A BILL
ENTITLED

AN ACT to Protect the privacy of certain data 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:-

PART I. Preliminary

1. - (1) This Act may be cited as the Data Protection Act, 2017, and shall come into operation on a day appointed by the Minister by notice published in the Gazette.

(2) For the purposes of subsection (1), the Minister may specify different dates for bringing this Act into operation as regards different types of data specified in a notice made under that subsection.

2. - (1) In this Act—

"accessible record" means —

(a) a health record; or

(b) an educational record;

"biometric data", in relation to an individual, means the photograph, signature, finger print, palm print, toe print, foot print, iris scan, retina scan, blood type, height, or eye colour, of the individual, or such other biological attribute of the individual as may be prescribed;

"Commissioner" means the office of Information Commissioner established by section 4;

"consent", in reference to any consent required to be given by a data subject to the processing of data, means express consent given
any personal data are, or are to be, processed,

determines the purposes for which and the manner in which

who, either alone or jointly or in common with other persons

public authority,

(a) a person or

"data controller" means any

authority

is recorded information held by a public

form or part of an accessible record:

below or

does not fall within paragraph (a), (b) or (c) below

system or

information that it should form part of a relevant filing

is recorded as part of a relevant filing system or with the

by means of equipment operating automatically;

is recorded with the intention that it should be processed

purpose:

automatically in response to instructions given for that

is being processed by means of equipment operating

"data" means information which

Court"

"Crown" means the Supreme Court;

the minor,

in the case of a minor, a parent or legal guardian of

processes or

the right to give or withhold consent to the

any individual to whom the data subject relates

the legal personal representative of the data subject;

consent given by

entirely or in whole and includes any such expression of
and where personal data are processed only for purposes which they are required under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act a data controller;

"data controller representative" means a person or other entity appointed for the purposes of section 3(2);

"data processor", in relation to personal data, means any – person other than an employee of the data controller; who processes the data on behalf of the data controller;

"data protection standards" means the data protection standards as set out in sections 22 to 31, and reference to any of those standards by number means the standard as numbered in any of those sections;

"data subject" means a named or otherwise identifiable individual who is the subject of personal data, and in determining whether an individual is identifiable account shall be taken of all means used or reasonably likely to be used by the data controller or any other person to identify the individual, such as reference to an identification number or other identifying characteristics (whether physical, social or otherwise) which are reasonably likely to lead to the identification of the individual;

"educational record" means any record or information that –

(a) is processed by or on behalf of any public educational institution, within the meaning of section 2 of the Education Act;

(b) relates to any person who is or has been a student at
(e) a person registered as a nurse or midwife, or enrolled as an assistant nurse, under the Nurses and midwives Act;

(f) a person registered as a pharmacist or pharmacy officer under the Pharmacy Act;

(g) a person entitled to practice optometry under the Optometrists Act;

(h) a person registered as a dentist under the Dental Act;

(i) a medical practitioner registered under the Medical Act;

"health professional" means any of the following:

the requirements of this Act;

and others, and includes (but is not limited to) compliance with

to be describable having regard to the interests of data subjects,

"good practice" means such practice as appears to the Commissioner

2016;

"Genetic data" means DNA as defined by the DNA Evidence Act,

released

the student to whom the record

having the charge, care or custody of

a parent, guardian or other person

released of

the student to whom the record

educational institution;

a teacher or employee of the public

responsible for education;

an employee of the Ministry

any of the following persons

of the public educational institution and
(f) a person registered as a member of a "specified profession" within the meaning of section 2 of the Professions Supplementary to Medicine Act;

(g) a regional hospital or public health facility, within the meaning of section 2 of the National Health Services Act;

(h) a private hospital or private health facility;

(i) the National Health Fund;

(j) a provider of ambulance services;

"health record" means any record which —

(a) is in the custody or control of a health professional in connection with the care of an individual; and

(b) consists of information relating to —

(i) the past or present physical or mental health, or condition, of an individual, for example -

(A) clinical information about diagnosis and treatment;

(B) genetic data;

(C) information about the testing of any body part or bodily substance, or the donation of a body part or bodily substance;

(ii) the registration of an individual for the provision of health services and any number, symbol or code assigned to uniquely identify the individual for those services;

(iii) the name of the individual’s health care provider; or
discussing or otherwise making it available of
disclosing the information of data by transmitting.
data.
Retaining, consulting or using the information of
information of data.
organisation, adaptation or alteration of the
including
any operation or set of operations on the information of data,
receiving or storing the information of data, or carrying out
"process" in relation to information of data means operating,
any other person in respect of the individual;
and any indication of the information of the data controller or
and includes any expression of opinion about the individual
of the data controller,
possessed of or likely to come into the possession
from the data and other information in the
from the data:
Identified.
"personal data" means data relating to a living individual who can be
age of eighteen years;
"minor" in relation to an individual means an individual under the
of health services to that individual;
individual that is collected in the course of the provision
or any other health-related information about the
services.
individual for the provision of health
personalities made by, or the eligibility of, the
destroying the information or data, or rendering the data anonymous;

"public authority" means –

(a) a Ministry, department, Executive agency or other agency of Government;

(b) a statutory body or authority, being a body corporate established by an Act of Parliament and over which the Government or an agency of the Government exercises control;

(c) the council of a Local Authority, within the meaning of the Local Governance Act;

(d) any company registered under the Companies Act, being a company in which the Government or an agency of the Government is in a position to direct the policy of that company;

(e) a commission of Parliament; or

(f) any other body or organization which provides services of a public nature which are essential to the welfare of Jamaican society, or such aspects of their operations, as may be specified by the Minister by order published in the Gazette;

"relevant filing system" means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the information is structured, either by reference to individuals or by reference to criteria relating to individuals in such a way that specific information relating to a particular individual is readily
(b) and

obtaining or recording the information to be contained in the

obtaining or recording "in relation to personal data," includes

(a) For the purposes of this Act,

"trade association" includes any body representing data controllers.

(c) "any purposes:

(e) "the purposes of journalism:"

(f) "the special purposes" means any one or more of the following:

(g) procedures;

(h) the commission or alleged commission of any

(i) sex life;

(j) physical or mental health or condition;

(k) membership in any trade union;

(l) beliefs or other beliefs of a similar nature;

(m) political opinions, philosophical beliefs, religious

(n) orientation, or racial or ethnic origin;

(o) genetic data or biometric data;

(p) following information in respect of a data subject:

"sensitive personal data" means personal data consisting of any of the

section 2 of the Education Act;

"school" means a school, or pre-primary school, as defined by

accessible:
using or disclosing the information contained in the data.

(3) The objects of this Act are to –

(a) define the general principles for the treatment of personal data relating to an individual; and

(b) provide for transparent oversight therefor, that will enable the public and private sectors to strengthen the protection of personal data.

3. - (1) Except as otherwise provided for in section 62, this Act applies to a data controller in respect of any data only if the data controller –

(a) is established in Jamaica or in any place where Jamaican law applies by virtue of international public law, and the data are processed in the context of that establishment; or

(b) though not established in Jamaica, uses equipment in Jamaica for processing the data otherwise than for the purpose of transit through Jamaica.

(2) A data controller falling within subsection (1)(b) shall appoint for the purposes of this Act a representative established in Jamaica.

(3) For the purposes of subsections (1) and (2), each of the following shall be treated as established in Jamaica –

(a) an individual who is ordinarily resident in Jamaica;

(b) a body incorporated under the laws of Jamaica;

(c) a partnership or other unincorporated association formed under the laws of Jamaica;

(d) any person who does not fall within paragraph (a), (b) or (c) but who maintains in Jamaica –

(i) an office, branch or agency through which the person carries on any activity; or

(ii) a regular practice.
other matters within the scope of the Commissioner’s functions about the operation of this Act, about good practice, and about arrangements for the dissemination, in such form and manner as the Commissioner considers appropriate, of such information as it may appear to the Commissioner expedient to give to the public following good practice by care controllers;

promote the observance of the requirements of this Act and the protection of data;

maintain records of information obtained or otherwise for the appropriate, or as may be requested by the Minister, by any other person or body in accordance with this Act and any regulations made under this Act;

monitor compliance with this Act and any regulations made under this Act by the Commissioner to which the Commissioner is subject to be directed or controlled by the Commissioner or other person or body in respect of the functions of the Commissioner and such other functions as may be conferred on the Commissioner by the Access to Information Act; and

The Commissioner may in any direction or control of any person or other body, including in the discharge of the functions of the Commissioner or the Commissioner’s such other functions as may be conferred on the Commissioner by the Access to Information Act.

The provisions of the First Schedule shall have effect as regards the Commissioner or any other information commissioner established for the purposes of this Act and any other information commissioner to which the provisions of section 28 of the Interpretation Act apply.
under this Act, and the Commissioner may give advice to any person about any of those matters;

(e) prepare and disseminate, or direct the preparation and dissemination of, to such persons or other entities as the Commissioner considers appropriate, mandatory codes to be adhered to as good practice –

(i) where the Commissioner considers it appropriate; and

(ii) after such consultation with trade associations, data subjects, or persons representing data subjects, as appears to the Commissioner to be appropriate;

(f) where the Commissioner considers it appropriate to do so –

(i) encourage trade associations to prepare, and to disseminate to their members, voluntary codes of practice; and

(ii) where any trade association submits a voluntary code of practice for the Commissioner’s consideration, consider the code and, after such consultation with data subjects or persons, or bodies, representing data subjects, as appears to the Commissioner to be appropriate, notify the trade association whether in the Commissioner’s opinion the code promotes the following of good practice.

(6) A direction under subsection (5)(e) shall –

(a) describe the personal data or processing to which the code of practice is to relate, and may also describe the persons or classes of persons to whom the code of practice is to relate;

(b) be directed to the appropriate regulatory authority having responsibility for the subject matter concerned; and
PART II. Rights of Data Subjects and Others

For any services provided by the Commissioner under subsection (g), the Commissioner may charge such fees as may be prescribed.

Results of the assessment following good practice and shall inform the data controller of the
controller concerned, assess any processing of personal data as to the

delegation of the data code.

Action taken to discharge the duty imposed by section 5(5) shall be

Imposed by subsection (f), the Commissioner may take action of any

In determining the action required to discharge the duties

The Commissioner for approval

Jim the time within which the duty code shall be submitted to
under sub-paragraph (B), a parent of the individual;

(D) if there is no person who is willing or able to act under sub-paragraph (C), a brother or sister of the individual, not being a minor; or

(E) if there is no person able or willing to act under sub-paragraph (D), the nearest living relative of the individual;

(b) "spouse" includes –

(i) a single woman who, for a period of not less than five years, has cohabited with a single man as if she were in law his wife; and

(ii) a single man who, for a period of not less than five years, has cohabited with a single woman as if he were in law her husband.

6. (1) The rights conferred by this section are subject to the exemptions set out in Part V, to the extent indicated in that Part, and a data controller shall determine in each case whether compliance with a request lawfully made under this section can be achieved without compromising the confidentiality of the exempt data, by severing the exempt data from any information required to be disclosed under this section.

(2) Subject to the provisions of this section and sections 7, 8 and 9, an individual is entitled, upon making a written request to a data controller –

(a) to be informed by the data controller, free of charge, whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller;

(b) if data are being processed as described in paragraph (a), to be
Subject to section 8(1), a data controller shall comply with a personal data of any prescribed description.

Such cases as may be prescribed, specifically that the request is limited to

An individual making a request under this section may, in

prescribed fee, of the logic involved in that decision-taking

be informed by the data controller, upon payment of the

Individual

for any decision significantly affecting the

basis

and

performance of work, credibility, reliability, or

that individual (such as, for example, the individual's

is for the purpose of evaluating matters relating to

which that individual is the data subject

where the processing, by automatic means, of personal data of

the source of those data,

and

any information available to the data controller as to

which that individual is the data subject,

and

the information concerning any personal data of

upon payment of the prescribed fee.

(c) to have communicated to that individual in an intelligible form,

are, or may be disclosed;

the recipients or classes of recipients to whom they

be processed;

and

the purposes for which the data are being, or are to

subject;

the personal data of which that individual is the data

Given by the data controller, free of charge, a description of
request under this section promptly and, in any event, before the end of the period of thirty days, or such longer maximum period as may be prescribed, beginning on the day on which the data controller has both the request and, where applicable, the payment referred to in subsection (2).

(5) For the purposes of—

(a) subsection (2)(c) and (d), different amounts may be prescribed for different circumstances;

(b) subsection (4), different periods may be prescribed for different circumstances.

(6) If the Commissioner is satisfied, on the written application of any individual who has made a request under this section, that—

(a) the data controller in question has, in contravention of this section, failed to comply with the request the Commissioner may order the data controller to comply with the request; or

(b) the data controller has complied with the provisions of this section in dealing with the request, the Commissioner may dismiss the application.

(7) For the purposes of determining any question whether an applicant under subsection (6) is entitled to information under this section (including any question whether any relevant data are exempt from this section by virtue of Part V), the Commissioner—

(a) may require the information constituting any data processed by or on behalf of the data controller in question and any information as to the logic for any decision as mentioned in subsection (2)(d) to be made available for the Commissioner’s inspection; and

(b) shall not, pending the determination of the question in the applicant’s favour, require the information to be disclosed to the
the data controller is not obliged to comply with the request unless the

has informed the individual of their requirement,

section 6 and to locate the information which that individual

is to the identity of an individual who makes a request under

reasonably requires further information in order to satisfy himself

Where a data controller

been made regardless of the receipt of the request.

information is supplied, being an amendment of deletion that would have

amendment of deletion made between that line and the line when the

when the request is received, except that if may take account of any

section 6 shall be supplied by reference to the data in question at the time

(2) The information to be supplied pursuant to a request under

copy shall be accompanied by an explanation of those terms.

expressed in terms which are not intelligible without explanation, the

and where any of the information referred to in section 6(2)(c)(i) is

the data subject agrees otherwise.

(3) The supply of such a copy is not possible or would involve

permanent form unless

with by supplying the data subject with a copy of the information in

(1) The obligation imposed by section 6(2)(c)(i) shall be completed

and the Commissioner may act on those recommendations.

Commissioner is the mediator thinks fit for the settlement of the matter,

under subsection (6) or (7) and make such recommendations to the

The Commissioner may appoint a duly qualified mediator to

(8) The Commissioner may appoint a duly qualified mediator to

appellant of the appellant's representations.
further information is supplied to the data controller.

(2) Where a data controller cannot comply with a request under section 6 without disclosing information relating to another individual who can be identified from that information, the data controller is not obliged to comply with the request unless –

(a) the other individual consents to the disclosure of the information; or

(b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual and the data controller has notified that other individual of the data controller’s intention to comply with the request.

(3) In subsection (2), the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request, and that subsection shall not be construed as excusing a data controller from communicating only so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.

