

1. LAND HESSEN
(Federal Republic of Germany)
DATA PROTECTION ACT
OF 7 OCTOBER 1970

PART 1: DATA PROTECTION

Section 1

Scope of data protection

Data protection shall cover all records prepared for purposes of automatic data processing, all stored data and the results of processing such records and data within the purview of the Land authorities and the public corporations, institutions and establishments under the jurisdiction of the Land.

Section 2

Meeting of data protection

The records, data and results covered by data protection shall be obtained, transmitted and stored in such a way that they cannot be consulted, altered, extracted or destroyed by an unauthorised person. This shall be ensured by appropriate staff and technical arrangements.

Section 3

Data secrecy

(1) Persons responsible for the preparation, transmission, storage or automatic processing of data shall be prohibited

from communicating or making available to other persons any information concerning the records, data and results gained during the course of their duties and from enabling other persons to obtain such information

except where authority exists for this by virtue of the provisions of law or the consent of those entitled to exercise control over records, data and results.

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- (2) The prohibition in sub-section 1 shall not apply if the procedures described therein are necessary for the administrative or technical operations involved in data processing.
- (3) The duty to maintain secrecy shall persist after the completion of the procedures referred to in sub-section 1.
- (4) The legal duty to provide information shall not be affected.

Section 4

Claim to data protection

- (1) If stored data is incorrect an aggrieved party may demand rectification.
- (2) Any person whose rights are infringed by unlawful access, alteration or destruction or by unlawful extraction (Section 2, first sentence) may require that the previous situation be restored and may require such action to be discontinued if there is danger of further infringement.
- (3) The right of natural or legal persons to information under existing legislation shall not be affected by the present Act.

Section 5

Data banks and information systems

- (1) Records, data and results may be communicated for the constitution of data banks and information systems and for the statistical purposes of the establishments referred to in Section 1.
- (2) In the case of data banks and information systems it must be ensured that none of the establishments referred to may consult or extract records, data and results other than those to which it is entitled.
- (3) Data and stocks of data containing no individual details concerning natural or legal persons and permitting no such details to be inferred may be communicated and published when there is no legal prohibition against it nor any important public interest to prevent it. As a rule public interest shall not stand in the way of the Land parliament's right to information (Section 6(1)).

Section 6

Right of Land parliament and local representative bodies to information

- (1) The Hessen data processing centre, local district computer

centres and the Land authorities operating data processing installations shall be bound to give the Land parliament, the Prime Minister of the Land parliament and the parliamentary parties such information from the stored data as they are entitled to receive, provided the requirements of Section 5, sub-section 3 are satisfied and processing programs exist.

(2) [Right to information by local authorities]

(3) In case of doubt the decision of the controlling authority shall be final.

PART II: DATA PROTECTION COMMISSIONER

Section 7

Legal status

(1) On the proposal of the Land government, the Land parliament shall appoint a data protection commissioner.

(2) The data protection commissioner shall be a public official, under the terms of this Act. A public official in part-time employment, an official on leave or a retired official may be appointed to the office.

(3) The data protection commissioner shall be elected to hold office during the electoral life of the Land parliament. After the expiration of this period he shall remain in office until the new elections. He shall be eligible for re-election. Before his term of office expires he cannot be dismissed except in circumstances which justify the dismissal of a public servant. He may resign at any time.

(4) The remuneration of the data protection commissioner shall be determined by contract.

Section 8

Freedom from direction

The data protection commissioner shall be free from direction notwithstanding his obligations under Sections 10 and 12.

Section 9

Secrecy requirements

The data protection commissioner shall be bound, even after the completion of his term of office, to maintain silence about the facts with which he may become acquainted during his official activities. This does not apply to communications made in the course of his

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duties or facts that are available to the public or which are not of sufficient importance to require any secrecy. He shall not, without prior authority, whether in a court of law or elsewhere, disclose facts which are subject to secrecy requirements. Such authority shall be given only by the Prime Minister.

Section 10

Duties

(1) The data protection commissioner shall ensure that the provisions of this Act and other regulations governing the confidential handling of information provided by citizens and of records relating to individual citizens are observed in the course of automatic data processing in the establishments referred to in Section 1. He shall inform the responsible control authorities of any infringements committed and shall initiate measures for improving data protection.

(2) The data protection commissioner shall observe the effects of automatic data processing on the operation and powers of decision of the establishments referred to in Section 1 and note whether they lead to any displacement in the distribution of powers among the Land's constitutional bodies, among local administrations and as between Land and local autonomous administrations. He shall be entitled to initiate any measures he thinks fit to prevent such effects.

Section 11

Right of complaint

Every person shall be entitled to apply to the data protection commissioner if he considers his rights to have been infringed by the automatic data processing referred to in Section 1.

Section 12

Investigations on behalf of the Land parliament and local representative bodies

The Land parliament, the President of the Land parliament, the parliamentary parties and the representative bodies referred to in Section 6, sub-section 2 may require the data protection commissioner to investigate the reasons for which requests for information are not met or not fully satisfied.

Section 13

Right to information

All the establishments referred to in Section 1 shall provide the

data protection commissioner with the information needed in the performance of his duties.

Section 14

Annual report

- (1) With effect from 31 March 1972, the data protection commissioner shall submit a report on the results of his activity to the Land parliament and the Prime Minister by 31 March each year.
- (2) The Prime Minister shall obtain the Land government's opinion on the report and present those to the Land parliament.
- (3) Interim reports may be submitted and shall be treated as laid down in sub-section 2.

Section 15

Assistance

- (1) Staff may be made available to the data protection commissioner by the State Chancellery if required for the performance of his duties. Such staff shall be answerable to him.
- (2) For specific individual problems the data protection commissioner may call upon the assistance of third parties.

PART III: FINAL PROVISIONS

Section 16

Offences

Whosoever intentionally or through negligence contrary to Section 3, contributes to making information covered by data protection available to unauthorised persons, shall commit an offence.

Section 17

Commencement

This Act shall come into force on the day it is promulgated.

The constitutional rights of the Land government shall be preserved.