

# **PRIVACY AND DATA PROTECTION BILL**

## **SAINT LUCIA**

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**No. of 2009**

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# SAINT LUCIA

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No. of 2009

**AN ACT** to make provision for the protection of individuals in relation to personal data and to regulate the collection, holding, use, processing, correction and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and for related matters.

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice of the House of Assembly and the Senate of Saint Lucia and the authority of the same as follows-

## PART 1 PRELIMINARY

### Short title and commencement

1. (1) This Act may be cited as the Privacy and Data Protection Act 2009.

(2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

### Interpretation

2. In this Act -

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

“authorized officer” means an officer or employee to whom the Commissioner has delegated his or her powers under section 10 or an officer or employee or person assisting under section 48 acting under the direction of the Commissioner;

“Commissioner” means the Data Protection Commissioner appointed pursuant to section 6;

“Court” means the High Court or a judge of the High Court;

“data ” includes representations of facts, information or concepts that are being prepared or have been prepared in a form suitable for use in an electronic system including computer programme, text, images, sound, video and information within a database or electronic system;

“data controller” means a person who, either alone or with others process data or determines the purposes for which and the manner in which any personal data is or is to be processed;

“data subject” means the natural person who is the subject of personal data;

“document” means any medium in which information is recorded, whether printed or on tape or film or by electronic means or otherwise and also means 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 establishment which holds the record;

“enforcement notice” means a notice issued b the Commissioner under section 53;

“information notice” means a notice issued by the Commissioner under section. 41

“Minister” means the Minister with responsibility for Information and Broadcasting;

“permanent secretary” means the officer for the time being exercising the highest level of administrative functions within any public authority;

“personal data” means information about a data subject that is recorded in any form including, without restricting the generality of the foregoing-

- (a) information relating to the race, national or ethnic origin, religion, age, sexual orientation, sexual life or marital status of the data subject;
- (b) information relating to the education, medical, criminal or employment history of the data subject or information relating to the financial transactions in which the individual has been involved or which refers to the data subject;
- (c) any identifying number, symbol or other particular designed to the data subject;
- (d) the address, fingerprints Deoxyribo Nucleic Acid, or blood type of the data subject;
- (e) the name of the data subject where it appears with other personal data relating to the data subject or where the disclosure of the name itself would reveal information about the data subject;

- (f) correspondence sent to an establishment by the data subject 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 data subject;

“prescribed” means prescribed by the Regulations;

“processing” in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including –

- (a) organization, adaptation or alteration of the information or data;
- (b) retrieval, consultation or use of the information or data;
- (c) disclosure of the information or data by transmission, dissemination, or otherwise making available; or
- (d) alignment, combination, blocking, erasure or destruction of the information or data;

“public authority” includes any body, for the purposes of this Act-

- (a) established by or under the Constitution;
- (b) established by statute;
- (c) which forms part of any level or branch of Government;
- (d) owned, controlled or substantially financed by funds provided by Government or the State; or
- (e) carrying out a statutory or public authority function;

except that a body referred to in paragraph (e) is a public authority only to the extent of its statutory or public functions;

“Regulations” means Regulation made pursuant to section 61;

“Register” means the Register of Data Controllers required to be kept pursuant to section 15;

“relevant person”, in relation to a data subject, means –

- (a) where the data subject is a minor, a person who has parental authority over the minor or has been appointed as his or her guardian by the Court;
- (b) where the data subject is physically and mentally unfit, a person who has been appointed his or her guardian by the Court;
- (c) in any other case, a person duly authorized in writing by the data subject to make a request under section 29.

### **Application**

3. (1) Except as otherwise provided in this Act applies to a data controller in respect of any data if-

- (a) the data controller is established in Saint Lucia and the data is processed in the context of the business of that establishment; or
- (b) the data controller is not established in Saint Lucia but uses equipment in Saint Lucia for processing data otherwise than for the purpose of transit through Saint Lucia.

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

### **Established in Saint Lucia**

4. For the purposes of section 3 each of the following is to be treated as established in Saint Lucia-

- (a) an individual who is ordinarily resident in Saint Lucia or the Caribbean Community;
- (b) a body incorporated under the Companies Act, Cap. 13.01;
- (c) a partnership or other unincorporated association formed under the laws of Saint Lucia; and
- (d) any person who does not fall within paragraphs (a), (b) and (c) but maintains in Saint Lucia an office, branch or agency through which he carries on any activity related to data processing.

### **Crown to be bound**

5. This Act binds the State.

## **PART 2 THE DATA PROTECTION COMMISSIONER**

### **Data Protection Commissioner**

6. (1) Subject to subsection (2), there shall be a Data Protection Commissioner who shall be appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition.

- (2) A person is not qualified to hold office as Commissioner if he or she-
- (a) is a Minister, Parliamentary Secretary, or a Member of the House of Representatives;
  - (b) is a judge or magistrate of the courts of justice;
  - (c) is an officer in the public service;
  - (d) is a member of a local authority;

- (e) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his or her functions as a Commissioner;
- (f) is an undischarged bankrupt;
- (g) has at any time been convicted of any offence involving dishonesty or moral turpitude.