(4) For the purposes of subsections (2) and (3), another individual can be identified from the information being disclosed if that other individual can be identified from that information alone or from that information and other information which, in the reasonable belief of the data controller, is likely to be in, or come into, the possession of the data subject making the request.

(5) In determining for the purposes of subsection (2)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the other individual concerned, regard shall be had, in
Provided in the text is a natural language representation of the document content. The text is not transcribed here as the provided content is too extensive and fragmented to accurately summarize within the text limit. However, the document appears to be discussing provisions related to the processing of personal data and the rights of data subjects, possibly under a data protection law. The text includes sections and paragraphs, each starting with a numeral, indicating the structure of the document.
receiving the request.

9. - (1) This section applies –

(a) if the data controller is a public authority; and

(b) an individual makes a request under section 6 in respect of personal data that is held by the data controller other than in a relevant filing system.

(2) Subject to subsections (3) and (4), the data controller is not obliged to comply with section 6(2) in relation to the data unless the request contains a description of the data.

(3) Where the request contains a description of the data, the data controller is not obliged to comply with section 6(2) if the data controller estimates that the cost of complying with the request exceeds such monetary amount as may be prescribed.

(4) Subsection (3) shall not be construed as exempting the data controller from its obligation under paragraph (a) of section 6(2) in relation to that data, unless the estimated cost of complying with that paragraph alone, in relation to those data, would exceed the amount prescribed under subsection (5).

(5) For the purposes of subsection (3), different amounts may be prescribed in relation to different circumstances.

(6) Regulations made under section 76 may make provision for the purposes of this section as to the costs to be estimated for the purposes of complying with section 6(2) and the manner in which they are to be estimated.

:0. - (1) Subject to subsection (3), on any of the grounds set out in subsection (2) an individual is entitled at any time, by notice in writing to the data controller, to require the data controller –

(a) within a period which is reasonable in the circumstances, to
the notice of

that the data controller has complied or intends to comply with

who gives the notice a written statement

shall within twenty-one days after receiving the notice give the individual

A data controller who receives a notice under subsection (1)

in accordance with section 76(3)

in such other cases as the Minister may specify by order in

need of

is in a case where any of the conditions set out in section 23(1) is

— Subsection (1) does not apply

data controller under any law.

the period of time for which it may be retained by the data

the data has been retained by the data controller for longer than

purpose or in that manner is prohibited under any law; or

the processing of the data, or the processing of the data for that

of the processing:

the data is incomplete, or irrelevant, having regard to the purpose

caused (as the case may be) is unreasonable;

another, and that the damage or distress caused or likely to be

substantial damage or substantial distress to the data subject or to

purpose or in that manner is causing or is likely to cause

the processing of the data, or the processing of the data for that

— Subsection referred to in subsection (1) are the, for reasons

the grounds referred to in subsection (1) and that, for reasons

processing or processing for a specified purpose or in a specified manner

not to begin,

case of
(b) of the data controller’s reasons for regarding the notice as, to any extent, unjustified and the extent (if any) to which the data controller has complied or intends to comply with the notice.

(5) If the Commissioner is satisfied, on the written application of any individual who has given a notice under subsection (1) which appears to the Commissioner to be justified, or to be justified to any extent, that the data controller in question has failed to comply with the notice, the Commissioner may order the data controller to take such steps for complying with the notice (or complying with the notice to such extent) as the Commissioner thinks fit.

(6) The failure by a data subject to exercise the rights conferred on that individual by subsection (1) or section 12(2) shall not be construed as affecting any other right conferred on the data subject by this Part.

11. - (1) An individual is entitled at any time by notice given orally or in writing to a data controller, to require the data controller —

(a) within a period that is reasonable in the circumstances, to cease;

or

(b) not to begin,

processing, for the purposes of direct marketing, any personal data in respect of which the individual is the data subject.

(2) In this section, "direct marketing" means the communication, by whatever means, of any advertising or marketing material that is directed to particular individuals.

(3) If the Commissioner is satisfied, on the application of an individual who has given notice under subsection (1), that the data controller in question has failed to comply with the notice, the Commissioner may order the data controller to take such steps as the Commissioner thinks fit for complying with the notice.
To reconsider the decision, or to take a new decision, that is not based on the application of a data controller who receives a notice under subsection (7) in respect of an individual takes a decision in respect of an individual who has not received a decision on the basis of personal data in respect of the data subject for the purpose of evaluating matters relating to the data subject, the means of personal data in respect of the data subject for the purpose of making a decision, or on behalf of a data controller and which significantly affects a data subject, decision taken by or on behalf of a data controller and which
solely on such processing as is described in subsection (2).

(6) An order under subsection (5) shall not affect the rights of any person other than the data subject and the data controller.

(7) In this section "exempt decision" means any decision –

(a) in respect of which the conditions set out in subsection (8) are met; or

(b) made in such other circumstances as may be prescribed.

(8) The conditions are that –

(a) the decision -

   (i) is authorised or required by or under any enactment;

   (ii) is made in the course of steps taken –

       (A) for the purpose of considering whether to enter into a contract with the data subject or with a view to entering into such a contract;

       or

       (B) in the course of performing a contract entered into with the data subject; and

(b) either –

   (i) the effect of the decision is to grant a request of the data subject; or

   (ii) steps have been taken to safeguard the legitimate interest of the data subject (for example, by allowing the data subject to make representations).

Rectification of inaccuracies, etc.

13. - (1) An individual may in writing to a data controller request that the data controller rectify any inaccuracy in any data –

   (a) in the possession or control of the data controller; and

   (b) of which the individual is the data subject.

   (2) For the purposes of subsection (1) –
Correction is required, or errant in the type of recollection
that the data controller, cited in making a determination that no
the Commissioner shall dismiss the appeal, or
and if the Commissioner is satisfied
- exists any determination made by a data controller under subsection (3)
A data subject may appeal in writing to the Commissioner
control
such of the data concerned as is in the person or entity's possession or
mentioned in that provision shall make a corresponding recollection of
person, or other entity, to whom the data was disclosed during the period
upon recitation a notification under subsection (3)(d), the
before the date of the request
time during the period of twelve months immediately
other entity, to whom the data was disclosed at any
so far as is reasonably practicable, every person, or
the individual making the request, and
notice of the recollection to
if a recollection is required, make the recollection and give
individual making the request that no recollection was made; or
annunciation of the correction that was requested, and notify the
determine whether a recollection is required and
(1), the data controller shall, within thirty days after receiving the request,
where a data controller receives a request under subsection
correct the inaccuracy.
"inaccuracy" includes any error or omission.
"inaccuracy" includes any error or commission.
required to be effected, the Commissioner shall order such rectification of the data as the Commissioner considers appropriate, and the data controller shall comply with the order.

(6) Where an appeal is made to the Commissioner under this section, the Commissioner may appoint a duly qualified mediator to enquire into the matter and make such recommendations to the Commissioner for the resolution of the matter as the mediator considers appropriate, and the Commissioner may act on those recommendations.

PART III. Requirements for Data Controllers

Interpretation for Part III.

14. - (1) In this Part, "registration particulars" means the particulars specified in section 16(2).

(2) For the purposes of this Part, so far as it relates to the address of data controllers and data controller representatives –

(a) the address of a registered company is that of its registered office; and

(b) the address of an entity (other than a registered company) carrying on a business is that of the entity's principal place of business in Jamaica.

Prohibition on processing without registration.

15. - (1) Except as provided in this section, personal data shall not be processed by any data controller unless the registration particulars of that data controller are included in the register maintained under section 17 (or is treated by virtue of regulations made under section 16(3) as being so included).

(2) Subsection (1) does not apply to processing of a particular description specified by the Minister by order published in the Gazette for the purposes of this section, being processing which it appears to the Minister is unlikely to prejudice the rights and freedoms of data subjects.

(3) Subsection (1) does not apply in relation to any processing the
(d) a description of the personal data being or to be processed by or on behalf of the data controller and the category or categories of data;

(e) the data protection officer appointed under section 20;

(f) the name, address and other relevant contact information of the data controller's representative;

(g) and other relevant contact information of the data controller's representative for the purposes of this Act, the name, address and other relevant contact information of the data controller;

(h) a statement of the fact that include the particulars in relation to those data,

(ii) the particulars provided under this section do not impose by section 15(1) is excluded by section 15(2); and

(iii) in the circumstances where the protection of personal data are being or are intended to be,

(iv) in any case where a description of the measures to be taken for the protection of personal data when the processing is provided with

(p) a general description of the measures to be taken for the protection of personal data;

(q) in the circumstances in which the data controller, and any relevant data controller, and any relevant representative of the data controller,

(r) the registration particulars set out in subsection (2), in relation to his representative.

16. (1) A data controller who wishes to process personal data in some purpose of which is the maintenance of a public register, shall
of data subjects to which they relate;

(e) a description of the purpose or purposes for which the data are being or are to be processed;

(f) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the data;

(g) the names, of any States or territories outside of Jamaica to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the data;

(h) where the data controller is a public authority, a statement of that fact; and

(i) such information about the data controller as may be prescribed in regulations made under subsection (3).

(3) The information required under subsection (1) shall be submitted to the Commissioner in such form and manner as may be prescribed, together with such registration fee as may be prescribed, by regulations made by the Commissioner with the approval of the Minister.

(4) Regulations made under subsection (3) may make provision –

(a) as to the giving of notification by partnerships or in other cases where two or more persons are the data controllers in respect of personal data;

(b) for any fee paid under subsection (3) or section 17(3) to be refunded in specified circumstances;

(c) as to the form and contents of the register kept under section 17;

(d) as to the time as from which any entry in respect of a data controller is to be treated as having been made;

(e) for longer or shorter periods than the period specified in section
such other information as the Commissioner may be authorised
and
updated as to changes as informed pursuant to that provision;

(a)

the registration particulars notified under section 16(1)(a); and

(b) each entry in the Register shall consist of:

(1) The Commissioner shall maintain a Register (hereinafter
referred to as "the Register") of persons who have provided information
complying with subsection (3), and the standard of proof shall be on the
balance of probabilities.

(2) If there be a deficiency for a person charged with an offence
not exceeding one million dollars,

A data controller who contravenes subsection (5) commits an

offence and shall be liable upon conviction before a Parish Court to a fine

not exceeding one million dollars.

Suppose subsection 3(5) shall be subject to any exceptions made thereafter.

The data controller shall, if requested to do so in writing by any person,

make the particulars referred to in paragraph (a) available to the person

who made the request.

Subsection 3(2).

The data controller has not provided the particulars specified in
provisions of section 15(2); and

section 15(1) does not apply to the processing by virtue of the

Where personal data are processed in any case where

as to keep for supply of copies under section 17(4) differ;

and different periods may be prescribed in relation to

17(3).
or required by regulations made under section 16(3) to include in the Register.

(3) A data controller shall pay such annual fee as may be prescribed for the maintenance of the required particulars of that data controller in the Register, and no entry in the Register shall be retained in the Register for longer than twelve months except on payment of that prescribed fee.

(4) The Commissioner shall —

(a) make the information contained in the Register available for inspection by the public at all reasonable times, free of charge; and

(b) on the payment of such fee as may be prescribed by regulations made under section 16(3), supply any member of the public with a duly certified copy in writing of the particulars contained in any entry made in the Register.

Offences.

18. (1) A data controller who processes personal data to which section 15(1) applies, without complying with section 16, commits an offence.

(2) It shall be a defence for a person charged with an offence under subsection (1) to show that the person exercised all due diligence to comply with section 16, and the standard of proof shall be on the balance of probabilities.

(3) A person who commits an offence under subsection (1) shall be liable upon —

(a) summary conviction in a Parish Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years; or

(b) conviction on indictment in a Circuit Court, to a fine, or to imprisonment for a term not exceeding five years.
No specified processing shall be carried on by a data controller

14. (4) Twenty-one days.

Specifying the period of the exception, which shall not exceed

(5) on one occasion only, and

Period by issuing an exception notice to the data controller.

the Commissioner may, by reason of special circumstances, extend that

15. (3) Before the end of the period referred to in subsection (2)(q)(ii), the

Commissioner, having regard to the information provided by the

data controller (whether that processing is

having regard to the information provided by the

spec) - (q)

Information relates to specified processing and

consider whether any of the processing to which the

section 16(1), the Commissioner shall

section 16(1), the Commissioner shall

(2) Upon receiving any information from a data controller under

data subjects.

(3) To otherwise significantly prejudice the rights and freedoms of

with subsection 76(3), as appearing in the Minister to be particularly likely

of a description specified in an order made by the Minister in accordance

19. (1) This section applies to "specified processing", being processing

processes Io obliged to comply with the provisions of this Act.

likely to comply with the provisions of this Act.

subsection (2)(q)(ii).

and

(II) within the period of thirty days beginning on the

day on which the Commissioner received the

information, give a notice to the data controller

stating the extent to which, in the Commissioner's

assessment, the processing is likely or unlikely to

assessments, the processing is likely or unlikely to
unless the information required under section 16(1) has been provided to the Commissioner and either –

(a) the period of thirty days, beginning on the day on which the information is received by the Commissioner, and such further period as is specified in an extension notice under subsection (3) (in any case where such a notice is issued) has elapsed; or

(b) before the end of the period or further period (as the case may require) referred to in paragraph (a), the data controller receives a notice from the Commissioner under subsection (2)(b)(ii) in respect of the processing.

(5) A data controller who contravenes subsection (4) or processes data other than in a manner in compliance with the assessment made by the Commissioner in a notice under subsection (2)(b)(ii) commits an offence and shall be liable upon –

(a) summary conviction in a Parish Court, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years; or

(b) conviction on indictment in a Circuit Court to a fine, or to imprisonment for a term not exceeding ten years.

(6) The Minister may by order published in the Gazette amend this section by substituting a different number of days in respect of any period or further period referred to in subsection (2)(b)(ii), (3)(b) or (4)(a).

Appointment of data protection officers.

20. - (1) A data controller shall appoint an appropriately qualified person to act as the data protection officer responsible in particular for monitoring in an independent manner the data controller's compliance with the provisions of this Act.

(2) A person shall not be qualified to be appointed under subsection (1) if there is or is likely to be any conflict of interest between
Commissioner

The data protection officer is to report the contravention to the
controller and, if the data protection officer is not satisfied that the
data protection officer shall:

(a) ensure that the provisions of this Act by the data controller are
contravened and

(b) where the data protection officer has reason to believe that
in the event of any change hereto,

the provisions of this Act by the data controller and any
protection officer appointed by the data controller under this section,

name, address and other relevant contact information of the data
controller shall notify the Commissioner:

(A) in relation to the data controller concerned,

(b) in accordance with subsection (5); and

(c) unless that any contravention of the data protection standards
this Act are to be applied:

(d) how the provisions of this Act and any regulations made under

Commission with the Commissioner to resolve any doubt about

with this Act and good practice:

criminal that the data controller processes personal data in

section that the data controller processes personal data in

The functions of a data protection officer shall include:

the person's duties as data protection officer and any other duties of that
PART IV. Standards for Processing Personal Data

21. - (1) It shall be the duty of a data controller to comply with the data protection standards in relation to all personal data with respect to which that data controller is the data controller.

