



National Data Privacy Legislation

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SAINT VINCENT AND THE GRENADINES

PRIVACY ACT, 2003

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SAINT VINCENT AND THE GRENADINES

ACT NO. OF 2003

I ASSENT

[]

Governor-General

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

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the Privacy Act, 2003.
2. This Act shall come into operation on a day to be appointed by the Minister, by Order published in the *Gazette*.
3. The object of this Act is to make provision for the collection, holding, use, correction and disclosure of personal information in a manner that recognises the right of individuals to privacy with respect to their personal information.
4. In this Act -
 - “administrative purpose”, in relation to the use of personal information about an individual, means the use of that information in a decision making process by a public authority that affects that individual;
 - “chief executive officer” includes the officer for the time being exercising the highest level of administrative functions within any public authority;
 - “Commissioner” means the Privacy Commissioner appointed under section 16;
 - “correct” in relation to personal information, means to alter that information by way of correction, deletion, or addition; and “correction” has a corresponding meaning;
 - “document” means any medium in which information is recorded, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record;
 - “Minister” means the Minister who has been assigned responsibility for information under the Constitution;

“personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing -

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

“public authority” includes -

- (a) Parliament or any committee of Parliament;
- (b) the Cabinet as constituted under the Constitution;
- (c) a Ministry, a department or division of a Ministry;
- (d) a local authority;
- (e) a public statutory corporation or body;
- (f) a body corporate or an incorporated body established for a public purpose, which is owned or controlled by the state;
- (g) an embassy, consulate or mission of the State or any office of the State situated outside of Saint Vincent and the Grenadines whose functions include the provision of diplomatic or consular services for or on behalf of Saint Vincent and the Grenadines;
- (h) any other body designated by the Minister by regulation made under this Act, to be a public authority for the purposes of this Act.

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

6. This Act shall bind the State.

PART II
COLLECTION, USE, DISCLOSURE AND RETENTION OF PERSONAL
INFORMATION

7. (1) A public authority shall not collect personal information unless -
- (a) the information is collected for a lawful purpose directly related to a function or activity of the authority; and
 - (b) the collection of the information is necessary for, or directly related to, that purpose.
- (2) A public authority shall not collect personal information -
- (a) by unlawful means; or
 - (b) by means that, in the circumstances of the case -
 - (i) are unfair; or
 - (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.
8. (1) A public authority may, subject to subsection (3), collect personal information directly from the individual concerned.
- (2) At or before the time, or if that is not practicable, as soon as practicable after, a public authority collects personal information under subsection (1), the authority shall take such steps as are, in the circumstances, reasonable to ensure that the individual concerned is aware of -
- (a) the purposes for which the information is being collected;
 - (b) the fact that the collection of the information is authorised or required by or under law, if such collection is so authorised or required; and
 - (c) the intended recipients of the information.
- (3) A public authority is not obliged to comply with subsection (1) where -
- (a) the information is publicly available information;
 - (b) the individual concerned authorises the collection of the information from someone else;
 - (c) non-compliance will not prejudice the interests of the individual concerned;
 - (d) non-compliance is necessary -
 - (i) for the prevention, detection, investigation, prosecution or punishment of any offence or breach of law;
 - (ii) for the enforcement of a law imposing a pecuniary or custodial penalty or both;

- (iii) for the protection of public revenue;
- (iv) for the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal;
- (v) in the interests of national security; or
- (vi) for the prevention of the spread of a communicable or contagious disease;
- (e) compliance would prejudice the purpose of the collection; or
- (f) compliance is not reasonably practicable in the circumstances of the particular case.

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

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

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

(v) in the interests of national security.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A person aggrieved by a decision of a public authority to refuse an application for an amendment to information may make a complaint in writing to the Commissioner within twenty-eight days of the date of receipt of the communication of the refusal.

PART III
PRIVACY COMMISSIONER

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

(2) The Privacy Commissioner shall be appointed by the Governor-General upon consultation with the Public Service Commission, subject to such terms and conditions as may be specified in the instrument of appointment.

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

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

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

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

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

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

19. A person appointed as Privacy Commissioner shall not necessarily be a full-time officer and may be employed in any other capacity during any period in which the person holds office as Privacy Commissioner.

20. (1) Where -

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

the Governor-General may, upon consultation with the Public Service Commission, appoint a suitable person to act in that office or perform those functions, as the case may be.