(3) The Commissioner shall be assisted by such public officers as may be necessary who shall be under the administrative control of the Commissioner.

(4) The Commissioner shall not hold any other office of emolument whether in the public service or otherwise and shall not engage in any other occupation for reward.

(5) The Prime Minister shall, after he or she has consulted the Leader of the Opposition, appoint a person who is qualified to be appointed as a temporary Commissioner if –

(a) the Commissioner resigns or if his or her office is otherwise vacant;

(b) the Commissioner is for any reason unable to perform the functions of his office; or

(c) the Commissioner considers it necessary, on a temporary basis, not to carry out any of his or her functions because of such circumstances, that if the Commissioner was a judge of the High Court, the Commissioner would abstain;

and any person so appointed shall cease to be a temporary Commissioner when a Commissioner is appointed to fill the vacancy or, as the case may be, when the Commissioner who was unable to perform the functions of his or her office resumes those functions or, in the case of a temporary purpose, the temporary Commissioner has performed the function assigned to him or her.

(6) The appointment of a temporary Commissioner for a temporary purpose as provided in subsection (5) (b) and (c) shall be exercised only on a certificate signed by the Commissioner to the effect that, in his or her opinion, it is necessary for the due conduct of the business of the Commissioner under this Act, that a temporary Commissioner be appointed.

### **Legal personality and representation of the Commissioner**

7. (1) The Commissioner shall have a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of his or her functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of his or her functions under this Act.

(2) Any document purporting to be an instrument made or issued by the Commissioner and signed by him or her shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Commissioner.

### **Tenure of office**



8. (1) The Commissioner shall hold office for a term not exceeding five years and shall be eligible for reappointment on the expiration of his or her term of office.

(2) Subject to the provisions of subsection (2), the Commissioner vacates his or her office-

- (a) at the expiration of the term for which he or she was appointed;
- (b) if he or she becomes disqualified by virtue of subsection 6(2); or
- (c) if he or she is appointed to any other office of emolument or engages in any other occupation for reward;

(3) The Commissioner shall not be removed from his or her office except by the Governor General after consultation with the Prime Minister and the Leader of the opposition on the ground of inability to perform the functions of his or her office, whether arising from infirmity of body or mind or any other cause, or misbehaviour.

### **Protection of the Commissioner**

9. No action or other proceeding for damages shall be instituted against a Commissioner for an act done in good faith in the performance of a duty or in the exercise of a power or discretion under this Act.

### **Delegation of Powers by Commissioner**

10. The Commissioner may delegate any of his or her investigating and enforcement powers conferred upon him or her by this Act to any authorized officer and to any police officer designated for that purpose by the Commissioner.

### **Independence of functions**

11. In the exercise of his or her functions under this Act the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority.

### **Functions of the Commissioner**

12. The Commissioner shall-

- (a) ensure compliance with this Act and the Regulations;
- (b) create and maintain a register of data controllers;
- (c) exercise control on all data processing activities and either of his or her own motion or at the request of a data subject, verify whether the processing of data is carried on in accordance with the provisions of this Act or the Regulations;

- (d) instruct the data controller to take such measures as may be necessary to ensure that the processing of data is in accordance with this Act or the Regulations; and
- (e) investigate reports and claims from data subjects or associations representing data subjects on violations of this Act or the Regulations and take remedial action as the Commissioner deems necessary or as may be prescribed under this Act, and to inform the data subjects or associations of the outcome;
- (f) issue such directions or public statements as may be required of the Commissioner for the purposes of this Act;
- (g) take such measures as may be necessary so as to bring the provisions of this Act to the knowledge of the general public, the provisions of this Act;
- (h) promote by education and publicity, an understanding and acceptance of the data protection principles and of the objects of those principles;
- (i) advise the Government on any legislative measures that are required to be taken relating to this privacy and data protection;
- (j) either of his or her own motion or upon request, report to the Minister as the need arises on any matter affecting the privacy of a data subject, including any recommendations relating to the need for or the desirability of, taking legislative, administrative or other action to give protection, or better protection, to the privacy of the data subject;
- (k) collaborate with supervisory authorities of other countries to the extent necessary for the performance of his or her duties, in particular by exchanging all useful information, in accordance with any convention to which Saint Lucia is a party or any other international obligation of Saint Lucia;
- (l) generally monitor compliance by governmental and non-governmental bodies with the provisions of this Act;
- (m) prepare and issue or approve, in consultation with the Minister, appropriate codes of practice or guidelines for the guidance of business persons and institutions handling personal data;
- (n) undertake research into and monitor developments in data processing and computer technology to ensure that any adverse effects of such developments on the privacy of data subjects are minimized, and include the results of such research and monitoring, if any, in the annual report required pursuant to section 59;
- (o) provide advice, with or without request, to a Minister or a public authority on any matter relevant to the operation of this Act and report to the Minister as the need arises on the desirability of the acceptance by Saint Lucia of any international instrument relating to the privacy of data subjects;
- (p) do any thing incidental or conducive to the performance of any of the preceding functions; and
- (q) exercise and perform such other functions as are conferred or imposed on the Commissioner by or under this Act, or any other enactment.