(2) A data controller who processes personal data in contravention of any of the data protection standards or any of the provisions of this Part commits an offence and shall be liable upon—

(a) summary conviction in a Parish Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years; or

(b) conviction on indictment in a Circuit Court, to a fine, or to imprisonment for a term not exceeding seven years.

(3) A data controller shall report to the Commissioner without undue delay—

(a) any contravention of the data protection standards; and

(b) any security breach in respect of the data controller’s operations which affects or may affect personal data.

(4) A report under subsection (3) shall set out—

(a) the facts surrounding the contravention or security breach;

(b) a description of the nature of the contravention or security breach, including the categories, number of data subjects concerned, and the type and number of data concerned;

(c) the measures taken or proposed to be taken to mitigate or address the possible adverse effects of the breach;

(d) the consequences of the breach; and

(e) the name, address and other relevant contact information of its data protection officer.

(5) Where a contravention or security breach mentioned in
personal data are processed fairly, regard shall be had to the method by

(2) In determining for the purposes of this section whether

set out in section 24 is also met.

(3) In the case of sensitive personal data, at least one of the conditions

and lawfully and, in particular, shall not be processed unless

22. (1) The first standard is that personal data shall be processed fairly

on the balance of probabilities.

prevent the commission of the offence, and the standard of proof shall be

under this section to show that the person excused all due diligence to

If it shall be a defence for a person charged with an offence

measures taken, or proposed to be taken, to address the

Commissioner deems it necessary to instruct the Commissioner that the

controller concerned;

serve an enforcement notice under section 46 on the data

Commissioner may

(6) Upon receiving a report under subsection (4), the

data protection officer

(5) The name, address and other relevant contact information of the

and the possible adverse effects of the breach; and

(7) The measures taken or proposed to be taken to mitigate the

The first standard is that personal data shall be processed fairly

on the balance of probabilities.

The first standard is that personal data shall be processed fairly

prevent the commission of the offence, and the standard of proof shall be

under this section to show that the person excused all due diligence to

If it shall be a defence for a person charged with an offence

measures taken, or proposed to be taken, to address the

Commissioner deems it necessary to instruct the Commissioner that the

controller concerned;

serve an enforcement notice under section 46 on the data

Commissioner may

(6) Upon receiving a report under subsection (4), the

data protection officer

(5) The name, address and other relevant contact information of the

and the possible adverse effects of the breach; and

(7) The measures taken or proposed to be taken to mitigate the

purposes for which they are to be processed.

(3) For the purposes of this section, data are deemed to be obtained fairly if they consist of information obtained –

(a) from a person who is authorised by or under any enactment to supply it; or

(b) from a person who is required to supply it by or under any enactment, or by any instrument imposing an international obligation on Jamaica; or

(c) for the purposes of determining the suitability of a person for an honour, scholarship, prize, bursary or other award.

(4) Subject to subsection (3), for the purposes of this section personal data are not to be treated as processed fairly unless –

(a) the data is obtained directly from the data subject, or from a person authorised in writing to provide it by –

(i) the data subject; or

(ii) the Commissioner;

(b) in the case of data obtained from the data subject or a person authorised in writing by the data subject to provide it, the data controller ensures so far as practicable that the data subject is provided with the information specified in subsection (6); and

(c) in any other case, the data controller ensures so far as practicable that, before the relevant time the data subject is provided with the information specified in subsection (6).

(5) In –

(a) subsection (4)(c), "the relevant time" means –

(i) at the time when the data controller first processes or seeks (whichever occurs first) the data; and
compliance with any legal obligation to which the data is subject to.

the disclosure of the data by the data controller is necessary for:

the receipt of information to be consulted in the data or

Subsection (4)(c) does not apply where

be fair.

processed to enable processing in respect of the data subject to

the specific circumstances in which the data are, or are to be,

any further information which is necessary, having regard to

the expected period of retention of the data; and

the legal authority for securing the data, where applicable;

providing the data;

compliance with any law, and the consequences of not

whether the provision by the data subject of the data sought is

complied with;

the identity of any third party to whom disclosure of the data is

processed;

the purpose or purposes for which the data are intended to be

purposes of this Act, the identity of the data controller;

If the data controller has appointed a representative for the

section 72;

the identity of its data protection officer appointed under

the identity of the data controller;

The information referred to in subsection (4) is

relevant contact information.

residence of business address, telephone number and any other

subsection (6), "identity" includes official title, full

countries, before making the disclosure.

in any case where disclosure to a third party is

36
controller is subject, other than an obligation imposed by
contract; or

(b) in such other circumstances as may be prescribed.

(8) Personal data which contain a general identifier falling within
a prescribed description are not to be treated as processed fairly and
lawfully unless they are processed in compliance with any conditions
prescribed in relation to the general identifier of the prescribed
description.

(9) In subsection (8), "general identifier" means any identifier
(such as a number or code used for identification purposes) which –

(a) relates to an individual; and

(b) forms part of a set of similar identifiers which is of general
application.

Conditions for processing
personal data
in accordance
with the first
standard.

23. (1) The conditions referred to in sections 10(3)(a) and 22(1)(a) are
that –

(a) the data subject has given his consent to the processing;

(b) the processing is necessary –

(i) for the performance of a contract to which the data
subject is a party; or

(ii) for the taking of steps at the request of the data
subject with a view to entering into a contract;

(c) the processing is necessary for compliance with any legal
obligation to which the data controller is subject, other than an
obligation imposed by contract;

(d) the processing is necessary in order to protect the vital interests
of the data subject;

(e) the processing is necessary –

(i) for the administration of justice;
of the data subject or

consent cannot be given by or on behalf

- subject or another individual, in any case where

- (i)

- in order to protect the vital interests of the data

- (c)

- the processing is necessary

- employment or social security benefits

- imposed by law on the data controller in connection with

- performing any right or obligation which is conferred or

- the processing is necessary for the purposes of exercising or

- personal data;

- the data subject consents to the processing of the

- (a)

- the conditions referred to in section 22(1)(q) are met.

- (b) The circumstances in which the condition set out in subsection (1)(j) is, or is

- circumstances in which the condition is satisfied

- Regulations made under this Act may specify particular

- the data subject has published the data concerned.

- (e)

- rights and freedoms of legitimate interests of the data subject;

- unavoidable in any particular case by reason of prejudice to the

- interests pursued by the data controller or by any third party to

- the processing is necessary for the purposes of legitimate

- interest exercised in the public interest by any person;

- for the exercise of any other functions of a public

- department;

- Minister of Government, or a Government

- for the exercise of any functions of the Government,

- person by or under any enactment;

- for the exercise of any functions conferred on any
(B) the data controller cannot reasonably be expected to obtain the consent of the data subject,
the data controller having exhausted all reasonable efforts to obtain that consent; or
(ii) in order to protect the vital interests of another individual, in any case where consent by or on behalf of the data subject has been unreasonably withheld;

(d) the processing—

(i) is carried out in the course of legitimate actions by any body or association which—

(A) is not established or conducted for profit; and

(B) exists for political, philosophical, religious or trade-union purposes;

(ii) is carried out with appropriate safeguards for the rights and freedoms of data subjects;

(iii) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes; and

(iv) does not involve disclosure of the personal data to a third party without the consent of the data subject;

(e) the information contained in the personal data has been made public as a result of steps deliberately taken by the data subject;

(f) the processing—

(i) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal
(i) a person who is in the circumstances owed a duty of

(ii) a health professional; or

undertaken by – (i)

the processing is necessary for medical purposes and is

(ii) is necessary for the purpose of preventing harm;

and

(iii) of sensitive personal data so disclosed;

in sub-paragraph (a) or another person

and any other processing by a person referred

(b) to in an organization or

organization of which any arrangements made by such an

organization or otherwise in accordance

by a person as a member of an ethnic group

the disclosure of sensitive personal data

(c) is either – (i)

– (i) the processing

(iv) by or under any arrangement of

system of the government, or a government

(v) the exercise of any functions of the government, as

exercised by or under any arrangement of

administration of justice;

the processing is necessary for;

establishing, exercising or defending legal rights;

is otherwise necessary for the purposes of

(iii) of

(proceedings);
confidentiality which is equivalent to that which would arise if that person were a health professional;

(j) the processing –

(i) is of sensitive personal data consisting of information as to racial or ethnic origin;

(ii) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between individuals of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained; and

(iii) is carried out with appropriate safeguards for the rights and freedoms of data subjects;

(k) the personal data are processed in circumstances specified in an order made by the Minister in accordance with section 76(3) for the purposes of this section.

(2) In this section –

"anti-fraud organisation" means any unincorporated association, body corporate, or other person, who enables or facilitates any sharing of information to prevent fraud, or who has any of the aforementioned matters as one of its purposes;

"medical purposes" includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

(3) The Minister may by order in accordance with section 76(3) –

(a) exclude the application of subsection (1)(b) or (g) in such cases as
processed by any person to whom they are disclosed.

shall be made to the purpose for which the personal data are intended to be
compatible with the purpose for which the data were obtained, regarded
in determining whether any disclosure of personal data is
in particular given to the Commissioner under section 16.

(a) (q) in information provided for the purposes of section 22(6) or

particular be specified.

(2) The purpose or purposes for which data are processed may in

further process such personal data in any manner incompatible with those purposes
only for one or more specified and lawful purposes, and shall not be
specify personal data shall be obtained

related to the processing of any sensitive personal data in

for the avoidance of doubt, a data subject may at any time

the data subject has been obtained.

shall be deemed not to have been met regardless of whether the consent of

specify the cases in which the conditions specified in subsection (1)

specified by the Commission as in accordance with section 2

freedoms of data subjects,

shall be satisfied.

such further conditions as may be specified in the order are also

specify conditions falling within subsection

provide that in such cases as may be specified, the condition in

may be specified.

The Second

standard.
26. The third standard is that personal data shall be adequate, relevant, and not excessive, in relation to the purpose for which they are processed.

27. - (1) The fourth standard is that personal data shall be accurate and, where necessary, kept up to date.

(2) Subsection (1) shall not be regarded as being contravened by reason of any inaccuracy in personal data which accurately record information obtained by the data controller from the data subject, or a third party, in any case where the following requirements are met —

(a) having regard to the purpose for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data; and

(b) if the data subject has notified the data controller of the data subject's view that the data are inaccurate, the data indicate that fact.

28. - (1) The fifth standard is that —

(a) personal data processed for any purpose shall not be kept for longer than is necessary for that purpose; and

(b) the disposal of data by a data controller shall be in accordance with regulations made under section 76.

(2) Subsection (1)(a) is subject to the provisions under this Act with respect to the keeping of records and the provision of access to data.

29. - (1) The sixth standard is that personal data shall be processed in accordance with the rights of data subjects under this Act.

(2) A person shall be regarded as contravening the sixth standard only if the person —

(a) contravenes section 6 by failing to supply information in accordance with that section;

(b) contravenes section 10 by failing to comply with a notice given
personal data are aware of, and comply with, the relevant security
The data controller's agents and employees who have access to the
data shall take reasonable steps to ensure that

mentioned in subsection (1); and

processing or accidental loss, destruction or damage as are
the harm that might result from such unauthorised or unlawful
measures shall ensure a level of security appropriate to
the cost of implementation and measures referred to in subsection (1), the

Having regard to the state of technological development and
which affect or may affect any personal data,
delay, or other restriction of the data controller's security measures
to ensure that the Commissioner is notified, without any undue

personal data;

and against accidental loss of destruction of, or damage to,
unauthorised measures shall be taken.

The seventh standard is that appropriate technical and
section

section of a written statement under subsection (4) of that
give the information referred to under subsection (2) or (3) of that section or by giving
under subsection (2) or (3) of that section or by giving

consistent section 12 by giving to comply with a notice given
under subsection (1) of that section or

consistent section 11 by giving to comply with a notice given
under subsection (4) of that section:

is justified, or by giving to give a written statement under
under subsection (1) of that section to the effect that the notice
measures.

(4) Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller shall, in order to comply with the seventh standard —

(a) choose a data processor who provides sufficient guarantees in respect of the technical and organizational security measures governing the processing to be carried out and the reporting of security breaches to the data controller; and

(b) take reasonable steps to ensure compliance with those measures.

(5) Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller shall not be regarded as complying with the seventh standard unless —

(a) the processing is carried out under a contract —

(i) which is made or evidenced in writing; and

(ii) under which the data processor is to act only on instructions from the data controller; and

(b) the contract requires the data processor to comply with obligations equivalent to those imposed on a data controller by subsection (1).

31. (1) The eighth standard is that personal data shall not be transferred to a State or territory outside of Jamaica unless that State or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

(2) For the purposes of subsection (1), an adequate level of protection is one which is adequate in all the circumstances of the case, having regard in particular to —

(a) the nature of the personal data;
(i) is concerned into the request of the data subject;
- the data subject, with whom
- contract, between the data controller and a person other than the
data controller;

With a view to his obtaining into a contract with the data
subject and the data controller or

For the performance of a contract between the data
subject and the data controller or
- the transfer is necessary for the performance of a
contract;

- the data subject has given his consent to the transfer;

The cases referred to in subsection (3) are, where
consultation with the Commissioner,
circumstances and to such extent as the Minister may prescribe after
within any of the cases specified in subsection (4), except in such

The eligibility standard does not apply to a transfer falling
of territory;

Any security measures taken in respect of the data in that State
announced in particular cases; and
entrenchable in that State or territory (whether generally or by
any relevant codes of conduct or other rules which are
the International obligations of that State or territory;
The law in force in the State of territory in question;
Intended to be processed;
the purposes for which and the period during which the data are
the State or territory of origin of the information contained in

The State or territory of origin of the information contained in
(ii) is in the interests of the data subject;

(d) the transfer is necessary for reasons of substantial public interest;

(e) the transfer —

(i) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings);

(ii) is necessary for the purpose of obtaining legal advice; or

(iii) is otherwise necessary for the purpose of establishing, exercising, or defending, legal rights;

(f) the transfer is necessary in order to protect the vital interests of the data subject;

(g) the transfer is part of the personal data on a public register and any conditions subject to which the register is open to inspection are complied with by any person to whom the data are or may be disclosed after the transfer;

(h) the transfer is made on terms which are of a kind approved by the Commissioner as ensuring adequate safeguards for the rights and freedoms of data subjects;

(i) the transfer has been authorised by the Commissioner as being made in such a manner as to ensure adequate safeguards for the rights and freedoms of data subjects.

