

**IN THIRD MEETING OF THE THIRD SESSION OF THE FIFTH PARLIAMENT OF THE
FOURTH REPUBLIC**

**REPORT OF THE JOINT COMMITTEE ON CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS AND COMMUNICATIONS ON THE DATA PROTECTION BILL**

1.0 INTRODUCTION

- 1.1 The Data Protection Bill was presented and read the first time in the House on the 29th of November 2010. Rt. Hon Speaker pursuant to article 106(4) and (5) of the Constitution and Orders 125, 179 and 182 of the Standing Orders of the House referred the Bill to the Joint Committee on Constitutional, Legal & Parliamentary Affairs and Communications for consideration and report.

The Joint Committee held a number of deliberations including workshops and meetings to consider the Bill. At the invitation of the Joint Committee, the Technical Team from the Ministry of Communications led by the Hon Minister, Mr. Haruna Iddrisu; a Chief State Attorney, Mr. P. O. Appiah of the Attorney General's Office were in attendance amongst other stake holders to assist the Committee in its deliberations.

Pursuant to some critical and fundamental concerns raised on some provisions of the Bill during deliberations, the Hon. Minister by leave of Rt. Hon Speaker and the House withdrew the Bill from the House on the 14th of July 2011. This was to enable the Ministry address the concerns raised and incorporate same by way of the changes in the Bill. The Bill was subsequently re-presented and read the first time on the 15th of July 2011 and referred to the Joint Committee for consideration and report. The Committee having considered the Bill, hereby reports as follows:

2.0 **REFERENCE DOCUMENTS**

The Joint Committee referred to the following documents during deliberations on the Bill

- i. The Constitution of the Republic,
- ii. The Standing Orders of the House,
- iii. National Identification Authority Act, 2006 (Act 707),
- iv. National Identity Register Act, 2008 (Act 750),
- v. Credit Reporting Act 2007, (Act 726), and
- vi. The National Health Insurance Act, 2003 (Act 680)

3.0 **BACKGROUND**

- 3.1 The presentation of the Data Protection Bill for passage by the House is a unique attempt by Government to give effect to the provisions of article 18(2) of the Constitution of the Republic which seeks to provide for the protection of the privacy of the individual against unwarranted interference of any form or kind.

Article 18(2) of the Constitution specifically provides as follows:

“No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others”

The emergence of advanced communication technology has made serious inroads into the privacy of the individual and continues in its wake to expose massive information on the individual to third parties. The Ministry of Communications, in a proactive step to protect residents of the country against breach of their privacy, thought it necessary to introduce

this legislation to regulate the conduct of data controllers and data processors. This is intended to prevent the abuse of personal data of a person by data controllers and data processors or other third party handlers of personal data or such other use of personal data without the consent of the data subjects.

In addition to existing laws on the subject matter which impose obligations on data controllers and processors regarding the handling of personal data, this Bill provides for the establishment of an institutional structure to ensure the enforcement of a person's right to privacy of personal data and the inviolability of personal data of data subjects.

4.0 OBJECT OF THE BILL

4.1 The Bill seeks to establish a data protection commission to protect the privacy of the individual and personal data by regulating the collection and processing of personal information, the process and mode of obtaining, holding, using or disclosing such information amongst others.

5.0 ORGANISATION OF THE BILL

5.1 The Bill is organised into twelve main groups of caption headings namely: Data Protection Commission; Administration; Finances of the Commission; Application of Principles of Data Protection; Rights of Data Subjects and others; Processing of Special Personal Data; Data Protection Register; Exemptions; Enforcement; Records obtained under Data Subject's Right of Access; Information provided to Commission and Miscellaneous and General Provisions.

5.1.1 Data Protection Commission – Clauses 1-10

Clause 1 establishes the Data Protection Commission. Clauses 2 and 3 spell out the object and functions of the Commission which includes amongst others the protection of the privacy of the individual's personal data, the regulation and processing of personal

information and the monitoring of compliance with the provisions of this Act. Clause 4 establishes the governing body of the Commission. Clauses 5 to 10 entail standard provisions on the tenure of office of members of the governing Board, meetings of the Board, disclosure of interest, establishment of committees, allowances and ministerial directives.

5.1.2 Administration - Clauses 11–13

Administrative matters are dealt with under clauses 11 to 13 which include amongst others the appointment and functions of the Chief Executive Officer of the Commission as well as the appointment of other members of staff.

5.1.3 Finances of the - Clauses 14-16

Clauses 14 to 16 provide for the finances of the Commission. Funds of the Commission are provided for hereunder to include moneys approved by Parliament. The provisions also cover accounts and audit, annual report and other reports to be submitted to Parliament.