### **Confidentiality and oath**

13. (1) The Commissioner and every authorized officer shall take the oath specified in the Schedule before the Governor General.

(2) A person who is or has been the Commissioner, an officer of the Commissioner's staff or an agent of the Commissioner shall not make use of or divulge, either directly or indirectly, any data obtained as a result of the exercise of a power or in the performance of a duty under this Act, except -

- (a) in accordance with this Act or any other enactment; or
- (b) as authorized by the order of a Court.

(3) A person who, without lawful excuse, contravenes subsection (2), commits an offence and is liable on conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Powers of Commissioner**

14. The Commissioner shall have power, for the purpose of carrying out his or her functions to do all such acts as appear to him or her to be requisite, advantageous or convenient for, or in connection with the carrying out of these functions.

## **PART 3 REGISTRATION OF DATA CONTROLLERS**

### **Register of data controllers**

15. The Commissioner shall keep a register to be known as the Register of Data Controllers in which the Commissioner shall cause to be entered in relation to each data controller, the following particulars-

- (a) the name and address;
- (b) the date of registration;
- (c) a description of the personal data processed by or on behalf of the data controller and of the category or categories of personal data subjects to which they relate;
- (d) a description of the purpose or purposes for which the personal data is processed;
- (e) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the personal data; and
- (f) the names, or a description of, any countries or territories outside the Saint Lucia to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the personal data.

### **Application for registration**

16.(1) An application for registration as a data controller shall be made in writing to the Commissioner and the person shall furnish such particulars as required under section 15.

(2) Subject to subsection (3), the Commissioner shall grant an application for registration, unless the Commissioner reasonably believes that -

- (a) the particulars proposed for inclusion in an entry in the Register are insufficient or any other information required by the Commissioner either has not been furnished, or is insufficient;
- (b) appropriate safeguards for the protection of the privacy of the data subjects concerned are not being, or will not continue to be, provided by the data controller; or
- (c) the person applying for registration is not a fit and proper person in the determination of the Commissioner.

(3) Upon registration of an application, the applicant shall pay the prescribed fee.

(4) Where the Commissioner refuses an application for registration, the Registrar shall, as soon as reasonably practicable, notify in writing the applicant of the refusal -

- (a) specifying the reasons for the refusal; and
- (b) informing the applicant that the applicant may appeal against the refusal under section 58.

### **Duration of registration**

17.(1) Registration shall be for a period not exceeding one year and on the expiry of that period, the relevant entry shall be cancelled unless the registration is renewed.

(2) The period specified under subsection (1) shall be calculated -

- (a) in the case of a first registration, from the date on which the relevant entry was made in the Register; and
- (b) in the case of a registration which has been renewed, from the date on which it was renewed.

(3) The Commissioner may, subject to this Act, renew a registration upon application by the data controller, and on payment the prescribed fee.

### **Failure to register or to renew registration**

18. (1) A data controller shall not, without reasonable excuse, process any personal data without being registered under this Part.

(2) A data controller who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Certificate issued by Commissioner**

19. In any proceedings in which the registration of a person as a data controller is in question, a certificate under the hand of the Commissioner that there is no entry in the register in respect of the person as a data controller shall be conclusive evidence of that fact.

### **Inspection of the Register**

20. (1) The Commissioner shall keep the Register in the office of the Commissioner and shall at all reasonable times make it available for inspection by any person free of charge.

(2) A person may, on payment of the prescribed fee, obtain from the Commissioner a certified copy of, or of an extract from, an entry in the Register.

## **PART 4 OBLIGATION ON DATA CONTROLLERS**

### **Collection of personal data**

21. (1) Subject to Part 6, a data controller shall not collect personal data unless -

- (a) it is collected for a lawful purpose connected with a function or activity of the data controller; and
- (b) the collection of the data is necessary for that purpose;

(2) Where a data controller collects personal data directly from a data subject, the data controller shall at the time of collecting personal data ensure that the data subject concerned is informed of

-

- (a) the fact that the personal data is being collected;
- (b) the purpose for which the personal data is being collected;
- (c) the intended recipients of the personal data;
- (d) the name and address of the data controller;
- (e) whether or not the supply of the personal data by that data subject is voluntary or mandatory;
- (f) the consequences for that data subject if all or any part of the requested personal data is not provided;
- (g) whether or not the personal data collected will be further processed and whether or not the consent of the data subject will be required for the further processing; and
- (h) the data subject's right of access to, the possibility of correction of and destruction of, the personal data to be provided.