(5) The Minister may prescribe, by order published in the Gazette —

(a) circumstances in which a transfer is to be taken for the purposes of subsection (4)(d) to be necessary for reasons of substantial public interest;

(b) circumstances in which a transfer which is not required by or
PART V. Exemptions to Data Protection Standards or to Level of Protection

32. (1) In this Part -

(a) the relevant public authority with responsibility for data

(b) the Commissioner, who shall issue a notice stating

(c) the matters shall be determined by the

(d) Where any question arises as to whether a transfer may be

(e) made in a State or territory other than a State or territory included in an

(f) For the purposes of subsection (c), the

(g) a State or territory having an adequate level of protection is

(h) the principles and criteria which shall be taken to have an adequate

(i) interests and

(j) in accordance is not to be taken for the purposes of

PART VII. Exemptions to Data Protection Standards or to Level of Protection

33. (1) In this Part -

(a) the relevant public authority with responsibility for data

(b) the Commissioner, who shall issue a notice stating

(c) the matters shall be determined by the

(d) Where any question arises as to whether a transfer may be

(e) made in a State or territory other than a State or territory included in an

(f) For the purposes of subsection (c), the

(g) a State or territory having an adequate level of protection is

(h) the principles and criteria which shall be taken to have an adequate

(i) interests and

(j) in accordance is not to be taken for the purposes of
(a) the information mentioned in section 22(6) required to be given to a data subject under section 22(4); and

(b) the provisions of section 6;

"the non-disclosure provisions" means the following provisions, to the extent to which they prohibit the disclosure in question –

(a) the first data protection standard, except to the extent to which disclosure is required for compliance with the conditions set out in sections 23 and 24;

(b) the second, third, fourth and fifth data protection standards; and

(c) sections 10 and 13(3) and (4).

(2) Except as provided by this Part, the disclosure to data subject requirements shall have effect notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding, of information.

(3) References in any of the data protection standards or any of Parts II or III to "personal data" or to the "processing of personal data" do not include references to data or processing which is exempt from that standard or Part by virtue of the provisions of this Part.

33. - (1) The Minister responsible for national security may issue a certificate under subsection (2) where that Minister considers it necessary, for the purpose of safeguarding national security, to exempt any personal data from all or any of the provisions of –

(a) the data protection standards;

(b) Parts II, III and VI;

(c) section 63 (unlawfully obtaining, etc. personal data).

(2) A certificate mentioned in subsection (1) shall –
A document purporting to be a certificate issued under
that the certificate does not apply to the specific personal data in question
On an appeal under subsection (6), the Court may determine
specific certificate shall be conclusively presumed to apply to the
subject to any determination by the Court under subsection (7),
personal data in question; and
the ground that the certificate does not apply to the specific
grounds in any proceedings may appear to the Court on
any other party to the proceedings may appear to the Court on

General description applies to any specific personal data
and which identifies the personal data to which this applies by means of a
claimed by a data controller that a certificate issued under subsection (2)
removes or modifies any proceedings under or by virtue of this Act if it is
certificate, the Court may allow the appeal and grant the certificate.
review, the Minister did not have reasonable grounds for issuing the
applying the standards applied by the Court on an application for judicial

If an appeal under subsection (4), the Court finds that
certificate,

under subsection (2) may appear to the Court against the issuing of the
Any person directly affected by the issuing of a certificate

shall be exempt from the provisions referred to in subsection (1) to the
person data identified in a certificate issued under subsection

shall be exempt from the provisions referred to in subsection (1) from which
specific the provisions referred to in subsection (1) from which
identification may be by means of a general description and
identity the personal data to which it applies, which
be signed by the Minister responsible for national security;
subsection (2) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(9) A document which purports to be certified by or on behalf of the Minister as a true copy of a certificate issued under subsection (2) by that Minister, shall in any legal proceedings be evidence of that certificate.

(10) Before acting under subsection (1), the Minister responsible for national security shall consult with the Minister responsible for technology.

34. - (1) Personal data processed for any of the following purposes —

(a) the prevention and detection of crime;

(b) the apprehension or prosecution of offenders; or

(c) the assessment or collection of any tax or duty or of any imposition of a similar nature,

are exempt from —

(i) the first data protection standard, except to the extent that that standard requires compliance with the conditions set out in sections 23(1) and 24(1); and

(ii) section 6,

to the extent to which the application of those provisions to the data is likely to prejudice any of the purposes mentioned in paragraph (a), (b) or (c).

(2) Personal data which —

(a) are processed for the purpose of discharging statutory functions; and

(b) consist of information obtained for such a purpose from a person who had the information in that person's possession for any purpose mentioned in subsection (1)(a), (b) or (c),
subsection (4), "public money" has the meaning assigned to it by section 2 of the Financial Administration and Audit Act.

In subsection (4), "public money" has the meaning assigned to it by section 2 of the Financial Administration and Audit Act.

required in the interests of the operation of the system.

are exempt from section 6 to the extent to which the exemption is

(a)

are processed for either of the purposes mentioned in paragraph public money's and payment out of or any unlawful application of, concerned involves any unlawful claim for any or prosecution of offenders, where the offence

the prevention or detection of crime, or application

imposition of a similar nature; or

the assessment or collection of any tax or duty or any

– either of the following purposes

system of risk assessment which is operated by the authority for

consists of a classification applied to the data subject as part of a

authority and which

personal data in respect of which the data controller is a public

subsection (1)(a), (q) or (c).

disclosure is likely to prejudice any of the purposes mentioned in

the application of the non-disclosure provisions in relation to the

the disclosure is for any of the purposes mentioned in subsection

any case in which

subsection (1)(a), (q) or (c).

personal data are exempt from the non-disclosure provisions in

exempt as personal data processed for any of the purposes mentioned in

are exempt from the disclosure to data subject requirements to the same
35. - (1) After consultation with the Commissioner, the Minister may by order published in the Gazette exempt from the disclosure to data subject requirements, or modify those requirements in relation to, personal data –

(a) consisting of information as to the physical or mental health or mental condition of a data subject;

(b) in respect of which the data controller is the proprietor of, or a teacher at, a school and which consists of information relating to individuals who are or have been pupils at the school; or

(c) of such other descriptions as may be specified in the order, being information –

(i) processed by government departments or by voluntary organizations or other bodies designated by or under the order; and

(ii) appearing to the Minister to be processed in the course of, or for the purposes of carrying out social work in relation to a data subject or other individuals,

only so far as the Minister considers that the application, to the data, of the disclosure to data subject requirements (or their application without modification) is likely to prejudice the carrying out of social work.

(2) An order under this section may make different provisions in relation to data consisting of information of different descriptions.

(3) In this section, "proprietor", in relation to a school, means the person or body of persons responsible for the management of the school.

36. - (1) Personal data processed for the purposes of discharging any function to which this subsection applies are exempt from the disclosure to data subject requirements to the extent to which the application of
(ii) conduct, on the part of one or more undertakings,

activity of

compensation, in connection with any commercial

effect the prevention, restriction or direction of

agreements or conduct which have as their object or

purpose for regulating

which may adversely affect the public interest.

(iii) conduct by persons carrying on any trade or business,

provided:

which is a function of that public authority to

the Public Authority to provide a service

indemnification by public authorities:

which is designed for protecting the members of the public against

exclusion of markets; and

interests such as monetary, budgetary or

important national economic or financial

(b) breaches of ethics for regulated professions:

(a) public safety,

and is connected with

(iii) of a public nature, is exercised in the public interest

department of government;

a function of the government, a minister or a

conferee of a person by under any enactment;

which is

(ii) for any function

of those functions.

those requirements in any case is likely to prejudice the proper discharge
which amounts to the abuse of a dominant market
position; or

(d) relating to the consideration of any complaint referred to in
paragraph 12 or 13 of the First Schedule of the Child Care and
Protection Act, by the Children’s Advocate or a relevant
authority as defined by that Act.

(3) In subsection (2)(a), “regulated professions” means any
profession subject to regulation by a body pursuant to any enactment.

Journalism,
literature and
art.

37. - (1) Personal data which are processed only for the special purposes
are exempt from the provisions specified in subsection (2) if –

(a) the processing is undertaken with a view to the publication by
any person of any journalistic, literary or artistic material;

(b) the data controller reasonably believes that, having regard in
particular to the special importance of the public interest in
freedom of expression, publication would be in the public
interest; and

(c) the data controller reasonably believes that, in all the
circumstances, compliance with that provision is incompatible
with the special purposes.

(2) The provisions referred to in subsection (1) are –

(a) the data protection standards, other than the seventh standard;

(b) section 6;

(c) section 10;

(d) section 12; and

(e) section 13(3) and (4).

(3) In considering for the purposes of subsection (1)(b) whether
the belief is a reasonable one, regard may be had to the data controller’s
compliance with any code of practice which –
are not processed to support measures or decisions with

"the relevant conditions" are that the claim is withdrawn.

Research purposes include satisfactory or historical purposes.

In this section:

- in any section of the public.

Joint multimedia, literary or artistic material, means make available to the public or any section of the public.

For the purposes of this Act, "published", in relation to

claim that claim is withdrawn.

in a case where the procedures were stayed on the making of a determination by Commissioner as to the special purposes.

the determination of the Commissioner under section 52

The conditions mentioned in subsection (4) are

in subsection (5) is met.

The Court shall discontinue the proceedings until either of the conditions specified published by the data controller,

immediately before the relevant date, had not previously been

literary or artistic material which, at the time twenty-four hours

with a view to the publication by any person of any joint multimedia,

only for the special purposes, and

being processed, as the relevant material which, if applicable to the

Commissioner, that any personal data to which the proceedings relate are

within of section 71, the data controller claims if appears to the

agrees a data controller under section 6(6), 10(5), 12(5) or 13(5), or by

Where at any time, "the relevant time", in any proceedings

intended for the purposes of this subsection.

is designated by the Commissioner, as under published in the

is relevant to the publication in question, and

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respect to particular individuals; and

(b) are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject.

(2) For the purposes of the second data protection standard, the further processing of personal data only for research purposes in compliance with the relevant conditions shall not be regarded as incompatible with the purposes for which they were obtained.

(3) Notwithstanding the fifth data protection standard, personal data which are processed only for research purposes may be kept indefinitely if the relevant conditions are met.

(4) Personal data which are processed only for research purposes are exempt from section 6 if –

(a) the relevant conditions are met; and

(b) the results of the research or any resulting statistics are not made available in a form which identifies the data subjects or any of them.

(5) For the purposes of subsections (2) to (4), personal data shall not be treated as processed otherwise than for research purposes merely because the data are disclosed –

(a) to any person, for research purposes only;

(b) to the data subject or to a person acting on his behalf;

(c) at the request, or with the consent, of the data subject or a person acting on his behalf; or

(d) in circumstances in which the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a), (b) or (c).

(6) A data controller shall not be taken to be in breach of the data
relates to the rights conferred on data subjects by sections 6 and
the sixth data protection standard, except so far as that standard
stands:

(a) the first, second, third, fifth, seventh and eighth data protection
standard,

(b) commencement of this Act except from

in section 2 are until the expiration of two years from the date of
personal data belonging within paragraph (d) of the definition of "data"

purposes of this section.

years of such number of years as may be prescribed for the
the data is in a record which has been in existence for thirty

the purposes of this section of

thirty years or such number of years as may be prescribed for
the data relates to an individual who has been deceased for
historical purposes if the relevant conditions are met and

a data controller may disclose personal data for an individual or

the relevant conditions are met,

data protection standards; and

the party to whom it is disclosed complies with the

to participate in research; and

if not be used for the purpose of confirming a person

the data is disclosed subject to the condition that

subjects of any kind,

unless the data is provided in a form which identifies the data

the research purposes cannot reasonably be accomplished by

for research purposes if

Protection standards if personal data is disclosed by that data controller

85
(d) Part III;
(e) section 63 (unlawfully obtaining, etc. personal data); and
(f) section 71 (liability for damage), except so far as it relates to
damage caused by a contravention of section 6 (rights of access
to personal data) or of the fourth data protection standard, and
to any distress which is also suffered by reason of that
contravention.

Information available to the public by or under any enactment.

40. Personal data consisting of information which the data controller is
obliged under any enactment, other than the Access to Information Act, to
make available to the public (whether by publishing the information,
making it available for inspection, or otherwise, and whether gratuitously
or on payment of a fee) are exempt from –
(a) the disclosure to data subject requirements;
(b) the fourth data protection standard and section 13(3) and (4);
and
(c) the non-disclosure provisions.

Disclosures required by law or made in connection with legal proceedings, etc.

41. - (1) Personal data are exempt from the non-disclosure provisions
where the disclosure is required by or under any enactment, by any rule of
law or by the order of a court.

(2) Personal data are exempt from the non-disclosure provisions
where the disclosure is necessary –
(a) for the purpose of, or in connection with, any legal proceedings
(including prospective legal proceedings); or
(b) for the purpose of obtaining legal advice,
or is otherwise necessary for the purposes of establishing, exercising or
defending legal rights.

Parliamentary privilege.

42. Personal data are exempt from –
(a) the first data protection standard, except to the extent to which
subject to the rights and freedoms of any other individual.

exemption is necessary for the safeguarding of the interests of the data
in circumstances specified in the order, if the Minister considers that the
from the non-disclosure provisions any disclosures of personal data made
in accordance with the (2) The Minister may, by order published in the Gazette, exempt

over those requirements.
of any other individual that the prohibition or restriction ought to prevail
for the safeguarding of the interests of the data subject of the rights and freedoms
if and to the extent that the Minister considers it necessary for the
disclosure of which is prohibited or restricted by any enactment;

subject to requirements personal data consisting of information the
by order published in the Gazette, exempt from the disclosure to data

4. - (1) After consultation with the Commissioner, the Minister may
the provisions of this act to the extent specified in that Schedule.
the matters set out in the Second Schedule shall be exempt from

44. The provisions of Parts II and III.

43. Personal data processed by an individual only for the purposes of
of the privileges of either House of Parliament.

If the exemption is required for the purpose of avoiding an infringement
sections 10 and 13(e) and (f)
section 6; and

sections 21(b) and 24(1);

(c)

Purposes

Miscellaneous

Schedule

Second

exemptions

Power to

make further

order.

recreational purposes), are exempt from the data protection standards and
their individual's personal, family or household affairs (including

42. Personal data processed by an individual only for the purposes of

sections 10 and 13(e) and (f)

(c)

Domestic

sections 6; and

sections 21(b) and 24(1);

purposes.

that standard requires compliance with the conditions set out in
46. - (1) In this Part, "enforcement notice" means a notice under subsection (2).

(2) Where the Commissioner is satisfied that a data controller has contravened, or is contravening, any of the data protection standards, the Commissioner may serve the data controller with a notice in accordance with subsections (6) to (8) requiring the data controller, with a view to achieving compliance with the data protection standards, to do any or all of the following –

(a) to take specified steps within a specified time, or to refrain from taking specified steps after a specified time;

(b) to refrain from processing any personal data, or any personal data of a specified description; or

(c) to refrain from processing data for a specified purpose or in a specified manner, after a specified time,

and for the purposes of this subsection “specified” means specified in the notice.