5.1.4 Application of Principles of Data Protection - Clauses 17 - 34

Clause 17 protects the privacy of the individual and enjoins a data controller to take cognisance of the data protection principles specified in the law. Clauses 18 and 19 impose obligations in relation to the manner in which personal data should be processed, having regards to the violation and rights of a data subject. Clause 20 prohibits the processing of personal data and provides grounds under which this may be justified while clause 21 prescribes conditions under which personal data may be indirectly collected. Clause 22 empowers the collection of personal data for specific purpose explicitly defined by law while clause 23 requires the notification of a data subject of the purpose of collecting data. Clause 24 prohibits the retention of personal data and specifies the exceptional circumstances under which such data may be retained and the duration for such retention. Clause 25 specifies conditions governing further processing of personal data and

imposes a requirement of compatibility of such processing with the purpose of collection. Clause 26 imposes obligations on a data controller to ensure the quality and accuracy of the personal data collected and clause 27 also enjoins a data controller to register with the Commission as well as prescribes requirements relating to notification of the data subject. Clauses 28 to 34 impose obligation on the data controller in terms of security measures to observe in relation to data gathering including data being held; mode of accessing and correcting personal information.

5.1.5 Right of Data Subjects and others - Clause 35 & 36

Clause 35 relates to the rights of data subjects in accessing personal data and the correlated obligations of a data controller while clause 36 imposes limitations under qualifying conditions within specified time lines on a credit bureau who act as a data controller.

5.1.6 Processing of Special Personal Data - Clause 37-45

This group of sections caption regulates the processing of special personal data. Clause 37 prohibits the processing of personal data under specified conditions and provides specific conditions under which this could be done; and clause 38 grants exemptions to such prohibition having regard to the religious or philosophical beliefs of the data subject. These clauses confer rights on the individual to disallow the processing of personal data and also provide for the procedures and processes involved. Clause 42 provides grounds under which a data subject may request for exemption of manual data held by the data controller and clause 43 provides for circumstances under which an individual who suffers damage or distress through the contravention by a data controller may be compensated. Provision is made for the procedures and processes relating to the rectification, blockage, erasure and destruction of personal data and clause 45 provides for the scope of application of the Act.

5.1.7 Data Protection Register - Clauses 46 – 59

Clauses 46 to 49 relate to the Data Protection Register. Clause 46 establishes the Data Protection Register while Clause 47 specifies the requirements relating to the application for registration as Data Controller. Clause 48 confers on the Commission the right to refuse registration under specified conditions. Clause 49 also imposes obligations on the Commission to register applicants who comply with the registration requirements. Clause 50 states the period for renewal of registration. Clauses 51 & 52 empower the Commission to remove from or cancel a registration for justifiable causes.

Clause 53 prohibits the processing of personal data without registration and Clause 54 enjoins the Commission to provide facilities to make information contained in the Register available for inspection by members of the public. Under Clause 55 a person in respect of whom an entry as a data controller is included in a register has a duty to notify the Commission of any changes. Failure of an individual to register as a data controller prior to processing personal data is made an offence under clause 56. Clause 57 spells out actions which constitute assessable processing and Clause 58 provides for the procedures for the appointment of data a protection supervisor. Prescription for fees for the purposes of the grant of registration among others is highlighted under clause 59.

5.1.8 Exemptions - Clauses 60 to 74

These clauses set out the exemptions for the processing of personal data spanning issues relating to national security, public order, public safety and public interest amongst others. They also provide for exemption regarding the prevention or detection of crime and information likely to prejudice the effectiveness of the Armed Forces of the Republic.

5.1.9 Enforcement - Clause 75 - 81

These clauses spell out the enforcement measures in the law upon the passage of the Bill.

5.2.0 Records obtained under Data Subject's Rights of Access - Clause 82 & 83

Clause 82 provides for the prohibition of a person providing goods, facilities or services to the general public from requiring any person to supply records as a condition precedent for the provision of the goods, facilities or services and Clause 83 precludes the requirement of a person to provide records relating to physical and mental health.

5.2.1 Information provided to the Commission - Clause 84 & 85

Clause 84 indicates that the restriction on the disclosure of information does not apply to situations whereby a person furnishes the Commission with relevant information for the performance of the Commission's functions and Clause 85 makes it an offence for a person who knowingly or recklessly discloses information on a data subject.

5.2.2 Miscellaneous and General Provisions - Clauses 86-93

These clauses detail miscellaneous and general provisions of the Bill which include general duties of the Commission, restriction on the functions of a Credit Bureau as a data controller and service of notices by the Commission. Clauses 94 to 97 cover provisions on Regulations, penalties, interpretation and date of commencement.

6.0 OBSERVATIONS

6.1 Establishment of a Data Protection Commission

The Joint Committee observed that, the rather strong linkage between privacy rights and human rights as a key factor underpinning the Bill called for the establishment of a body which would guarantee the safeguarding of such rights of the individual as well as those of other data subjects. Against this background, the Committee initially considered the Commission of Human Rights and Administrative Justice (CHRAJ) as an appropriate entity to be entrusted with this responsibility, as this would avoid the creation of another public service structure as proposed in the Bill, and thereby save public funds.