- (3) A data controller shall not be required to comply with subsection (2) -
- (a) in respect of a data subject where –
    - (i) compliance with subsection (2) in respect of a second or subsequent collection will be to repeat, without any material difference, what was done to comply with that subsection in respect of the first collection; and
    - (ii) not more than twelve months have elapsed between the first collection and this second or subsequent collection; or
  - (b) where –
    - (i) compliance is not reasonably practicable at the time of collection, provided that the data controller makes available to the data subject all the relevant information specified in subsection (2) as soon as practicable; or
    - (ii) the personal data is used in a form in which the data subject concerned cannot or could not reasonably expect to be identified.
- (4) Where personal data is not collected directly from the data subject concerned, the data controller or any person acting on his behalf shall ensure that the data subject is informed of the matters specified in subsection (2).
- (5) Subsection (3) shall not operate to prevent a second or subsequent collection from becoming a first collection where the data controller has complied with subsection (2) in respect of the second or subsequent collection.
- (6) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Consent for processing of personal data**

22. (1) Subject to subsections (2), (3) and (4), a data controller shall not process personal data unless the data controller has obtained the express consent of the data subject.
- (2) A data controller may process personal data without obtaining the express consent of the data subject where the data subject has published the personal data.
- (3) A data controller may process personal data, without obtaining the express consent of the data subject, for health and hospital care purposes, provided that the personal data is processed

by a health care professional subject to the obligation for professional secrecy or professional confidentiality and the processing is necessary for-

- (a) preventative medicine and the protection of public health;
- (b) medical diagnosis;
- (c) health care or treatment; or
- (d) management of health and hospital care services.

(4) A data controller may process personal data without obtaining the express consent of the data subject where the processing is necessary –

- (a) for the performance of a contract to which the data subject is a party;
- (b) in order to take steps required by the data subject prior to entering into a contract;
- (c) in order to protect the vital interests of the data subject or another person, in a case where-
  - (i) consent cannot be physically or legally be given by or on behalf of the data subject; or
  - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject;
- (d) for compliance with any legal obligation to which the data controller is subject;
- (e) for the administration of justice;
- (f) for the performance of an activity that is carried out in the public interest or in the exercise of official authority vested in the data controller or in a third party to whom the personal data is disclosed; or
- (g) for a purpose that concerns a legitimate interest of the data controller or of such a third party to whom personal data is provided, except where such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right to privacy;

(5) Where the processing of personal data is done pursuant to paragraphs (f) and (g) of subsection (4), the data subject, except where otherwise provided in any other law, shall be entitled to object at any time to the data controller on compelling legitimate grounds to the processing of the personal data.

(6) Where the processing of personal data takes place with the consent of the data subject, the data subject may at any time revoke his or her consent for compelling legitimate grounds relating to his or her particular situation.

(7) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

(8) For the purposes of this section "health care professional" has the meaning given to it pursuant to the Health Practitioners Act 2006, No. 33.

### **Accuracy of personal data**

23. A data controller shall take all reasonable steps to ensure that personal data within the data controller's possession is -

- (a) accurate; and
- (b) kept up to date where such data requires regular updating.

(2) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Use of personal data**

24. The data controller shall ensure that personal data is -

- (a) kept only for one or more specified and lawful purposes for which the personal data has been collected and processed;
- (b) not used or disclosed in any manner incompatible with the purposes for which the personal data has been collected and processed;
- (c) adequate, relevant and not excessive in relation to the purposes for which the personal data has been collected and processed; and
- (d) not kept for longer than is necessary for the purposes for which the personal data has been collected and processed.

(2) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Security of personal data**

25.(1) A data controller shall –

- (a) take appropriate security and organizational measures for the prevention of unauthorized access to, alteration of, disclosure of, accidental loss, and destruction of the personal data in the data controller's control; and
- (b) ensure that the measures provide a level of security appropriate to –
  - (i) the harm that is likely to result from the unauthorized access to, alteration of, disclosure of, destruction of the data and its accidental loss; and
  - (ii) the nature of the data concerned.

(2) A data controller shall take all reasonable steps to ensure that any person employed by the data controller is aware of and complies with the relevant security measures.

(3) Without prejudice to subsection (1), in determining the appropriate security measures, in particular, where the processing involves the transmission of personal data over an information and communication network, a data controller shall have regard to -



- (a) the state of technological development available;
- (b) the cost of implementing any of the security measures;
- (c) the special risks that exist in the processing of the personal data; and
- (d) the nature of the personal data being processed.

(4) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Duty to destroy personal data**

26. Where personal data is no longer required for the purpose for which it was collected, the data controller shall forthwith destroy the personal data and render it inaccessible electronically destroy the personal data as soon as reasonably practicable.

(2) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Access to, disclosure of, or sale of personal data**

27. (1) A data controller shall not, without lawful excuse, disclose personal data in any manner that is incompatible with the purposes for which the personal data has been collected.

(2) Subject to subsection (4), a person shall not -

- (a) obtain access to personal data, or obtain any information constituting such personal data, without prior authority of the data controller by whom the personal data is kept or disclose that personal data or information to another person.

(3) Subsection (2) shall not apply to a person who is an employee or agent of a data controller or processor and is acting within his mandate.

(4) A person shall not offer personal data for sale where the personal data has been obtained in breach of subsection (1).

(5) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

(6) For the purposes of subsection (5), an advertisement indicating that personal data is or may be for sale, constitutes an offer for the sale of personal data.