(3) In deciding whether to serve an enforcement notice, the Commissioner shall consider whether the contravention has caused or is likely to cause any individual damage or distress.

(4) An enforcement notice, relating to a contravention of the fourth data protection standard –

(a) which requires a data controller to rectify, block, erase or destroy any inaccurate data may also require the data controller to rectify, block, erase or destroy any other data held by the data controller and containing an expression of opinion which appears to the Commissioner to be based on the inaccurate data;
(4) An enforcement notice shall contain
(a) a statement of the data protection standard or standards which
have to be complied with;
(b) a statement of the number of persons whose data would
have to be contained in the data which have been disclosed in
accordance with any of the data protection standards,
(c) the circumstances in which the personal data disclosed have
been retrieved, blocked, erased or destroyed, and in which they have
been retrieved, blocked, erased or destroyed, and in which they have
been retrieved, blocked, erased or destroyed.
(d) the circumstances in which the data controller is satisfied that personal data which have
been retrieved, blocked, erased or destroyed, and in which they have
been retrieved, blocked, erased or destroyed, and in which they have
been retrieved, blocked, erased or destroyed.
(e) the personal data to which the data controller requires the data controller to refer,
(f) the data to which the Commission may require the
data controller to refer, and
(g) any other data held by the data controller.

(5) Where
(a) there exists such steps as are specified in the notice for
paragraph (4) of
(b) the expression of opinion as mentioned in
(c) and any other data held by the data controller and
(d) the personal data to which the data controller requires the data controller to refer,

(6) For the purposes of determining whether it is reasonable

(7) to require the notification of third parties under subsection (5),

(8) the notification, blocking, erasure, or destruction,

(9) controller to notify third parties to whom the data have been disclosed, of

(10) an enforcement notice may, if reasonable, require the data

the Commissioner is satisfied have been or are being contravened, and the Commissioner's reasons for reaching that conclusion; and

(b) particulars of the rights of appeal conferred by section 55.

(8) Subject to subsection (9), an enforcement notice shall not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(9) Subsection (8) shall not apply if the Commissioner, in the enforcement notice –

(a) includes a statement to the effect that by reason of special circumstances the Commissioner considers that an enforcement notice should be complied with as a matter of urgency, together with the Commissioner's reasons for reaching that conclusion; and

(b) specifies a time within which the notice shall be complied with, being not less than seven days beginning with the day on which the notice is served.

(10) Regulations made under this Act may make provision as to the effect of the service of an enforcement notice on any entry in the register maintained under section 17.

(11) This section has effect subject to section 53(1).

(12) If the Commissioner considers that all or any of the provisions of an enforcement notice need not be complied with in order to ensure compliance with the data protection standards to which the notice relates, the Commissioner may cancel or vary the notice by written notice to the person on whom the enforcement notice was served,
subsection (1), the Commissioner shall make an assessment in such

Subject to subsection (1), on receiving a request under

compliance with the provisions of this Act,

unless it appears to the Commissioner that it is being, or has been, carried out in

processing of personal data for an assessment as to whether it is likely or

any individual who is, or believes himself to be, directly affected by any

processes of personal data for an assessment by or on behalf of

48. (1) A request may be made to the Commissioner by or on behalf of

as may be necessary to secure compliance with this Act,

to implement such other recommendations,

operation or other activities of

(8) to make such amendments to the data controller's systems of

Concerned

consideration appropriate issue such directions to the data controller

assessment received under subsection (1) and shall, as the Commissioner

(2) The Commissioner shall examine each data protection impact

report of all data in the custody or control of the data controller.

submit to the Commissioner a data protection impact assessment in

published in the "Cascades":

(9) in such form as may be prescribed by the Commissioner by notice

(a) within thirty days after the end of the relevant calendar year, and

(47) (1) A data controller shall, in respect of each calendar year,

data protection standards to which the notice relates,

notice need not be complied with in order to ensure compliance with the

reason of any change in circumstances, all or any of the provisions of the

For the cancellation or variation of that notice on the ground that it

can be brought about that notice applicable to any time after the expiration of the period during which an appeal

(13) A person on whom an enforcement notice has been served

Section 47 - Data Protection Act 1998
manner as appears to the Commissioner to be appropriate, unless the Commissioner has not been supplied with such information as the Commissioner may reasonably require in order to be—

(a) satisfied as to the identity of the individual making the request; and

(b) able to identify the processing in question.

(3) The matters to which the Commissioner may have regard in determining in what manner it is appropriate to make an assessment include—

(a) the extent to which the request appears to the Commissioner to raise a matter of substance;

(b) any undue delay in making the request; and

(c) whether or not the individual making the request is entitled to make an application under section 6 in respect of the personal data in question.

(4) Where the Commissioner receives a request under subsection (1), the Commissioner shall notify the individual who made the request—

(a) whether the Commissioner has made an assessment as a result of the request; and

(b) of any conclusion formed or action taken as a result of the request, to the extent that the Commissioner considers it appropriate having regard to any exemption from section 6 applying to the personal data concerned.

49. - (1) The Commissioner may serve a data controller with a notice in accordance with subsection (2) (hereinafter referred to as an "assessment notice") for the purpose of enabling the Commissioner to determine whether the data controller has complied with, or is complying with, the data protection standards.
3. In subsection (2), references to the Commissioner include:

Commissioner may require to be interrogated process personal data on behalf of the data controller as the
specified persons or the persons of a specified description who
make available for inspection by the Commissioner such
personal data that takes place on the premises;

permit the Commissioner to observe the processing of any

4. To view:

Commissioner is directed or which the Commissioner is assisted
document, information, equipment or material to which the
permit the Commissioner to inspect or examine any of the
premises which is of a specified description;

direct the Commissioner to any equipment or other material on

5. View:

information which the Commissioner is assisted to

a copy in such form as may be requested of any
mission is directed:

a copy of any of the documents to which the Com-
 complied with any request from the Commissioner for
the premises;

description that is capable of being viewed using equipment on
assist the Commissioner to view any information of a specified
are of a specified description;

direct the Commissioner to any documents on the premises that
purposes mentioned in subsection (1),

permit the Commissioner to enter any specified premises for the
controller to do all or any of the following

An assessment notice is a notice which requires the data

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references to the Commissioner's officers and staff.

(4) An assessment notice shall –

(a) in relation to each requirement imposed by the notice, specify –

(i) the time at which the requirement is to be complied with; or

(ii) the period during which the requirement is to be complied with; and

(b) state the rights of appeal conferred by section 55.

(5) The Commissioner may cancel an assessment notice by written notice to the data controller on whom the assessment notice was served.

50. - (1) A time specified in an assessment notice under section 49(4) in relation to a requirement shall not fall, and a period so specified must not begin, before the end of the period within which an appeal can be brought against the notice, and if such an appeal is brought the requirement need not be complied with pending the determination or withdrawal of the appeal.

(2) If by reason of special circumstances the Commissioner determines that it is necessary for a data controller to comply with a requirement in an assessment notice as a matter of urgency –

(a) the Commissioner may include in the notice a statement to that effect and a statement of the reasons for that determination; and

(b) for the purposes of subsection (1), the time specified in the assessment notice shall not fall, or if the period so specified must not begin, before the end of the period of seven days beginning on the day on which the notice is served.

(3) A requirement imposed by an assessment notice does not have effect so far as compliance with the requirement would result in the disclosure of any communication that is subject to legal professional
the data controller has complied, or is reasonable grounds for suspecting that, in a case in which

(a) a decision under section 5(5) of the Access to Information Act

(b) a member of the judiciary; or

(c) a body specified in section 5(6) of the Access to Information Act

(d) intelligence services ("security or

(e) false voluntary declarations and other false statements without oath).

(f) the decision under this Act or an offence under section 8 of the Police Act

(g) offences under this Act or an offence under section 8 of the Police Act and

(h) revealing evidence of the commission of that offence, other than an

(i) information would expose that person to proceedings for an offence by

(j) the Commissioner, any information if the information, or

(k) a person shall not be required by virtue of this section to

(l) A notice in section 4(6) authorises the Commissioner to serve

Notes:
been published by the data controller, the Commissioner may serve the data controller concerned with a notice (in this Act referred to as an "information notice") requiring the data controller to furnish the Commissioner with the specified information relating to the request or to compliance with the provisions of this Act (as the case may be).

(2) For the purposes of subsection (1), the specified information is information –

(a) specified, or described, in the information notice; or

(b) falling within a category which is specified, or described, in the information notice,

and may include information about processing of personal data and the documentation thereof, as well as information relating to the security and confidentiality of such processing and documentation.

(3) An information notice may specify the form in which the information shall be furnished, and shall –

(a) subject to subsection (4), specify the period within which, or the time and place at which, the information shall be furnished;

(b) contain –

(i) in any case falling within subsection (1)(a), a statement that the Commissioner has received a request under section 48 in relation to the processing specified in the notice;

(ii) in any case falling within subsection (1)(b), a statement that the Commissioner regards the specified information as relevant for the purpose of determining whether the data controller has complied, or is complying, with this Act and the
punishable pending the determination or withdrawal of the appeal and if an appeal is brought against the notice, the information need not be brought against the notice.

Before the end of the period within which an appeal can be made under subsection (q) of section 55 before the end of the period of 365 days beginning on the day on which the notice is served:

in any case falling within subsection (q)(p), shall not require the period of time specified under subsection (q)(a).

The period of time specified for the determination of the notice included a statement in that effect together with the information that the information is required as a matter of law by reason of special circumstances, the Commissioner may set out the particulars of the notice of appeal referred to by subsection (1)(c):

being processed as mentioned in

suspicions that the personal data are not

suspicions that the personal data are not

of the Commissioner's grounds for

being processed as mentioned in

purpose of processing whether they are

specified information as relevant for the

that the Commissioner refers to the

statement

in any case falling within subsection (1)(c), a

information as relevant for that purpose:

Commissioner's reasons for referring the
(5) A person shall not be required by virtue of this section to furnish the Commissioner with any information in respect of any communication that is subject to legal professional privilege.

(6) A person shall not be required by virtue of this section to furnish the Commissioner with any information if the furnishing of that information would expose that person to proceedings for an offence by revealing evidence of the commission of that offence, other than an offence under this Act or an offence under section 8 of the Perjury Act (false voluntary declarations and other false statements without oath).

(7) Any relevant statement provided by a person in response to a requirement under this section may not be used in evidence against that person or on a prosecution for any offence under this Act, other than an offence under section 54 (failure to comply with notice), unless in the proceedings –

(a) in giving evidence, the person provides information inconsistent with the statement; or

(b) evidence relating to the statement is adduced, or a question relating to the statement is asked, by that person or on that person’s behalf.

(8) In subsection (7), "relevant statement", in relation to a requirement under this section, means –

(a) an oral statement; or

(b) a written statement made for the purposes of the requirement.

(9) The Commissioner may cancel an information notice by written notice to the person on whom the information notice was served.

(10) This section has effect subject to section 53(3).

52. - (1) Where at any time it appears to the Commissioner (whether as a result of the service of an information notice or otherwise) that any
application for leave,

has been given in accordance with rules of court, notice of the exception where the case is one of urgency, that the data controller

importance; and

the data protection standards which is of substantial public

the Commissioner has reason to suspect a contravention of

unless it is satisfied

(1) (a) The Court shall not grant leave for the purposes of subsection

(b) the Court has granted leave for the notice to be served.

(2) has taken effect and

a determination under section 52(1) with respect to those data

for the special purposes unless

for a data controller with respect to the processing of personal data

(1) The Commissioner may at any time serve an enforcement

within which the appeal

appeal is brought, shall not take effect pending the determination of

the end of the period within which an appeal can be brought, and, where

a determination under subsection (1) shall not take effect until

section 55.

be given to the data controller concerned, and

Notice as to a determination under subsection (1) shall

the Commissioner may make a determination in whole or in part;

not previously been published by the data controller;

person or any journalist, library or archive material which has

are not being processed with a view to the publication by any

are not being processed only for the special purposes of

personal data.
(3) The Commissioner may not serve an information notice on a data controller with respect to the processing of personal data for the special purposes unless a determination under section 52(1) with respect to those data has taken effect.

54. - (1) A person who fails to comply with an enforcement notice, an assessment notice or an information notice commits an offence.

(2) A person who, in purported compliance with an information notice or an assessment notice –

(a) makes a statement which the person knows to be false in a material respect; or

(b) recklessly makes a statement which is false in a material respect,

commits an offence.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that the person exercised all due diligence to comply with the notice in question.

(4) A person who commits an offence under subsection (1) or (2) shall be liable upon conviction in a Parish Court to a fine not exceeding five hundred thousand dollars.

55. - (1) A person on whom an enforcement notice, an assessment notice, or an information notice, has been served may appeal to the Court against the notice.

(2) A person on whom an enforcement notice has been served may appeal to the Court against the refusal of an application under section 46(15) for cancellation or variation of the notice.

(3) Where an enforcement notice, an assessment notice or an information notice, contains a statement by the Commissioner in accordance with section 46(9), 50(2) or 51(3)(d), then, whether or not the
contain any such statement as mentioned in section 55(3) of the Act. In any case the Court considers that the determination of the question on which the notice in question was based on any appeal under section 55(1) if any appeal is preferred by the Commissioner and the Court shall allow the appeal or substitute such notice differently.

Commissioner ought to have exercised his discretion by the Commissioner, in the determination of the question involved in exercise of the jurisdiction of the Court against which the appeal is preferred. If in any case the Court considers that the determination of the appeal made under section 52(1) may appeal to the Court against the decision of the person appeals against the notice, the person may appeal against the notice of the inclusion of the statement as respects any part of the decision. The effect of the statement is the statement as respects any part of the notice. A draft notice in respect of whom a determination has been made under section 52(1) may appeal to the Court against the person appeals against the notice, the person may appeal against the notice of the inclusion of the statement as respects any part of the determination.
(b) that the inclusion of the statement shall not have effect in relation to any part of the notice, and may make such modifications to the notice as may be required for giving effect to the direction.

(5) On an appeal under section 55(4), the Court may quash the determination of the Commissioner.

Powers of entry and inspection. Third Schedule.

57. The provisions of the Third Schedule shall have effect as to the powers of entry and inspection under this Act.

PART VII. Miscellaneous and General

Reports and codes of practice to be laid before Parliament.


(2) The Commissioner may from time to time lay before each House of Parliament such other reports with respect to those functions as the Commissioner thinks fit.

(3) Where the Commissioner prepares or approves a code of practice under section 4(5)(e) (mandatory codes), the Commissioner shall lay the code before each House of Parliament.

Data-sharing code.

59. - (1) The Commissioner shall prepare and submit to the Minister a code of practice (in this Act referred to as "the data-sharing code") which contains -

(a) practical guidance in relation to the sharing of personal data in accordance with the requirements of this Act; and

(b) such other guidance as the Commissioner considers appropriate to promote good practice in the sharing of personal data.

