, take and subscribe an oath to be administered in the form set out in the Second Schedule-

- (a) in the case of a person other than the Chairman, by the Chairman, the Director-General or a Justice of the Peace;
- (b) in the case of the Chairman, by the Governor- General.

**15.-(1)** Every person having any official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential all documents, information and records obtained in pursuance of the provisions of this Act.

(2) Every such person having possession of or control over any such documents, information or records, who at any time communicates or attempts to communicate such information or anything contained in such documents or records to any person-

- (a) other than to a person to whom he is authorized to communicate it; or
- (b) otherwise than for the purposes of this Act,

commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars and in default of payment to imprisonment for a term not exceeding twelve months.

*Registration*

**16.** Every person falling within any category specified in the Third Schedule shall apply in accordance with the rules set out in the Fourth Schedule for registration under this Act



17.--(1) Upon the registration of an individual this Act the Director-General shall cause-

- (a) a registration number to be assigned;
- (b) an identification card to be issued, in respect of such individual.

(2) The registration number shall be different for each individual.

18. Every person required to be registered under this Act shall supply his registration number when carrying out a transaction with any public agency when so requested in the course of the lawful execution of the duties of an employee of such agency.

19. Every person required to be registered under this Act shall produce upon reasonable request his identification card in the circumstances specified in the Fifth Schedule or such other circumstances as may be prescribed.

#### *National Register*

20.-(1) For the purposes of this Act there shall be a National Register consisting of the information relating to individuals which is required by this Act or as may be prescribed, to be supplied for the purposes of registration under this Act.

(2) The National Register shall be in such form as may be prescribed and shall contain-

- (a) in relation to each person registered, his name and registration number;
- (b) such other information and particulars as may be required of a district registrar pursuant to section 26; and
- (c) such other particulars as the Director-General may require.

21. (1) Subject to subsection (2), the National Register shall, in relation to any particular date of the first publication thereof, constitute the primary record of the matters contained therein, in relation to individuals ordinarily resident in Jamaica at that date.

(2)<sup>1</sup> Notwithstanding subsection 1), the National Register--shall not be regarded as affecting the status of the general register of births and the general register of deaths constituted under the Registration (Births and Deaths) Act or the status of other information or records relating to individuals connected with Jamaica constituted under any other law.

22. Alterations may be made in the National Register under the direction of the Director-General in the following circumstances-

- (a) upon the direction in writing of the Commission;
- (b) as necessary upon a change in any of the information or particulars mentioned in section 20 (2).

#### *Administration*

**23.** For the purposes of this Act, Jamaica shall be divided into registration districts which shall be under the supervision of district registrars.

**24.-(1)** For the purposes of this Act, the Commission shall establish such number of centres (in this Act referred to as registration centres)-

- (a) in Jamaica, not being less than 14; or
- (b) outside Jamaica, as it may deem appropriate, to facilitate registration under this Act.

(2) Each registration centre shall be under the direct supervision of a registration officer.

(3) The Commission may assign to each registration centre such number of auxiliary registration units to facilitate the carrying out of registration functions under this

(4) In determining the number and location of registration centres and auxiliary registration units, the Commission shall have regard to considerations of a geographical, demographic or economic nature and such other factors as might influence attendance at the registration centres.

**25.** Where the Commission determines that the circumstances so warrant, the information required for the purpose of registration under this Act may be obtained by means of house-to-house enquiry by district registrars in accordance with the procedure specified in the Fourth Schedule.

**26.** The district registrar for each registration district shall, in addition to such other duties as he may be assigned in pursuance of this Act-

- (a) enter the information in respect of any individual which has been supplied in accordance with the requirements of this Act in the register for that district in the prescribed form;
- (b) supply to the Director-General on a monthly basis returns from his district register containing such particulars as may be prescribed.

#### *Special Provisions in Relation to Information and Evidence*

**27.** The Commission may by notice in the prescribed form require any person to whom such notice is addressed, to supply the Commission with such information relevant to any person required to be registered under this

Act as may lawfully be required pursuant to this Act and as relates to any of the matters specified in the Appendix to the Fourth Schedule.

**28.** Every person who is required other than in the performance of his functions to supply information relating to the registration of an individual under this Act shall in such manner as the Commission may determine, notify the Authority of any change in any of the particulars relating to the registration of that individual.

29.-(1) Any person duly authorized in that behalf by the Commission may, pursuant to the warrant of a Resident Magistrate, granted in accordance with subsection (2), at all reasonable times enter premises specified in the warrant for the purposes of ensuring compliance with the provisions of this Act.