21. (1) The functions of the Privacy Commissioner shall be -

- (a) to monitor compliance by public authorities of the provisions of this Act;
- (b) to provide advice to public authorities on their obligations under the provisions, and generally on the operation, of this Act;
- (c) to receive and investigate complaints about alleged violations of the privacy of persons and in respect thereof may make reports to complainants;
- (d) to inquire generally into any matter, including any enactment or law, or any practice, or procedure, whether governmental or non-governmental, or any technical development, if it appears to the Commissioner that the privacy of the individual is being, or may be, infringed thereby;
- (e) for the purpose of promoting the protection of individual privacy, to undertake educational programmes on the Commissioner's own behalf or in co-operation with other persons or authorities acting on behalf of the Commissioner;
- (f) to make public statements in relation to any matter affecting the privacy of the individual or of any class of individuals;
- (g) to receive and invite representations from members of the public on any matter affecting the privacy of the individual;
- (h) to consult and co-operate with other persons and bodies concerned with the privacy of the individual;
- (i) to make suggestions to any person in relation to any matter that concerns the need for , or the desirability of, action by that person in the interests of the privacy of the individuals;
- (j) to undertake research into, and to monitor developments in, data processing and computer technology to ensure that any adverse effects of such developments on the privacy of individuals are minimised, and to report to the Minister the results of such research and monitoring;
- (k) to examine any proposed legislation including subordinate legislation or proposed policy of the Government that the Commissioner considers may affect the privacy of individuals, and to report to the Minister the results of that examination;
- (l) to report with or without request to the Minister from time to time on any matter affecting the privacy of the individual, including the need for, or desirability of, taking legislative, administrative, or other action to give protection or better protection to the privacy of the individual;
- (m) to report to the Minister from time to time on the desirability of the acceptance, by Saint Vincent and the Grenadines of any international instrument relating to the privacy of the individuals;

- (n) to gather such information as in the opinion of the Commissioner will assist the Commissioner in discharging the duties and performing the functions of the Commissioner under this Act;
- (o) to receive complaints from any decision of a public authority pursuant to section 15 (4) refusing an application for the amendment of information;
- (p) to do anything incidental or conducive to the performance of any of the preceding functions; and
- (q) to exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment.

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

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

PART IV

INVESTIGATIONS OF COMPLAINTS

23. (1) Subject to this Act, the Commissioner shall receive and investigate a complaint from any person in respect of any matter relating to -

- (a) the collection, retention or disposal of personal information by a public authority;
or
- (b) the use or disclosure of personal information held by a public authority;

(2) Nothing in this Act precludes the Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorised by the complainant to act on behalf of the complainant, and reference to a complainant in any other section includes a reference to a person so authorised.

(3) Where the Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Act, the Commissioner may initiate a complaint in respect thereof.

24. (1) A complaint under this Act shall be made to the Commissioner in writing unless the Commissioner authorises otherwise.

(2) The Commissioner shall give such reasonable assistance as is necessary in the circumstances to enable any person who wishes to make a complaint to the Commissioner, to put the complaint in writing.

25. Before commencing an investigation of a complaint under this Act, the Commissioner shall notify the chief executive officer of the public authority concerned of the intention to carry

out the investigation and shall inform the chief executive officer of the substance of the complaint.

26. Subject to this Act, the Commissioner may determine the procedure to be followed in the discharge of any duty or the performance of any function of the Commissioner under this Act.

27. (1) Every investigation of a complaint under this Act by the Commissioner shall be conducted in private.

(2) In the course of an investigation of a complaint under this Act by the Commissioner, the complainant and the chief executive officer of the public authority concerned shall be given an opportunity to make representations to the Commissioner, but no one is entitled as of right to be present during a hearing or, to have access to, or to comment on, representations made to the Commissioner by any other person.

28. (1) The Commissioner has, in relation to carrying out of the investigation of any complaint under this Act, the power -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32. The Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this Act or any other Act of Parliament shall, with respect to the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

33. Subject to this Act, the Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in carrying out duties and performing functions under this Act.

34. (1) Notwithstanding the provisions of section 37, no criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise, discharge, or performance of any power, duty or function of the Commissioner under this Act.

(2) For the purpose of any law relating to libel or slander,

(a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation carried out by or on behalf of the Commissioner under this Act is absolutely privileged; and

(b) any report made in good faith by the Commissioner under this Act is absolutely privileged.

35. (1) No person shall obstruct the Commissioner or any person acting on behalf or under the direction of the Commissioner in the discharge and performance of the Commissioner's duties and functions under this Act.

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

PART V

MISCELLANEOUS

36. The chief executive officer of a public authority may, subject to section 38 (2) (b), by order, designate one or more officers or employees of that authority to exercise, discharge or perform any of the powers, duties or functions of the chief executive officer under this Act that are specified in the order.

37. In any civil or criminal proceedings against a public authority for the disclosure of any personal information pursuant to this Act, or for any consequences that flow from that disclosure, it shall be an absolute answer that such disclosure was made in good faith.

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

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

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

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

Passed in the House of Assembly this day of 2003.

OBJECTS AND REASONS

This Act makes provision for the promotion and protection of the privacy of individuals. It further provides for the collection, holding, use, correction and disclosure of personal information in a manner that recognises the right to privacy of individuals with respect to their personal information.

Dr. the Hon. Ralph Gonsalves
Prime Minister, Minister of Finance,
Planning, Legal Affairs, Labour,
Information, Grenadines Affairs,
Crown Lands, Surveys and Postal
Services