(2) Before a code is prepared under this section, the Commissioner shall consult such of the following as the Commissioner considers
The Commissioner shall keep the data-sharing code under provisions.

A data-sharing code may include transitional or savings

The code shall come into operation on that later date.

The code as the date on which it is to come into operation, in which case together with the affirmative resolution, unless a later date is specified in

comes into operation upon the publication of the code in the Gazette,

A data-sharing code which is attested under subsection (a)

accompanies with this section

(4)(a), the Commissioner shall prepare another code of practice in

Where a code is not approved and attested under subsection reasons for withholding approval.

obligations, and shall publish in the Gazette a notice of the

any of its related obligations or any other international

the terms of the code could result in Jamaica being in breach of

without approval of the code if it appears to the Minister that

Paragraph for affirmative resolution:

approve the code and lay the code before the Houses of

(4) Where a data-sharing code is submitted to the Minister under

making the data available;

the disclosure of the data by transmission, dissemination or otherwise

In this section, a reference to the sharing of personal data is to

interests of data subjects:

persons who appear to the Commissioner to represent the
data subjects' and

trade associations:

applicable
review and in any event shall review the code within eighteen months
after the code first comes into operation and thereafter at least once every
three years.

(9) Any amendment or repeal of the data-sharing code shall be
done in accordance with the procedure set out in this section for the
making of the code (including the provisions as to prior consultation).

60. - (1) A failure on the part of any person to act in accordance with
any provision of the data-sharing code does not of itself render that
person liable to any legal proceedings in any court or tribunal.

(2) The data-sharing code is admissible in evidence in any legal
proceedings.

(3) If any provision of the data-sharing code appears to –
(a) a court conducting any proceedings under this Act;
(b) a court or tribunal conducting any other legal proceedings; or
(c) the Commissioner carrying out any function under this Act,
to be relevant to any question arising in the proceedings, or in connection
with the exercise of that jurisdiction or the carrying out of those functions,
in relation to any time when the code was in force, that provision of the
code shall be taken into account in determining that question.

61. - (1) An individual who is an actual or prospective party to any
proceedings –
(a) under section 6(6), 10(5), 12(5), or 13(5); and
(b) which relate to personal data processed for the special purposes,
may apply to the Commissioner for assistance in relation to those
proceedings.

(2) The Commissioner –
(a) shall, as soon as reasonably practicable after receiving an
application under subsection (1), consider the application and
produce the disclosure to another person or any information

in personal data, or

obtain or disclose personal data, or any information contained

respectively, without the consent of the data controller.

63. (1) Subject to subsection (2), a person shall not knowingly or

exchange of information with such authorities,

with the performance of their respective duties and, in particular, as to the

andalogous to those of the Commissioner under this Act, in connection

Commissioner with authorities in foreign States exercising functions

for Foreign Affairs, make regulations as to co-operation by the

International

co-operation.

The Commissioner may, after consultation with the Minister responsible

individual who applies for assistance.

"applicant", in relation to assistance under this section, means an

proceedings;

reference to "proceedings" include references to prospective

In this section -

decision and the reasons therefor.

after making the decision, notify the applicant of the Commissioner's

this section, the Commissioner shall, as soon as reasonably practicable

IF the Commissioner decides not to provide assistance under

assistance to be provided.

making the decision, notify the applicant, stating the extent of the

section, the Commissioner shall, as soon as reasonably practicable after

IF the Commissioner decides to provide assistance under this

Importance.

opinion of the Commissioner on whether to grant the application;

shall not grant the application unless, in the Commissioner's

decide whether and to what extent to grant the application, and

(9)
contained in personal data.

(2) Subsection (1) does not apply to a person who shows that—

(a) the obtaining, disclosing or procuring—

(i) was necessary for the purpose of preventing or detecting crime; or

(ii) was required or authorised by or under any enactment, by any rule of law, or by the order of a court;

(b) the person acted in the reasonable belief that the person had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person;

(c) the person acted in the reasonable belief that the person would have the consent of the data controller if the data controller had known of the obtaining, disclosing or procuring and the circumstances of it; or

(d) in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.

(3) A person who contravenes subsection (1) commits an offence.

(4) A person who sells personal data commits an offence if the person obtains the data in contravention of subsection (1).

(5) A person who offers to sell personal data commits an offence if the person—

(a) obtains the data in contravention of subsection (1); or

(b) subsequently obtains the data in contravention of subsection (1).

(6) For the purposes of subsection (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.
take into account any matter which comes to the Commissioner’s

(2) For the purposes of subsection (1), the Commissioner may
but shall, in taking reasonable steps to prevent the contravention,
cause substantial damage or substantial distress;

that such contravention would be of a kind likely to
 occur, and

(1) that there was a risk that the contravention would

ought to have known

the contravention was deliberate, or the data controller knew or

– damage or substantial distress; and

the contravention was of a kind likely to cause substantial

act to which this section applies by the data controller;

– there has been a serious contravention of any provision of this

penalty notice if the Commissioner is satisfied that

64. (1) The Commissioner may serve a data controller with a fixed

imprisonment for a term not exceeding ten years.

conviction on indictment in a Circuit Court to a fine of to

years or

million dollars or imprisonment for a term not exceeding five

summary conviction in a District Court to a fine not exceeding five

liable upon

A person who commits an offence under this section shall be

security of 39 (manual data) or exempt from this section

reference to personal data which by virtue of section 33 (national

reference in this section to personal data do not include

includes information extracted from personal data

For the purposes of subsection (4) to (6), “personal data”

Section 32(7) does not apply for the purposes of this section.
attention as a result of anything done in pursuance of –

(a) an assessment notice; or

(b) an assessment under section 4(8) (assessment with consent of data controller).

(3) The offences to which this section applies are –

(a) an offence under section 21(1) (duty of controller to comply with standards) or section 16(5) (failure to provide particulars); and

(b) any other offence prescribed under subsection (11).

(4) A fixed penalty notice under this section is a notice in writing in the prescribed form offering the data controller the opportunity to discharge any liability to conviction of an offence to which this section applies by payment of a fixed penalty under this section.

(5) A data controller shall not be liable to be convicted of an offence to which this section applies, in respect of which –

(a) the data controller pays the fixed penalty in accordance with this section; and

(b) the requirement in respect of which the offence was committed is complied with, before the expiration of the fifteen days following the date of the fixed penalty notice referred to in subsection (4) or such longer period as may be specified in the notice, or the date on which proceedings are begun, whichever event last occurs.

(6) Where a data controller is served with a fixed penalty notice under this section in respect of an offence, proceedings shall not be taken against any person for that offence until the end of the fifteen days following the date of the notice or such longer period as may have been specified therein.
The Minister may, by order subject to affirmative resolution—

non-payment of

the giving of such a notice, or, as the case may be, to such payment or with the proceedings, reference is made by or on behalf of the accused to proceedings or in some document which is before the court in connection

proceedings or a fixed penalty shall be paid in the course of the

the giving of any notice under this section or to the payment of non-applicable, no reference shall be made after the conviction of the accused to

In any proceedings for an offence to which this section

paid.

Takes to whom and the address at which it may be

the amount of the fixed penalty and the Collector of

will not be taken for the offence; and

during which, by virtue of subsection (6) proceedings

the period (whether fifteen days or a longer period)

of the alleged offence; and

furnish reasonable information of the allegation; and

give such particulars of the offence alleged as are necessary for

a notice under subsection (1) shall—

an indispensable evidence of the facts stated therein.

if the certificate purports to be signed by the Collector of Taxes, be

made to the Collector of Taxes by a duly specified in the certificate shall

proceedings a certificate that payment of a fixed penalty was or was not

the Collector of Taxes specified pursuant to subsection (1) and in any

payment of a fixed penalty under this section shall be paid to

commenced, and "convicted" shall be construed in the like manner

proceedings in respect of the act or omission constituting the offence

in subsections (5) and (6), "proceedings" means any criminal
make provision as to any matter incidental to the operation of this section, and, in particular, any such order may –

(a) prescribe –

(i) the form of notice under subsection (1), and the Collector of Taxes to whom a fixed penalty is payable;

(ii) the nature of the information to be furnished to the Collector of Taxes along with any payment;

(iii) the arrangements for the Collector of Taxes to furnish to the Commissioner information with regard to any payment pursuant to a notice under this section;

(iv) the amount of the fixed penalty; and

(v) without prejudice to any offence mentioned in subsection (3), any other offences under this Act to which this section shall apply;

(b) provide that a fixed penalty notice may not be served on a data controller with respect to the processing of personal data for the special purposes except in circumstances specified in the order;

(c) make provision for the cancellation or variation of fixed penalty notices.

65. - (1) A person concerned with the provision of goods, facilities or services to the public or a section of the public, whether for payment or not, shall not as a condition of providing or offering to provide any goods, facilities or services to an individual, require that individual to supply or produce a relevant record.

(2) Subsection (1) does not apply to a person who shows –

(a) that the imposition of the requirement was required or
that in the particular circumstances the imposition of the
requirement was justified as being in the public interest.

A person who contravenes subsection (1) commits an offence
and shall be liable upon —

(a) summary conviction in a Parish Court to a fine not exceeding
two million dollars or imprisonment for a term not exceeding
two years, or

(b) conviction on indictment in a Circuit Court, to a
fine, or imprisonment for a term not exceeding five years.

(4) In this section "a relevant record" means any record which —

(a) has been or is to be obtained by a data subject from a data
controller specified in the first column of the Fourth Schedule in
the exercise of the right conferred by section 6 (right of access
to personal data); and

(b) contains information relating to any matter specified in relation
to that data controller in the second column of the Fourth
Schedule.

and includes a copy of such a record or part of such a record.

(5) For the purposes of this section —

(a) a record is not a relevant record to the extent that it relates, or is
to relate, only to personal data falling within paragraph (d)(ii)
of the definition of "data" in section 2;

(b) a record which states that a data controller is not processing any
personal data relating to a particular matter shall not be taken to be
a record containing information relating to that matter.

(6) The Minister may, by order published in the Gazette, amend
the Fourth Schedule.
Avoidance of certain contractual terms relating to health records.

66. - (1) This section applies to any record which –

(a) has been or is to be obtained by a data subject in the exercise of
a right conferred by section 6 (right to access personal data);

and

(b) consists of the information contained in any health record.

(2) Any term or condition of a contract is void in so far as it
purports to require an individual –

(a) to supply any other person with a record to which this section
applies, or with a copy of such record or part of such a record;

or

(b) to produce to any other person such a record, copy or part.

Disclosure of information.

67. No enactment or rule of law prohibiting or restricting the disclosure
of information shall preclude a person from furnishing the Commissioner
or the Appeal Tribunal referred to in section 72, as the case may require,
with any information necessary for the discharge of the Commissioner’s
functions under this Act.

Confidentiality of information.

68. - (1) No person who is or has been the Commissioner, a member of
the Commissioner’s staff or an agent of the Commissioner shall disclose
any information which –

(a) has been obtained by, or furnished to, the Commissioner under
or for the purposes of this Act or the Access to Information
Act;

(b) relates to an identified or identifiable individual or business; and

(c) is not at the time of the disclosure, and has not previously been,
available to the public from other sources,

unless the disclosure is made with lawful authority.

(2) For the purposes of subsection (1), a disclosure is made with
lawful authority only if, and to the extent that –
the person for the time being carrying on the business as the case may be; the information was provided for the purposes of its being made available to the public (in whatever manner) under any provision of this Act or the Access to Information Act; the disclosure is made for the purposes of, and is necessary for, the discharge of—

(i) any functions under this Act or the Access to Information Act; or

(ii) any of Jamaica’s obligations under an international treaty;

(d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or the Access to Information Act or otherwise; or

(e) having regard to the rights and freedoms or legitimate interests of any individual, the disclosure is necessary in the public interest.

(3) Any person who knowingly or recklessly discloses information in contravention of subsection (1) commits an offence and shall be liable upon—

(a) summary conviction in a Parish Court, to a fine not exceeding two million dollars or imprisonment for a term not exceeding two years; or

(b) conviction on indictment in a Circuit Court to a fine, or to imprisonment for a term not exceeding ten years.

69. (1) No proceedings for an offence under this Act shall be instituted except—

Prosecutions and penalties.
(a) by the Director of Public Prosecutions; or

(b) by the Commissioner, with the consent of the Director of
Public Prosecutions.

(2) Subject to subsection (3), the court by or before which a
person is convicted of an offence under—

(a) section 18(1) (processing without registration), 19(5) (carrying
on specified processing other than via assessment by the
Commissioner), 63 (unlawfully obtaining, etc. personal data) or
65 (prohibition on requiring certain records); or

(b) section 54(1) (failure to comply with notice), as concerns an
enforcement notice,

may order that any document or other material used in connection with
the commission of the processing of personal data and appearing to the
court to be connected with the commission of the offence to be forfeited,
destroyed or erased.

(3) A court shall not make an order under subsection (2) in
relation to any material where a person, other than the offender, claiming
to be the owner of the material, or otherwise interested in the material,
 applies to be heard by the court, is given an opportunity to be heard, and
shows cause why the order should not be made.

Liability of body corporate, directors, etc.

70. — (1) Where a body corporate commits an offence under this Act, the
body corporate shall be liable to a fine not exceeding ten per cent of the
annual gross income of that body corporate.

(2) In determining the quantum of any fine under subsection (1), a
court shall take into account—

(a) the estimated economic cost to consumers, users of the services
concerned and any other persons, of the contravention giving rise
to the offence;
the special purposes.

(a) the contravention relates to the processing of personal data for

contravention of

(b) the individual also suffers damage by reason of the con-

vention by a data controller for the purposes of this Act is

which an individual who suffers damage by reason of any

vention by a data controller for the purposes of this Act is

71. (1) an individual who suffers damage by reason of any

If the member were a director of the body corporate,

member's subsection (3) shall apply in relation to the acts and defaults of

Where the affairs of a body corporate are managed by its

punished accordingly.

shall be liable, as well as the body corporate to be proceeded against and

manager, secretary, similar officer or other person (as the case may be)

person who was purporting to act in any such capacity, that director,

director, manager, secretary, similar officer of the body corporate or any

consequence of or to be attributable to any neglect on the part of any

body corporate and is proved to have been committed with the consent of

Where an offence under this Act has been committed by a

any other factor which the court considers relevant

committed by the body corporate and

the number and severity of any other offences under this Act

the period for which the contravention continued;

the estimated economic benefit derived by the body corporate.
(3) In proceedings brought against a person by virtue of this section, it is a defence to prove that the person took all such care in all the circumstances as was reasonably required to comply with the requirement concerned.

Appeals.

72. - (1) A person aggrieved by a decision of the Commissioner, other than a decision in respect of an enforcement notice, assessment notice or information notice, may appeal to the Appeal Tribunal in accordance with such procedure as may be prescribed.

(2) The provisions of the Fifth Schedule shall have effect in respect of the constitution and functions of the Appeal Tribunal.