(2) Where a Resident Magistrate is satisfied upon the application by any person that there is reasonable ground for suspecting that an offence under this Act has been, is being or is about to be committed on premises specified in the information, or that evidence relating to the commission of such offence or any other offence under this Act is to be found thereon, he may grant a search warrant authorizing a person named in the warrant to enter at any time or times within one month from the date of the warrant the premises specified in the information and to search those premises.

**30.** Entries in the National Register or certified extracts therefrom duly certified by the Commission and purporting to have been made in accordance with the provisions of this Act shall be admissible in any court proceedings as *prima facie* evidence of the matters set forth therein.

### *Offences*

**31.** A person commits an offence who is required to be registered under this Act or to supply for the purposes of this Act, information in relation to either himself or to another person, commits an offence if, without reasonable excuse he-

- (a) refuses or neglects to supply particulars required of him by this Act or any regulations made thereunder;
- (b) refuses or neglects to answer any question relating to the registration under this Act of himself or any other person for whose registration he is responsible and addressed to him by any person acting under the authority of this Act;
- (c) fails to report a change of any information required of him in relation to the particulars contained in an identification card, issued under this Act, and shall be liable on summary conviction in, a Resident Magistrate's Court to a fine not exceeding one hundred thousand dollars.

**32.** A person commits an offence if-

- (a) in relation to any enquiry made of him or any requirement imposed on him for the purposes of this Act or any regulations made hereunder he makes statement which he knows to be false in any material particular;
- (b) he falsifies or makes any entry which he knows to be false, in any record, register, identification card or other document issued or required to be kept for the purposes of this Act or any regulations thereunder;
- (c) by means of any statements or actions which he either knows to be false or has no reasonable cause to believe to be true, he obtains or attempts to obtain any identification card assigned or registration number issued under this Act.

**33.** A persons commits an offence if he-

- (a) unlawfully obtains the identification card issued under this Act in respect of any other person;
- (b) wilfully and with intent to defraud, conceals, alters, damages or destroys any identification card, register, record or other document issued or required to be kept under this Act;
- (c) fails to disclose to the Commission the loss, alteration or damage of an identification card in relation to himself or any person for whose registration he is responsible;
- (d) unlawfully produces a document purporting to be an identification card issued under this Act;
- (e) by personation or false representation holds himself out to be the rightful holder of an identification card issued under this Act;
- (f) parts with possession of an identification card to another person without lawful authority or for an unlawful purpose.

**34.** Any person who obstructs the Commission, or threatens or obstructs any officer or agent of the Commission acting for the purpose of the administration of this Act commits an offence.

**35.** Any person who with intent to defraud or injure, for the purpose of any transaction uses a registration number assigned to another person commits an offence.

**36.** Any person who commits an offence against this Act for which no penalty is prescribed shall be liable on summary conviction before a Resident Magistrate, to a fine not exceeding seven hundred thousand

dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

37.-(1) If a Resident Magistrate is satisfied by information on oath that there is reasonable cause to believe that any person has in his custody or possession without lawful authority-

prosecution order the forfeiture of the article. (a) any identification card issued under this Act;

(b) any document purporting to be an identification card issued under this Act;

(c) any machinery, implement, utensil, or material used or intended to be used for the forgery of any identification card;

(d) any other thing by means of which or in respect of which a constable could reasonably believe that an offence against this Act has been committed or which may be evidence of the commission of such offence, the Resident Magistrate may act in accordance with sub- section (2).

(2) For the purposes of subsection (1) the Resident Magistrate may grant a warrant authorizing any constable named in the warrant at any time or times within one month from the date of the warrant to enter, if need be by force, the premises named in the warrant, and to search the premises and any persons found therein, and if there is reasonable ground for suspecting that any article found is connected with the commission of an offence against this Act, to seize or detain the article, as the case may be.

(3) Where an article seized pursuant to this section has been used in, or in connection with, the commission of an offence against this Act in relation to which there has been a conviction, the Court shall upon the application of the

### *Regulations*

38.-(1) The Minister may, on the recommendation of the Commission, make regulations generally for giving effect to the provisions of this Act, and without limiting the generality of the foregoing may make regulations-

(a) prescribing the particulars and information required to be collected in relation to persons registered or required to be registered under this Act;

(b) prescribing the form and manner of keeping of records, registers or other documents and the submission of returns;

- (c) regarding the alteration of records, identification cards or other documents for the purpose of ensuring the accuracy of particulars when a change of circumstances affecting such particulars occurs;
- (d) regarding the issue, replacement, surrender or cancellation of identification cards;
- (e) prescribing the duties of persons employed to carry out functions under this Act;
- (f) prescribing a tariff of fees for the supply of information, the replacement of identification cards upon loss or the performance of any other special function by the Commission;
- (g) prescribing any other matter required by this Act to be prescribed.

(2) Regulations made under this section shall be subject to affirmative resolution.