## **Transfer of personal data**

28. (1) Subject to subsection (2), a data controller shall not transfer personal data to a country or territory outside Saint Lucia unless-

- (a) with the written consent of the Commissioner; and
- (a) that country 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) Subsection (1) (b) shall not apply where –

- (a) the data subject has given his or her consent to the transfer;
- (b) the transfer is necessary –
  - (i) for the performance of a contract between the data subject and the data controller, or for the taking of steps at the request of the data subject with a view to the data subject entering into a contract with the data controller;
  - (ii) for the conclusion of a contract between the data controller and a person, other than the data subject, which is entered at the request of the data subject, or is in the interest of the data subject, or for the performance of such a contract;
  - (iii) it is in the public interest or section 34 applies;
- (c) the transfer is made on such terms as may be approved by the Commissioner as ensuring the adequate safeguards for the protection of the rights of the data subject.

(3) For the purposes of subsection (2)(c), the adequacy of the level of safeguards of a country or territory shall be assessed in the light of all the circumstances surrounding the transfer of personal data, having regard in particular to -

- (a) the nature of the personal data;
- (b) the purpose and duration of the proposed processing;
- (c) the country or territory of origin and country of final destination;
- (d) the rules of law in force in the country or territory in question; and
- (e) any relevant codes of conduct or other rules and security measures which are complied with in that country or territory.

## **PART 5 RIGHTS OF DATA SUBJECTS AND OTHERS**

### **Right to access to personal data**

29. (1) Subject to section 30, a data controller shall on the written request of a data subject or a relevant person or relevant person -

- (a) provide a written response to the data subject setting out the following-
  - (i) whether the data kept by the data controller includes personal data relating to the data subject and a description of that personal data, if any;
  - (ii) the purposes for which the personal data is being or is to be processed;

- (iii) the source from which the information is being collected;
  - (iv) the logic that is involved in any automatic processing of personal data concerning the data subject;
  - (v) the recipients or classes of recipients to whom they are or may be disclosed; and
- (b) permit the data subject or relevant person to examine the personal data in accordance with the Regulations or supply the data subject or the relevant person with a copy of any personal data referred to in paragraph (a) on payment of the prescribed fee.

(2) A request made under subsection (1) (a) and (b) shall be treated as a single request.

(3) Where access to personal data is given under this Act and the data subject has a sensory disability and requests that access be given in an alternative format, access shall be given in an alternative format if-

- (a) the personal data already exists in an alternative format that is acceptable to the data subject; or
- (b) the data controller considers it to be reasonable to cause the personal information to be converted.

(3) Where any personal data referred to under subsection (1) is expressed in terms that are not intelligible without explanation, the data controller shall supply the personal data with an explanation of those terms.

(4) A fee paid by a person to a data controller under this section shall be returned to the person where a request made under subsection (1) is not complied with.

(5) The information to be supplied pursuant to a request under this section shall be supplied by reference to any personal data at the time when the request is received, except that it may take account of any amendment or deletion made between that time and the time when the information is supplied.

### **Compliance with request for access to personal data**

30. (1) Subject to subsection (2) and section 31 and to the payment of the prescribed fee, a data controller shall comply with a request made under section 29 not later than thirty days after the receipt of the request.

(2) Where a data controller is unable to comply with the request within the period specified in subsection (1), the data controller shall -

(a) before the expiry of the specified period -

- (i) inform the data subject that the data controller is unable to comply with the request and shall, if required, state the reasons for inability to comply;
- (ii) seek

consent of the data subject for an extension of time for compliance by the data controller; or

(iii) apply to the Commissioner forthwith for an extension of time for compliance by the data controller.

### **Denial of access to personal data**

31.(1) A data controller may refuse a request made under section 29 where -

- (a) the data controller is not supplied with such information as the data controller may reasonably require in order to satisfy himself or herself as to the identity of the person making the request, and to locate the information which the person seeks;
- (b) compliance with such request will be in contravention with his confidentiality obligation imposed under this Act or any other enactment.

(2) Where a data controller cannot comply with a request made under section 29 without disclosing personal data relating to another person, the data controller may refuse the request unless -

- (a) the other individual has consented to the disclosure of his or her personal data to the person making the request; or
- (b) the data controller obtains the written approval of the Commissioner.

(3) In determining for the purposes of subsection (2) (b) whether it is reasonable for the Commissioner to approve a request without the consent of the other individual concerned, regard shall be had, in particular, to -

- (a) any duty of confidentiality owed to the other individual;
- (b) any steps taken by the data controller with a view to seeking the consent of the other individual;
- (c) whether the other individual is capable of giving consent; and
- (d) any express refusal of consent by the other individual.

(5) A data controller shall not comply with a request made under section 29 where -

- (a) the data controller is being requested to disclose information given or to be given in confidence for the purposes of –
  - (i) the education, training or employment, or prospective education, training or employment, of the data subject;
  - (ii) the appointment, or prospective appointment, of the data subject to any office; or
  - (iii) the provision, or prospective provision, by the data subject of any service;
- (b) the personal data requested consists of information recorded by candidates during an academic, professional or other examination;

- (c) such compliance would, by revealing evidence of the commission of any offence other than an offence under this Act, expose him or her to proceedings for that offence.

(6) A notification by the data controller of a refusal of a request made by a data subject shall be in writing and shall include a statement of the reasons for the refusal and an indication that the data subject may complain to the Commissioner about the refusal.