The Committee however observed that, while the choice of CHRAJ would have given yet another advantage of obviating the design and use of a new administrative systems and procedures for initiating and investigating complaints, CHRAJ was already over-burdened with work and therefore its choice would be counter-productive. Having regard to the above and considering the fact that the CHRAJ has always had a back-log of complaints pending adjudication the Committee held the view that the establishment of a new Commission would be more productive in realizing the full objectives of the Bill.

6.2 Business Processing and Outsourcing (BPO)

The Joint Committee observed that, while ensuring that Ghanaian data subjects are always protected regardless of where their data is processed, the Bill also complies with international standards and best practices as it takes due cognisance of the laws of foreign data processors. The Joint Committee further observed that this is a positive step towards creating a congenial atmosphere for attracting vital Business Operating Outsourcing ventures and thereby creating jobs and income to the country.

The Joint Committee accordingly recommends that a Data Protection Commission, when finally set up upon the passage of the Bill, should ensure that it is always guided by the need to maintain the country's attractiveness to Business Processing Outsourcing ventures to facilitate the country's accelerated development.

6.3 Development of Information Communication Technology

The Joint Committee observed that when the Bill is passed into Law, it will provide the framework that will facilitate the use of Information Communication Technology platform for administrative and other economic activities and this will further entrench the E-Governance strategy of the country.

In the process, the Joint-Committee noted that, the regulation of issues related to data subject privacy and third party use of data subject information would ensure confidence in the development of information communication technology, mediated platforms and technology.

The Joint-Committee therefore recommends that the Ministry take advantage of the law to continuously create the requisite atmosphere for the entrenchment of the E-governance strategy.

7.0 AMENDMENTS PROPOSED

The Committee proposes the following amendments for consideration by the House:

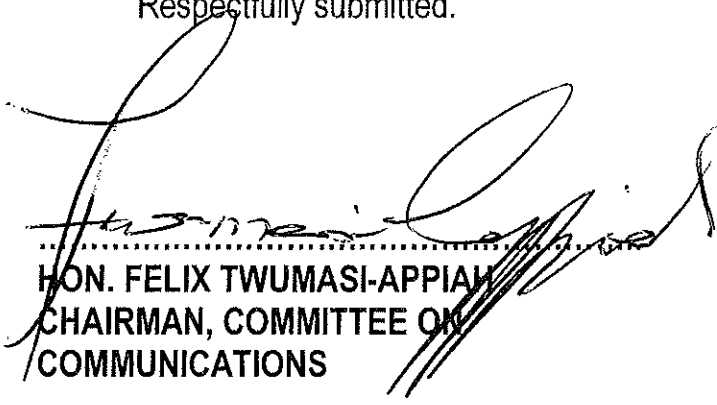
- i. Clause 4 – Amendment proposed – sub-clause (1), paragraph (b), sub-paragraph (ii), at end add “not below the rank of Deputy Commissioner”.
- ii. Clause 4 – Amendment proposed – sub-clause (1) paragraph (b) sub-paragraph (iii), at end add “not below the rank of a Director”.
- iii. Clause 4 – Amendment proposed – sub-clause (1), paragraph (b), sub-paragraph (iv), delete and insert the following “one representative elected by the Industry Forum”
- iv. Clause 4 – Amendment proposed – sub-clause (1), paragraph (b), sub-paragraph (v), at end add “not below the rank of a Director”
- v. Clause 4 – Amendment proposed – sub-clause (1), paragraph (b), sub-paragraph (vii) after “Service” insert “not below the rank of a Director”
- vi. Clause 4 – Amendment proposed – sub-clause (1), paragraph (b), at end add the following new sub-paragraph “two other persons appointed by the President at least one of whom is a woman.
- vii. Clause 6 – Amendment proposed – sub-clause (3), line (1), delete “six” and insert “seven”
- viii. Clause 10 – Amendment proposed – after all the words after “policy”

- ix. Clause 11 – Amendment proposed – headnote, delete “Appointment of Chief Executive Officer” and insert “Appointed of Executive Director “
- x. Clause 11 – Amendment proposed – sub-clause (1), line 2, delete “Chief Executive Officer” and insert “Executive Director” .


8.0 RECOMMENDATION AND CONCLUSION

The Joint-Committee has examined the provisions of the Bill in the light of its object and purpose and is of the view that they are consistent with the Constitution and other relevant statutes and accordingly recommends its passage by the House subject to the above proposed amendments.

Respectfully submitted.



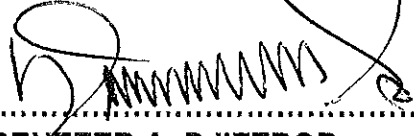
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