(3) On hearing an appeal under this section, the Appeal Tribunal may –

(a) dismiss the appeal; or

(b) allow the appeal in whole or in part, and direct the appropriate person or body to take any action or make any decision which could have been taken or made (as the case may be), by that person or body regarding the matter in respect of which the appeal is allowed.

Service of notices.

73. - (1) Any notice authorised or required by this Act to be served on or given to any person by the Commissioner may –

(a) if that person is an individual, be served on the person –

(i) by hand-delivering it to the person; or

(ii) by sending it to the person by registered post addressed to the person’s usual or last-known place of residence or business, or by leaving it for the person at that place;

(b) if that person is a body corporate or unincorporated body, be served on that body –

(i) by sending it by registered post addressed to an officer
made under this section may

(2) Without limiting the generality of subsection (1), regulations appropriate

transitional provisions or services as the Minister considers

make such supplemental, incidental, consequential or
made different provision for different cases; and

(3) The Minister may make regulations for the purpose of tying

for the purposes of this Act, and such regulations may

effect to the provisions of this Act, and such regulations may

76. (1) The Minister shall be the Clerk to the Houses.

for the purposes of this Act, shall be the Clerk to the Houses.

of either House of Parliament, the clerk controller in respect of those data

of either House of Parliament, the data controller in respect of those data

personnel data are, or are to be, processed are determined by, or on behalf

personnel data are, or are to be, processed are determined by, or on behalf

(2) Where the purposes for which and the manner in which any

personal data are, or are to be, processed are determined by, or on behalf

of Parliament as applies to the processing of personnel data by other

of Parliament as applies to the processing of personnel data by other

apply to the processing of personal data by or on behalf of either House

apply to the processing of personal data by or on behalf of either House

Act.

Section 42 (exemption relating to parliamentary privilege), this Act.

Subject to the following provisions of this section and to

42. (1) Subject to the following provisions of this section and to

43. A public authority shall not be liable to prosecution under this

section 42 (exemption relating to parliamentary privilege), this Act.

A public authority shall not be liable to prosecution under this

treated as a person separate from any other public authority.

treated as a person separate from any other public authority.

(2) For the purposes of this Act, each public authority shall be

75. (1) Subject to the following provisions of this section and to

75. (1) Subject to the following provisions of this section and to

44. (1) This Act binds the Crown.

of the body's principal office, or

of the body's principal office, or

setting of giving a notice.

setting of giving a notice.

(2) This section is without prejudice to any other lawful method of
data;

(b) prescribe retention periods for personal data, to be observed by data controllers;

(c) prescribe the fees which may be imposed under this Act;

(d) prescribe offences for the contravention of the regulations and the penalties therefor, which penalties may exceed the amount specified in section 29(1)(b) of the Interpretation Act but shall not in any event exceed five million dollars; and

(e) prescribe the methods by which personal data may be disposed of.

(3) The following instruments mentioned in this Act shall be subject to affirmative resolution –

(a) regulations under section 2 prescribing attributes considered to be biometric data;

(b) orders under section 10(3)(b) (order specifying additional grounds on which processing of data may be prevented);

(c) orders under section 19(1) (order describing “specified processing” for which assessment is required);

(d) orders under section 24(1)(k), (3) or (4) (orders concerning processing of sensitive personal data);

(e) orders under section 24(5) specifying cases in which conditions for processing sensitive data are deemed not to be met regardless of consent of data subject;

(f) regulations mentioned in section 28, prescribing methods for disposal of data;

(g) orders under section 31(5) prescribing circumstances when transfer to another State or territory is or is not necessary in the public interest;
The Commissioner of the Commonwealth of Australia

First Schedule

Period prescribed in subsection (1) of section 4

Controller in respect of any data processing done in good faith during the

transactional

examination from the discretion to data subject requirements in
the matters to be taken into account in determining whether

orders under paragraph (6) of the Second Schedule applicable

orders under section 65(6) amending the Fourth Schedule;

the fixed penalty shall apply;

standards or specifying other offences under this Act to which

orders under section 64(8)(a) or (v) varying the amount of
a member of a Local Authority, as defined by the Local Governance Act;

(a) a person who has a financial or other interest in any enterprise or activity which is likely to affect the discharge of the person's functions as Commissioner;

(f) an undischarged bankrupt; or

(g) a person who has been convicted of any offence involving dishonesty.

(3) The office of Commissioner, or of any staff appointed by the Commissioner (except as provided in paragraph 4(3)) shall not be a public office within the meaning of section 2 of the Constitution of Jamaica.

2. - (1) Subject to the provisions of this paragraph, the Commissioner shall hold the office for such term not exceeding five years as may be specified at the time of the Commissioner's appointment, and shall, subject to sub-paragraph (3) be eligible for re-appointment on the expiration of that term.

(2) The Commissioner may at any time resign the office by notice in writing transmitted to the Governor-General.

(3) The office of Commissioner shall become vacant—

(a) upon the expiration of the term for which the Commissioner is appointed;

(b) if the Commissioner resigns or is removed from office under sub-paragraph (6); or

(c) if the Commissioner contravenes sub-paragraph (5) or is appointed to any office of emolument in the public service.

(4) The Commissioner shall in any case vacate the office—

(a) on completing the year of service in which he attains the age of sixty-five years; or

(b) if earlier, on completing ten years of service as Commissioner.

(5) The Commissioner shall not engage in any other occupation for reward while holding the office.

(6) The Commissioner may be removed from
Representatives:

The Speaker of the House of

Parliament shall consist of

The Committee referred to in sub-

of this Act,

The Committee considers necessary for

such number of other officers and staff as

one Deputy Commissioner, and

under sub-paragraph (2) may be approved by the Committee, shall appoint a such

appoint and

The Commissioner may appoint and

office as Commissioner.

The Commissioner's appointment and terms and conditions of service shall have, in

and paid out of the Consolidated Fund.

The Commissioner under this Act shall have

be payable.

as the case may be.

the Commissioner's appointment or

Commissioner's disabled during the period of

compulsory pension shall not exceed to the

allowances that are not taken into account in

of service of the Commissioner other than

remuneration and terms and conditions

The house of Representatives,

prescribed by or under any law or by a resolution of

conditions of service as may from time to time be

enormous and be subject to such other terms and

enormous and be entitled to such

office of Commissioner.

In this paragraph, "the office" means the

has ceased in any circumstances due to any infirmity of body or mind, or

Commissioner.

the Leader of the Opposition on the grounds that he

become incapable of effectively performing the functions of Commissioner

the office of the Governor-General. The Acting on the
(c) the person designated by the Prime Minister as Leader of Government Business in the House of Representatives;

(d) the person designated by the Leader of the Opposition as Leader of Opposition Business in the House of Representatives;

(e) the person designated by the Leader of the Opposition as Leader of Opposition Business in the Senate; and

(f) the Minister responsible for finance or nominee.

(3) The Governor-General may, subject to such conditions as the Governor-General may impose, approve the appointment, to the staff of the Commissioner, of any officer in the public service, provided that in relation to pension, gratuity, allowance and other rights as public officers, such officer shall be deemed to be in the public service while so employed.

(4) The Deputy Commissioner shall perform the functions of the Commissioner during any vacancy in that office or at any time when the Commissioner is for any reason unable to act.

(5) Without prejudice to sub-paragraph (4), any functions of the Commissioner may, to the extent authorised by the Commissioner, be performed by any of the Commissioner’s officers or staff.

Seal of the Commissioner.

5. (1) The application of the seal of the Commissioner shall be authenticated by the Commissioner’s signature or by the signature of some other person authorised for the purpose.

(2) Any document purporting to be an instrument issued by the Commissioner and to be duly executed under the Commissioner’s seal or to be signed by or on behalf of the Commissioner shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

Funds.

6. The funds of the office of Commissioner shall consist of fees and other sums received by the Commissioner in the exercise of the Commissioner’s functions, such sums as may from time to time be placed at the disposition of the Commissioner by Parliament, and such other sums as may lawfully be paid to the Commissioner.
(a) In pursuit of medical evidence, to the extent necessary.

(b) A minimum of ten years' service.

(i) By reason of the health of the person, attributable to conditions arising from the discharge of the person from the office of commissioner on the retirement of the person.

(ii) By reason of the health of the person, attributable to such sixty-five years of age, or after attaining the age of sixty years.

(iii) Reforms circumstances leading to retirement.

(iv) A person entitled to a pension or annuity.

(v) A person entitled to a pension or annuity temporarily, as in the event of a pension or annuity, pursuant to the Retirement Parliament.

(vi) From such protection.

APPENDIX TO FIRST SCHEDULE

Paragraph (3)

Pensions and Gratuities
(b) is removed from office, in accordance with paragraph 2(6) of the First Schedule, for reason of inability arising from infirmity of mind or body, to perform the functions of the office of Commissioner.

(5) A person who, pursuant to paragraph 2(6) of the First Schedule, is removed from the office of Commissioner for misconduct or for any other cause other than inability arising from infirmity of mind or body or who retired otherwise than in pensionable circumstances may, subject to sub-paragraph (2), be granted by the Governor-General, in lieu of any pension, allowance or gratuity for which the person may have been eligible pursuant to the Pensions Act such pension and gratuity –

(a) as the Governor-General thinks fit; and

(b) not exceeding the pension and gratuity to which the person would have been entitled had the person retired in pensionable circumstances from the office of Commissioner,

and, for the purposes of sub-paragraph (6), the date of such removal from office or retirement shall be deemed to be the date of retirement in pensionable circumstances.

(6) Pension payable in accordance with this paragraph shall be –

(a) charged on and payable out of the Consolidated Fund; and

(b) paid monthly in arrears with effect, subject to paragraph 4, from the date of retirement in pensionable circumstances and shall, subject to the provisions of this Act, continue to be paid during the lifetime of the person entitled thereto.

Rate of pension. 3. The rate of pension payable pursuant to paragraph 2 to any person shall be an annual rate equivalent to the sum of one-half of the pensionable emoluments of the person’s pensionable emoluments at the date of retirement and one-third hundred and sixtieth of such pensionable emoluments in respect of each month of service as Commissioner.

Special provision where Commissioner retires before attaining age 4. Where in accordance with paragraph 2(3) a person retires in pensionable circumstances before attaining the age of sixty-five years –

(a) the date with effect from which any
whichever is the greater:

6. (1) Where a person dies while in receipt of a reduced pension, and the pension due to the person under this Act and the pension due to the person's legal personal representative a gratuity of an amount equivalent to one year's gratuity shall be paid to the personal representative.

(2) Where a person dies while in receipt of a gratuity paid under subparagraph 2, there shall be paid to the personal representative a gratuity in a lump sum of whatever amount the Court of Commisssioner, having regard to all the circumstances of the case, may allow.

7. (1) Any person to whom a pension (in this Act called a "reduced pension") is payable pursuant to paragraph 2, may, at any time prior to the attainment of the person's fifteen (15) years of age, elect to cease the person's retirement on the condition that the reduced pension be payable to the person's legal personal representative, subject to the provisions of paragraph 8, for a period not exceeding, in the case of a person thirty (30) years of age or more, five (5) years from the date of the person's election.
pensionable emoluments of that person at the date of
the person's retirement or removal from office, from
which gratuity shall be deducted any pension or
gratuity already paid to that person under this Act or
under the Pensions Act.

7. Where a person holding the office of
Commissioner dies as a result of injuries received –
(a) in the actual discharge of the person's
duties;
(b) in circumstances in which the injury is not
wholly or mainly due to or seriously
aggravated by the person's own serious
and culpable negligence or misconduct; and
(c) on account of circumstances specifically
attributable to the nature of the person's
duties,
while in that office, it shall be lawful for the
Governor-General to grant to the deceased officer's
widow, children, parents or other dependants such
award as would have been made under the Pensions
Act if the office of Commissioner were a
pensionable office for the purposes of that Act.

8. A pension or gratuity payable under this Act
shall not be assignable or transferable except for the
purpose of satisfying –
(a) a debt due to the Government; or
(b) an order of any court for the payment of
periodical sums of money towards the
maintenance of the spouse or former spouse
or the minor children, of the person to whom
the pension or gratuity is payable,
and shall not be liable to be attached, sequestered or
levied upon, for or in respect of any debt or claim
whatever except a debt due to the Government.

9. (1) For the purposes of the Pensions (Civil
Service Family Benefits) Act, the office of
Commissioner shall be deemed to be a pensionable
office in the service of Jamaica.

(2) Where a person dies while holding the office
of Commissioner or while entitled to a pension under
paragraph 2, there shall be paid to the person's
widow a pension at an annual rate equivalent to one-
fifth of pensionable emoluments of the person at the
date of the person's death or, if at that date the
the data subject or any service.

the provision of prospective provision, by

of the data subject to any officer; or

the appointment, or prospective appointment,

employment, of the data subject;

the education, training or employment of

controller.

by the data controller for the purposes

of a reference given or to be given in

Personnel data are exempt from section 6 if they

(Section 44)

SECOND SCHEDULE

in permissible circumstances.

in paragraphs 5 if the person has retired

reference to which the person has a right to

respect of that person’s service, the continued

in your service, the person shall be entitled in

10. Where a person retains without a minimum of

deemed to include references to a wife.

and similarly, references to a husband shall be

counter-expressions shall be construed accordingly.

deemed to include references to a widow and

the case of a female appointed commissioner, be

(3) of this paragraph, references to a widow shall in

(5) in paragraphs 7 and sub-paragraphs (2) and

the pensions (Civil Service Pension) Act,

to which the widow may be entitled under

sub-paragraph (2) shall be without prejudice to any

Pension payable to a widow pursuant to

(4)

to be paid during the widow’s lifetime.

be paid under the provisions of this Act; continue

the case of the husband’s death and shall,

be paid monthly in arrears with effect from

be charged on and payable out of the

sub-paragraph (2) shall

Pension payable to a widow pursuant to

(3)

subject to the provisions of this Act; continue

Consolidated Fund and

case may be removal from office in accordance with

paragraph 2 of the form of retirement of an active

person was entitled to receive a pension under

his act.
2. Personal data are exempt from the disclosure to data subject requirements in any case to the extent to which the application of those requirements would be likely to prejudice the combat effectiveness of the Jamaica Defence Force.

3. Personal data processed for the purposes of—
   (a) assessing any person’s suitability for judicial office or the office of Queen’s Counsel; or
   (b) the conferring of any honour or award under the National Honours and Awards Act,
   are exempt from the disclosure to data subject requirements.

4. The Minister may by order exempt from the disclosure to data subject requirements personal data processed for the purposes of assessing any individual’s suitability for—
   (a) employment to any office of emolument in the public service; or
   (b) any office to which appointments are made by the Governor-General or by a Minister.

5. Personal data processed for the purposes of management forecasting or management planning to assist the data controller in the conduct of any business or other activity are exempt from the disclosure to data subject requirements in any case to the extent to which the application of those provisions would be likely to prejudice the conduct of that business or other activity.