### **Right of rectification, etc. of inaccurate personal data**

32. (1) Where personal data processed by a data controller to which access has been given under any enactment, contains personal data of a data subject which the data subject claims-

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

the data controller shall, upon application of the data subject, cause such data to be rectified, blocked, erased, destroyed, rendered inaccessible or annotated as appropriate.

(2) Where a data controller is aware that a third party holds personal data to which subsection (1) (a) and (b) applies, he or she shall, as soon as reasonably practicable, require the third party to rectify, block, erase, destroy, render inaccessible or annotate the data, as appropriate.

(3) Where a data controller or a third party fails to rectify, block, erase or destroy personal data to which subsection (1) (a) and (b) applies, a data subject may apply to the Commissioner to have such data rectified, blocked, erased, destroyed, rendered inaccessible or annotated as appropriate.

(4) Upon being satisfied by an application under subsection (3) that the personal data to which subsection (1) (a) and (b) applies, the Commissioner shall, direct the data controller to rectify, block, erase, destroy or annotate those data and any other personal data in respect of which he or she is data controller.

(5) Where the Commissioner -

- (a) issues a direction under subsection (4); or
- (b) is satisfied on the application by an individual that personal data of which the individual is the data subject were inaccurate and have been rectified, blocked, erased, destroyed or annotated,

the Commissioner may direct the data controller to notify third parties to whom the data have been disclosed, of the rectification, blocking, erasure, destruction or annotation.

### **Right to prohibit processing of personal data**

33. (1) A person may, at any time, by notice in writing revoke consent to the processing of personal data in respect of which he or she is a data subject.

(2) Where the data controller receives a notice under subsection (1), the data controller shall, as soon as reasonably practicable, and in any event not more than thirty days after the request is received, stop processing the personal data and delete the personal data and render it inaccessible.

(3) The data controller shall forthwith, in writing, notify the data subject in writing of any action taken under subsections (2).

(4) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

## **PART 6 EXEMPTIONS**

### **National Security**

34. The Minister may by Order published in the *Gazette* exempt a data controller from complying with any provision of this Act in the interest of national security.

### **Crime and taxation**

35. A data controller which is a public authority shall be exempt from the provisions of Parts 3, 4 and 5 if the processing of data is required for-

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders; or
- (c) the assessment or collection of any tax, duty or any imposition of a similar nature,

### **Health and social work**

36.(1) A data controller shall be exempt from the application of section 29 where the personal data to which access is being sought relates to the physical or mental health of the data subject and the application of that section is likely to cause serious harm to the physical or mental health of the data subject or of any other person.

(2) The Minister may, by Order published in the *Gazette*, waive the obligations imposed under section 29, on a public authority, voluntary organizations and any other similar body as may be prescribed, where the public authority, voluntary organization or other body carries out social work in relation to a data subject, and the application of that section is likely to prejudice the carrying out of the social work.

### **Regulatory activities**

37. The processing of personal data by a data controller for the purpose of discharging any of the relevant functions -

- (a) designed for protecting members of the public against -
  - (i) financial loss due to dishonesty, malpractice or other serious improper conduct, or by the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate;
  - (ii) financial loss due to the conduct of discharged or undischarged bankrupts; or
  - (iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorized to carry on any profession or other activity;
- (b) conferred on the Central Bank, the Director of Financial Services and the Financial Intelligence Unit, by or under any enactment;
- (c) for protecting charitable trusts and other bodies involved in charitable work against misconduct or mismanagement in their administration;
- (d) for protecting the property of charitable trusts and other bodies specified in paragraph (c) from loss or misapplication;
- (e) for the recovery of the property of charitable trusts and other bodies specified in paragraph (c);
- (f) for securing the health, safety and welfare of persons at work;
- (g) for protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work;  
or
- (h) designed for –
  - (i) protecting members of the public against conduct which adversely affect their interests by persons carrying on a business;

- (ii) regulating agreements or conduct which have as their object or effect the prevention, restriction or distortion of competition in connection with any commercial activity; or
- (iii) regulating conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market,

is exempt from the application of Part 4 to the extent that such an application would be likely to prejudice the proper discharge of such functions.

### **Disclosure required by law or in connection with legal proceedings**

38. A data controller is exempt from Part 4 where, the disclosure of personal data is—
- (a) required under any enactment or by a Court order;
  - (b) necessary for the purpose of, or in connection with, any on- or prospective legal proceedings;
  - (c) necessary for the purpose of obtaining legal advice; or
  - (d) necessary for the purpose of establishing, exercising or defending legal rights.

### **Legal professional privilege**

39. A data controller is exempt from Parts 3 and 4, where the data consist of information in respect of which a claim to legal professional privilege or confidentiality as between client and legal practitioner could be maintained in legal proceedings, including prospective legal proceedings.

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### **Domestic purposes**

40. An individual is exempt from the provisions of Parts 3, 4 and 5 where the data is processed by the individual only for the purposes of that individual's personal, family or household affairs or for recreational purposes.