(3) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under this Act may prescribe greater penalties than those specified in that section, so, however, that the maximum penalty that may be imposed shall be a fine not exceeding one hundred thousand dollars.

#### FIRST SCHEDULE (Section 3)

1.-(1) The Commission shall consist of five members of which two shall be *ex officio* and three shall be members appointed by the Governor-General by instrument under the Broad Seal after consultation with the Prime Minister and the Leader of the Opposition (the latter members being hereinafter referred to as the independent members).

(2) The *ex officio* members shall be-

- (a) The Chairman of the Electoral Advisory Committee;
- (b) The Registrar-General or his nominee.

2.-(1) The members of the Commission shall within two weeks of the constitution of the Commission nominate an independent member for appointment by the Governor-General as Chairman.

(2) Where the members fail to act pursuant to, sub-paragraph (1), the Governor-General shall, after consultation with the Prime Minister and the Leader of the Opposition appoint an independent member to be Chairman.

3. Where, pursuant to paragraph 1 or 2, the Governor-General is directed to, act on the advice of or after consultation with, the Leader of the Opposition and-

- (a) there is no person holding the office of Leader of the Opposition; or
- (b) the holder of that office is unwilling or, by reason of his illness or absence from Jamaica, unable to perform his functions in that regard, the Governor-General shall act as if the reference in those paragraphs to, the Leader of the Opposition were a reference to such person as the Governor-General, in his discretion, considers appropriate.

4.-(1) The appointment of every independent member of the Commission shall, subject to, the provisions of this Schedule, be for a period of seven years.



(2) Each independent member of the Commission shall be eligible for re-appointment.

5. The Governor-General may appoint any person to act temporarily in the place of any independent member of the Commission, in the case of the absence or inability to act of such member.

6. The office of a member of the Commission shall become vacant-  
(a) if he resigns his office;

(b) *in the case of an independent member, if his appointment is revoked by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition.* -

/

7. Any independent member of the Commission may at from office. any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the Chairman, and from the date of the receipt by the Governor- General of such instrument the member shall cease to hold office; ..

8.-(1) The Commission shall. meet at least once every for three months and subject thereto, as often as may be necessary or expedient for the performance of its functions under this Act, and such meetings may be held at such places and times and on such days as the Commission may determine.

(2) The Chairman may at any time call a special meeting. of the Commission, and shall call a special meeting within 7 days of his receiving the written request for that purpose addressed to him by at least one *ex officio* member and one independent member, respectively.

(3) The Chairman shall preside at all meetings of the Commission and if the Chairman is absent from a meeting the members present shall elect one of the independent members to preside at that meeting.

(4) The quorum of the Commission shall be three, consisting of the Chairman and at least one independent member.

(5) The decisions of the Commission shall be by a majority of votes and in addition to an original vote the Chairman or other member presiding at the meeting shall have a casting vote *in* any case in which the voting is equal.

(6) Subject to the provisions of this Schedule, the Commission may regulate its own proceedings.

(7) The validity of any proceedings of the Commission shall riot be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

(8) Minutes in proper form of each meeting of the Commission, shall be kept and shall be confirmed as soon as practicable at a subsequent meeting.

(9) The Director-General of the Authority shall serve as the Secretary of the Commission.

(9) The Director-General of the Commission shall serve mission such remuneration, if any, whether by way of salary, honorarium, travelling or other allowances as the House of Representatives may by resolution determine.

10.-(1) The seal of the Commission shall be kept in the custody of the Director-General of any officer authorized by the Commission in that behalf. and shall be authenticated by the signatures of. the Chairman or .one of the independent member authorized to act in that behalf, and the Secretary of the Commission; .

(2) All documents, other than those required by law to be under seal made by, and all decisions of, the Commission may be signified under the hand ~~Of~~ the Chairman or any other member authorized in that behalf .

11.-( 1) No action, suit, prosecution or other proceedings . shall be brought or instituted: personally against any member for any act or default of the Commission done or omitted to be done in good faith in pursuance or execution or intended execution of this Act.

(2) Where any member of the Commission is exempt from liability by reason only of the provisions of this paragraph, the Commission shall be liable to the extent that it would have been if that member were an employee or agent of the Commission.

12. The office of independent member shall not be a independent public office for the purpose of Chapter V of the Constitution

#### SECOND SCHEDULE

(Section 14)

##### *Form of Declaration*

I,                   do solemnly and sincerely.  
(Name of Employee)

declare and affirm that I understand and am aware that I must not divulge any information gained by me as a result of my office/employment with the National Registration Commission to any unauthorized person, whether orally, in writing, or by any other means wIthout the previous sanction of the [head of] or other appropriate authority. I understand also that this undertaking shall apply not only during the period of my office/employment but also after my office / employment with the Commission has ceased.