6. (1) Where personal data are processed for the purposes of, or in connection with, a corporate finance service provided by a relevant person—
   (a) the data are exempt from the disclosure to data subject requirements in any case to the extent to which either—
      (i) the application of those provisions to the data could affect the price of any instrument which is already in existence or is to be or may be created; or
      (ii) the data controller reasonably believes that the application of those provisions to the data could affect the price of any
agreements and any other derivative
options, futures, swaps, forwards, etc.

Securities (act): 
shares and debentures
units in collective investments
money-market instruments
transferable securities

Instrument" means

sub-paragraph (a)
underwritten as mentioned in
services relating to such

underwriting or

advice and service relating to

capital structure

advice to underwriters on

any instrument

of or the placing or issue of,
underwriting in respect of issues

cooperative finance service" means a service

In this paragraph

to be required for that purpose

requirements in, or not to be taken

circumstances in which exemption from

familiar: or

important economic or familiar interest of
require for the purpose of safeguarding an
disclosure to whom subject requirements is
determining whether exemption from the
matters to be taken into account in

the Minister may by order specify

For the purposes of sub-paragraph (1),

financial interest of Parliament

of safeguarding an important economic or
the exemption is required for the purpose
they are exempt from those provisions if
requirements by virtue of paragraphs (a)
the exemption that the data are not exempt
contracts relating to securities, currencies, interest rates or yields, or other derivative financial instruments, financial indices or financial measures which may be settled physically or in cash;

(e) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market or a multilateral trading facility;

(g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in sub-paragraph (f) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognized clearing houses or are subject to regular margin calls;

(h) derivative instruments for the transfer of credit risk;

(i) financial contracts for differences; or

(j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures
the end of forty days beginning with the
relevant day.
the end of three months beginning with the
such results.

Any such examination to be determined of any
examination or qualifying the results of
examination of an examination professional or other
personnel data comprising of names or other
information processed by a data controller.

8. (1) Section 6 shall have effect subject to the

Regulations.

Securities Act
Investment adviser business under the
carry on a securities business or
"relevant person" means a person licensed to

"price" includes value;

acquired with non-discretionary index
instruments in the system and in
buying and selling interests in financial
which brings together multiple third-party
investment in a market operation,
"multilateral trading facility " means a

subject to regular margin calls;
recognized clearing houses or are
cleared and settled through
multilateral trading facility are
on a negotiated market or a
characteristics of other derivative
section, which have the
not otherwise mentioned in this
date of the announcement,

whichever is the earlier.

(3) Where by virtue of sub-paragraph (2) a period longer than the prescribed period elapses after the relevant day before the request is complied with, the information to be supplied pursuant to the request shall be supplied both by reference to the data in question at the time when the request is received and (if different) by reference to the data as from time to time held in the period beginning when the request is received and ending when the request is complied with.

(4) For the purposes of this paragraph the results of an examination shall be treated as announced when they are first published or (if not published) when they are first made available or communicated to the candidate in question.

(5) In this paragraph –

"examination" includes any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his performance in any test, work or other activity;

"the prescribed period" means thirty days or such other period as is for the time being prescribed under section 6(4) in relation to the personal data in question;

"relevant day", in relation to a request under this paragraph, means the first day on which the data controller has –

(a) the request;

(b) if a fee is payable under section 6(2)(c) in respect of the request, that fee; and

(c) if further information is required under section 8(1) in respect of the request, that information.

Examination scripts, etc.

9. - (1) Personal data consisting of information recorded by candidates during an academic, professional or other examination are exempt from section 6.

(2) In this paragraph, "examination" has the same meaning as in paragraph 8.
assessment notice.

Comply with a requirement imposed by an
Commissioner, that the Commissioner has relied to
satisfied, 'by information on which applied to the
shall paragraph (4) applies if a judge is

final a warrant to the Commissioner;
may, subject to subparagraph (5) and paragraph 2,
premises sealed to the information, the Judge
commission of the offence is to be found on any
and that evidence of the commission of the

contrary,

on offence under this Act has been or is being

Standard(s) for

Compliance of any of the data protection

- Reasonable grounds for suspicion that

Revealed information supplied in confidence.
where the disclosee could reasonably be expected to
Correlative information are excepted from section 6,
12. Data consisting of any report on an inspection of a

Proceedings for an offence under this Act,
shall not be admitted as evidence in any
proceedings with any person in

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where the disclosee could reasonably be expected to
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12. Data consisting of any report on an inspection of a

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Proceedings for an offence under this Act,
shall not be admitted as evidence in any
proceedings with any person in

Revealed information supplied in confidence.
where the disclosee could reasonably be expected to
Correlative information are excepted from section 6,
(4) Subject to sub-paragraph (5) and paragraph 2, the Judge may, for the purpose of enabling the Commissioner to determine whether the data controller has complied, or is complying with, the data protection standards, grant a warrant to the Commissioner in relation to any premises that were specified in the assessment notice.

(5) A Judge shall not issue a warrant under this Schedule in respect of any personal data processed for the special purposes unless a determination by the Commissioner under section 52 (determination by Commissioner as to the special purposes) with respect to those data has taken effect.

(6) A warrant issued under this Schedule shall authorise the Commissioner or any of his officers or staff at any time within seven days after the date of the warrant —

(a) to enter the premises;

(b) to search the premises;

(c) to inspect, examine, operate and test any equipment found on the premises and which is used, or intended to be used, for the processing of personal data;

(d) to inspect and seize any documents or other material found on the premises and which —

(i) in the case of a warrant issued under sub-paragraph (2), may be such evidence as is mentioned in that sub-paragraph;

(ii) in the case of a warrant issued under sub-paragraph (4), may enable the Commissioner to determine whether the data controller has complied, or is complying with the data protection standards;

(e) to require any person on the premises to provide an explanation of any document or other material found on the premises;

(f) to require any person on the premises to provide such other information as may reasonably be required for the purpose of determining whether the data controller has contravened, or is contravening, the
Schedule shall be executed at a reasonable hour

(2) A warrant is issued under this
necessary.

| Execution of |
| 2. (1) A person executing a warrant under this |
| Schedule may use such reasonable force as may be |
| necessary and carry the copies clearly as copies. |

(10) A judge who issues a warrant under this |

directs or of the entity.

| 9. (a) and any |
| notice required by sub-paragraph (7) should not apply if the |
| Judge is satisfied that the case is one of urgency or |
| assessment notice served on the occupier is to be |
| not issued. |

| 8. In determining whether the Com- |
| (c) The occupier has, after the refusal, been |
| paragraph (g); and |
| the refusal referred to in sub-

| 7. no interest be paid by the judge on |
| application for the warrant and this has an |
| notice by the Commissioner of the |
| notified by the Commissioner of the |
| Commissioner's office of |
| Commissioner of any of the |
| with a reference by the |
| unreasonable refusal to comply |
| was refused. The occupier |

| (i) Although only to the premises |
| unreasonable refusal; or |
| access was demanded at a |
| reasonable hour and was |
| other |

| (q) |

| (p) |

| (a) |

| (n) |

| (m) |

| (l) |

| (k) |

| (j) |

| (i) |

| (h) |

| (g) |

| (f) |

| (e) |

| 3. |

| (d) |

| (c) |

| (b) |

| (a) |

| data protection standards. |

| 108 |
unless it appears to the person executing the warrant that there are reasonable grounds for suspecting that the objects of the warrant would be defeated if the warrant were so executed.

(3) If the person who occupies the premises in respect of which a warrant is issued under this Schedule is—

(a) present when the warrant is executed, the person shall be shown the warrant and supplied with a copy of it; and

(b) not present when the warrant is executed, a copy of the warrant shall be left in a prominent place on the premises.

(4) A person seizing anything in pursuance of a warrant under this Schedule shall give a receipt for it if asked to do so.

(5) Anything seized in pursuance of a warrant under this Schedule may be retained for so long as is necessary in all the circumstances, but the person in occupation of the premises in question shall be given a copy of any document seized, and a receipt for any other item seized, if the person so requests and the person executing the warrant considers that the request can be complied with without undue delay.

3. - (1) The powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of personal data which by virtue of section 33 (national security) are exempt from any of the provisions of this Act.

(2) Subject to the provisions of this paragraph, the powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of—

(a) any communication between an attorney-at-law and his client in connection with the giving of legal advice to the client with respect to the client’s obligations, liabilities or rights under this Act; or

(b) any communication between an attorney-at-law and his client, or between the attorney-at-law or the client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Court) and for the purposes of such proceedings.
Schedule:

Execution of a warrant issued under this
intentionally obstructs a person in the

5. A person commits an offence if the person
under the warrant
when powers have been exercised by that person
execute shall make an endorsement on it stating
and the person by whom any such warrant is
for its execution,
if not executed within the time authorised
(a)

(a) after being executed:

retained to the warrant which it was issued
(b) A warrant issued under this Schedule shall be
those powers
of so much of the material as is not executed form
written the person executing the warrant with a copy
shall. If the person executing the warrant so requests,
which those powers are not exercisable, the person
within this Schedule or in respect of the
grounds that consists partly or entirely in respect of
section under the warrant of any material on the
section in respect of which a warrant is issued
premise in respect of which a warrant is issued
If the person in occupation of any
(6)

person representing that person
of an abatement-of-law include references to any
In this paragraph, references to the claim
purpose
which with the intention of committing a criminal
when the accused is-true or this claim, or in anything
to such in the possession of any person other
Sub-paragraphs (z) and (z) do not apply

mentioned in this sub-paragraph.
for the purposes of any procedure
concerned with this complaint or any
advice of at the time may be in
made in connection with the giving of any
any document or article enclosed with or
paragraph and
communication mentioned in that sub-
any copy of or other record of any
(3)
person executing a warrant issued under this Schedule such assistance as the person executing the warrant may reasonably require for the execution of the warrant;

(c) makes a statement in response to a requirement under paragraph 1(6)(e) or (f), which that person knows to be false in a material respect; or

(d) recklessly makes a statement which is false in a material respect in response to such a requirement.

Vessels, vehicles, etc.

6. In this Schedule, "premises" includes any vessel, vehicle, aircraft or hovercraft, and references to the occupier of any premises include references to the person in charge of the vessel, vehicle, aircraft or hovercraft (as the case may be).

Self-incrimination.

7. An explanation given, or information provided, by a person in response to a requirement under paragraph 1(6)(e) or (f) may only be used in evidence against that person—

(a) on a prosecution for an offence under—

(i) paragraph 5; or

(ii) section 8 of the Perjury Act (false voluntary declarations and other false statements without oath);

(b) on a prosecution for any other offence where—

(i) in giving evidence that person makes a statement inconsistent with that explanation or information; and

(ii) evidence relating to that explanation or information is adduced, or a question relating to it is asked, by that person or on that person’s behalf.

FOURTH SCHEDULE (Section 65)

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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</thead>
<tbody>
<tr>
<td>1. The Commissioner of Police or such other person as is</td>
<td>1. Convictions.</td>
</tr>
</tbody>
</table>
appointed under section 43 of the Criminal Justice (Administration) Act.

2. Clerks of the Circuit and Parish Courts.

2. Returns of persons convicted of criminal offences, pursuant to functions under section 45 of the Criminal Justice (Administration) Act.

3. The Commissioner of Police or his designate under section 54D of the Criminal Justice (Administration) Act.

3. Particulars as to restricted persons; and registration certificates relating to restricted persons.

4. The Criminal Records (Rehabilitation of Offenders) Board.


FIFTH SCHEDULE

Appeal Tribunal

Constitution. 1. (1) The Appeal Tribunal shall, subject to sub-paragraph (2), consist of five members (including the chairperson appointed pursuant to paragraph 3), appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition.

(2) For the hearing of any appeal under this Act the Appeal Tribunal may consist of one member sitting alone, if the parties to the appeal agree.

Tenure. 2. The members of the Appeal Tribunal shall, subject to the provisions of this Schedule, hold office for a period of five years and shall be eligible for reappointment.

Chairperson. 3. The Governor-General shall appoint to be the chairperson of the Appeal Tribunal a retired Judge of the Supreme Court or Court of Appeal.

Acting appointments. 4. The Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may appoint –

(a) in the case of the absence or inability to act of the chairperson, another retired Judge of the Supreme Court or Court of Appeal to act in place of the chairperson; or

(b) in the case of the absence or inability to act of any other member of the Appeal Tribunal, any person to act in place of that member.
5. (1) Any member of the Appeal Tribunal other than the chairperson may at any time resign the office by instrument in writing addressed to the Governor-General and transmitted through the chairperson, and from the date of receipt by the Governor-General of the instrument that member shall cease to be a member of the Appeal Tribunal.

(2) The chairperson may at any time resign the office by instrument in writing addressed to the Governor-General, and such resignation shall take effect as from the date of receipt by the Governor-General of the instrument.

6. The Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may terminate the appointment of any member of the Appeal Tribunal who—

(a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;

(b) becomes bankrupt or compounds with, or suspends payment to, his creditors;

(c) is convicted and sentenced to a term of imprisonment or to death;

(d) is convicted of any offence involving dishonesty; or

(e) fails to carry out the functions conferred or imposed on the member by this Act.

7. If any vacancy occurs in the membership of the Appeal Tribunal, such vacancy shall be filled by the appointment of another member.

8. The names of all the members of the Appeal Tribunal as first constituted, and every change in membership thereof, shall be published in the Gazette.

9. There shall be paid to the chairperson and other members of the Appeal Tribunal, in respect of each appeal, such remuneration (whether by way of honorarium, salary or fees) and such allowances as may be determined by the Minister responsible for the public service.

10. Subject to paragraph 1(2), the decisions of the Appeal Tribunal shall be by a majority of votes of the members, and in addition to an original vote, the chairperson shall have a casting vote in any case in which the voting is equal.
Ministry of Science, Energy and Technology
Andrew Whalley

Information and communications technology:

Legislation will fall under the portfolio of the Ministry responsible for

responsibility for the implementation and administration of the

process of personal data.

conscious and adequate level of protection of individuals with regard to the

treatment, in line with existing high international standards, with a view to

CARPROM, aims to establish appropriate legal and regulatory

European Union on October 15, 2008, the EPA requires significant

entered into an Economic Partnership Agreement (EPA) with the

It should also be noted that Jamaica, as part of CARICOM,

the possession of those entities is handled.

with the responsibility of overseeing the manner in which personal data in

Things establish the Office of Information Commissioner charged

entities. This Bill seeks to give effect to that decision and, among other

individuals in relation to their personal data in the possession of those

including Government authorities) and to provide for the rights of

confidentiality of personal data which may be in the possession of entities

A decision has been taken to enact legislation in order to secure the

MEmORANDUM OF OBJECTS AND REASONS

Chapter 1 of the Constitution of Jamaica,

The tribunal shall not be a public office for the purposes of

I. The office of chairman or member of the Appeal

II. Subject to the provisions of this Act, the Appeal

proceedings.

III. Provision to a Power to