## **PART 7 INVESTIGATION AND ENFORCEMENT**



## **Power of Commissioner to obtain information**

41. (1) The Commissioner may, by a written information notice served on any person, request that person to furnish to him or her in writing in the time specified-

- (a) access to personal data;
- (b) information about and documentation of the processing of personal data;
- (c) information related to the security of processing of personal data; and
- (d) any other information in relation to matters specified in the notice as is necessary or expedient for the performance by the Commissioner of his or her functions and exercise of his or her powers and duties under this Act.

(2) Where the information requested by the Commissioner is stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the person named in the information notice shall produce or give access to the information in a form in which it can be taken away and in which it is visible and legible.

(3) A notice required or authorized 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 him or her by;
  - (i) delivering, personally to the person;
  - (ii) sending it to the person by post addressed to the person at his or her usual or last known place of business; or
  - (iii) leaving it for the person at or her last known place of business that place;
- (b) if that person is a body corporate or partnership, be served by -
  - (i) sending it by post to the proper officer of the company at its principal office;
  - (ii) addressing it to the proper officer of the partnership and leaving it at the office of the proper officer.

## **Contents of information notice**

42. (1) Subject to subsection (2), the information notice specified in section 41 shall state-

- (a) that the person to whom the notice is addressed has a right of appeal under section 58 against the requirement specified in the notice within thirty days from the service of the notice on him or her; and
- (b) the time for compliance with a requirement specified in the information notice, which time shall not be expressed to expire before the end of the period of thirty days specified in paragraph (a).

(2) Where a notice of appeal against a decision made under section 41, is lodged with the Commissioner, the information required need not be furnished, and section 43 shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(3) Where the Commissioner considers that by reason of special circumstances the information is required urgently for the proper performance of his or her functions and exercise of his or her powers under this Act, the Commissioner may apply to a Judge in Chambers for communication of the information.

(4) A law in force in Saint Lucia or rule of law prohibiting or restricting the disclosure of information shall not preclude a person from furnishing to the Commissioner any information that is necessary or expedient for the performance by the Commissioner of his or her functions and this subsection shall not apply to information that in the opinion of the Minister or the Minister responsible for national security is, or at any time was, kept for the purpose of safeguarding the security of Saint Lucia or information that is privileged from disclosure in proceedings in any court.

### **Failure or refusal to comply with information notice**

43. (1) A person shall not, without reasonable excuse, fail or refuse to comply with a requirement specified in an information notice.

(2) A person shall not, in purported compliance with an information notice furnish information to the Commissioner that the person knows to be false or misleading in a material respect.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable shall commit an offence and shall be liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

(4) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that he or she exercised all due diligence to comply with the information notice.

### **Insufficient information pursuant to the information notice**

44. If the Commissioner cannot, pursuant to a request under section 41(1), obtain sufficient information in order to conclude that the processing of personal data is lawful, the Commissioner may prohibit the data controller from processing personal data in any other manner than by storing the personal data.

### **Complaints to Commissioner and powers of investigation**

45. (1) The Commissioner may, on complaint by a data subject or at the Commissioner's instance, investigate, or cause to be investigated, whether any provisions of this Act or the Regulations have been, are being or are likely to be contravened by a data controller in relation to a data subject.

(2) Where a complaint is made to the Commissioner under subsection (1), the Commissioner shall -

- (a) investigate the complaint or cause it to be investigated by an authorized officer, unless the Commissioner is of the opinion that it is frivolous or vexatious; and
- (b) as soon as reasonably practicable, notify the data subject concerned in writing of his or her decision in relation to the complaint and that the data subject may, if aggrieved by the Commissioner's decision, appeal against the decision to the Court under section 58.

(3) Nothing in this Act precludes the Commissioner from receiving and investigating complaints that are submitted by a person authorized in writing by the data subject concerned to act on behalf of the data subject, and a reference to a data subject in any other section of this Act includes a reference to the person so authorized.

### **Form of complaint**

46. (1) A complaint pursuant to this Act shall be made to the Commissioner in writing unless the Commissioner authorizes 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.

### **Notice of investigation**

47. Before commencing an investigation of a complaint pursuant to this Act, the Commissioner shall notify, in the case of a public authority, the Permanent Secretary and in any other case, the Chief Executive Officer, of the intention to carry out the investigation and shall include in the notification the substance of the complaint.

### **Powers to request assistance**

48. (1) For the purposes of gathering information or for the proper conduct of any investigation concerning compliance with this Act, the Commissioner may seek the assistance of such persons or authorities, as the Commissioner thinks fit and that person or authority may do such things as are reasonably necessary to assist the Commissioner in the performance of the Commissioner's functions.

### **Powers of entry and search**

49. (1) Subject to subsection (2), an authorized officer who is accompanied by a police officer may, at any time, enter any premises, for the purpose of discharging any functions or duties under this Act or the Regulations.

(2) An authorized officer shall not enter any premises unless he or she is accompanied by a police officer and shows to the owner or occupier of the premises, a warrant issued by a Magistrate, under section 50.

### **Warrant to enter and search premises**

50. (1) If a Magistrate is satisfied by information on oath supplied by the Commissioner or an authorized officer that there are reasonable grounds for suspecting that an offence under this Act has been or is being committed, and that evidence of the contravention or of the commission of the offence is to be found on any premises specified by the Commissioner or an authorized officer, the Magistrate may issue a warrant authorizing the entry and search of premises.