*Signature of Employee*

Declared before me this     day of.. , 199 .

.....

*Commission-Chairman / Director-  
General / Iustice of the Peace.*

#### THIRD, SCHEDULE

(Section 16)

*Persons required to register or provide information relating to registration*

1. A citizen of Jamaica of 18 years of age or over who-
  - (a) is [ordinarily] resident in Jamaica; , ,
  - (b) being resident outside OF Jamaica makes application on his own behalf for a Jamaican passport.
2. In the case of a citizen of Jamaica under the age of 18 years who-
  - (a) . is [ordinarily] resident in Jamaica; ,



(b) being resident outside, of Jamaica is the subject of an application for a Jamaican passport.

the father and mother or the lawful guardian, as the case may be shall fulfill the registration requirements.

3 In the case of an infant or person incapacitated by disability, the guardian or committee responsible for the management of the affairs of such person shall fulfill the registration requirements.

4 In the case of an inmate of a correctional institution, mental hospital or almshouse the person responsible for the administration of such institution shall fulfill the registration requirements.

5 Any person of the age of 18 years or over not falling within any of the above categories and who is ordinarily resident in Jamaica whether or not by reason of duties of employment (other than an employee of an Embassy, High Commission, Consulate, or International Organization or members of household of such employee, entitled to diplomatic privileges under the Diplomatic Privileges and Immunities Act).

6 The father and mother or the lawful guardian as the case may be, of any person under the age of 18 years not falling into any of the abovementioned categories who is ordinarily resident in Jamaica (and not excluded on diplomatic grounds as specified in paragraph 5).

#### FOURTH SCHEDULE (Sections 16.25 and 27)

##### *Registration Procedure*

1. Any person who is required to be registered or as the case may be, to supply information relating to himself or another individual (hereinafter called the registrant) shall be interviewed by a Registration Officer or a District Registrar at a registration centre, mobile centre, in the home of such person or within the vicinity or other prescribed place.

2. The registrant shall supply such personal data, as specified in the Appendix as the Registration Officer or District Registrar may lawfully require.

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3 The registrar (shall allow the taking" of such fingerprints, photographs and specimen signature as Registration Officer or District Registrar is required to obtain, unless this is impracticable due to inability -or other circumstances beyond the control of the registrant

#### APPENDIX

##### *Personal Data Fields*

1. Name:

*Surname*

*First name*

*Middle name(s)*

2. Name at Birth (if different from above):

*Surname Firstname Middle name(s)*

3. Indicate Reason for Name Change:

Adoption ☐ Deed Poll ☐

Marriage ☐ other (specify) \_\_\_\_\_

If Deed Poll state previous name \_\_\_\_\_ ; \_\_\_\_\_

Separated ☐ Divorced

(If married please state date of marriage below) .

1. Date of marriage:

year,                      Month                      ,;                      Day                      .

\*Marriage Officer:                      "

                    ' . Surname First Name Middle Name(s)

7. Date of Birth: Year..                      ,                      Month                      Day                      .

8. . Country of Birth:

Jamaica [ ] other (specify) .

9. . Parish o~ Birth:

10 Place of Birth: *Parish*] (*District*)

11. Nationality :

Jamaican                      ~                      .

(if Jamaican please specify whether by Birth, Descent, Naturalization or Registration)

other (specify) .

12. Telephone Number: . Home..... Work                      .

13. Home Address:                      .

14. Mailing Address:

(if different from home address)

15 Change of Address:

(reason(s) for change)

16. Mother: *Maiden Name*                      *First Name* *Middle Name(s)*

17. Father: *Surname* *First Name* *Middle Name(s)*

18 Spouse: *Surname* *First Name* *Middle Name(s)*

19. M.S. No.:                      .

Income Tax Ref. No.:                      .

T.R.N. No.:                      .

- 20 Driver's Licence No.: .  
 Passport No. and Type: .  
 Birth Registration No.: .  
 21. Occupation/Profession: .

22. Height: (*Metres / Centimetres*)  
 23. Number of Members of Household: 18 years and older  
 24. Distinguishing mark(s)  
 25. Employer's name and address

#### FIFTH SCHEDULE Section 19

##### *Circumstances in which identification is required*

- 1 Making applications for-  
 (i) passport;  
 (ii) driver's licence  
 (iii) national health insurance, drugs under the drugs for the elderly programme  
 (iv) criminal record
2. Sending and receiving registered mail
3. receiving money drafts or money orders from public or private institutions
4. Receiving benefits from:-  
 (i) National Housing Trust  
 (ii) Ministry/agency responsible for social security (such as death grants, food stamps)  
 (iii) national health insurance
5. Casting ballots at elections of members to serve in the House of Representatives or of councillors to serve on a Parish Council or on the Council of the Kingston and St. Andrew Corporation

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