(2) A warrant issued under subsection (1) authorizes a police officer accompanied by the Commissioner or an authorized officer at any time within seven days of the date of the warrant to enter the premises at a reasonable time to -

- (a) request the owner or occupier to produce any document, record or data;
- (b) examine any such document, record or data and, either on the premises or elsewhere, take copies or extracts from them;
- (c) inspect, examine, operate and test any data equipment found therein;
- (d) request the owner of the premises entered into, or any person employed by him or her, or any other person on the premises, to give to the authorized officer all reasonable assistance and to answer all reasonable questions either orally or in writing.

(3) The police officer shall at the time of execution of the warrant, show the warrant and supply with a copy of the warrant to the person who occupying the premises in respect of which a warrant is issued.

(4) The authorized officer shall provide an inventory of the type of data collected or seized to the data controller or the occupier of premises who supplies the data to the authorized officer.

### **Matters exempt from inspection and seizure**

51. (1) The powers of inspection and seizure conferred by a warrant are not be exercisable in respect of personal data which by virtue of section 34 is exempt from any of the provisions of this Act.

(2) The powers of inspection and seizure conferred by a warrant are not exercisable in respect of

-

- (a) any communication between a professional legal adviser and his or her client in connection with the giving of legal advice to the client with respect to his or her obligations, liabilities or rights under this Act; or
- (b) any communications between a professional legal adviser and his or her client, or between such an adviser or his or her client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act.

### **Obstruction of authorized officer**

52. (1) A person shall not, in relation to the exercise of powers conferred by sections 14 and 41-
- (a) obstruct or impede an authorized officer in the exercise of any of the authorized officer's powers;
  - (b) fail to provide assistance or information requested by the authorized officer;
  - (c) refuse to allow an authorized officer to enter any premises in the exercise of the authorized officer's functions;
  - (d) give to an authorized officer any information which is false and misleading in a material respect.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Power of Commissioner to issue enforcement notice**

53. Where the Commissioner is of the opinion that a data controller has contravened or is contravening a provision of this Act, other than a provision the contravention of which is an offence, the Commissioner may, subject to section 54, serve an enforcement notice on the data controller, requiring the data controller person to take such steps as are specified in the enforcement notice within such time as may be so specified to comply with the provision concerned.

### **Contents of enforcement notice**

54. An enforcement notice shall be in writing and shall-
- (a) specify the provision of this Act that, in the opinion of the Commissioner, the data controller has contravened or is contravening and the reasons for the Commissioner having formed that opinion; and
  - (b) specify the action which the Commissioner requires the data controller to take;
  - (c) subject to subsection (2), inform the data subject of his or her right of appeal pursuant to section 58 and the time within which the appeal must be lodged.

(2) An enforcement notice may, without prejudice to the generality of section 53 or subsection (1), require the data controller-

(a) to rectify or erase any of the data concerned; or

(b) to supplement the personal data with such statement relating to the matters dealt with by them as the Commissioner may approve;

and with respect to the personal data that is inaccurate or not kept up to date, if the data controller complies with paragraphs (a) or (b), the data controller shall be deemed not to be in contravention of the provision.

(3) Subject to subsection (4), the time specified in an enforcement notice for compliance with a requirement specified in the enforcement notice shall not be expressed to expire before the end of the period for appeal specified in section 58 and, if an appeal is brought against the requirement, the requirement need not be complied with, pending the determination or withdrawal of the appeal.

(4) If the Commissioner —

(a) by reason of special circumstances, is of the opinion that a requirement specified in an enforcement notice shall be complied with urgently; and

(b) the enforcement notice includes a statement to that effect,

subsections (1)(b) and (2) shall not apply in relation to the enforcement notice, but the notice shall contain a statement of the right of appeal the applicant to under 58, and shall not require compliance with the requirement before the end of the period of seven days beginning on the date on which the notice is served.

(5) On compliance by a data controller with a requirement under subsection (2), the data controller shall, as soon as may be and in any event not more than thirty days after such compliance, notify -

(a) the data subject concerned; and

(b) any person, where the Commissioner considers it reasonably practicable to do so, to whom the data were disclosed during the period beginning twelve months before the date of the service of the enforcement notice concerned and ending immediately before such compliance, of the rectification, erasure or statement concerned, if such compliance materially modifies the data concerned.

(6) The Commissioner may cancel an enforcement notice and, if he or she does so, shall notify in writing the person on whom it was served accordingly.

### **Failure to comply with enforcement notice an offence**

55. (1) A person shall not, without reasonable excuse, fail or refuse to comply with a requirement specified in an enforcement notice.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

### **Investigations in private**

56. (1) All investigations of a complaint pursuant to this Act shall be conducted in private.

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

### **Referral to Commissioner of Police**

57. On completion of an investigation under this Act, the Commissioner shall, where the investigation reveals that an offence has been committed under this Act or the Regulations the Commissioner shall refer the matter to the Commissioner of Police for necessary action.

## **PART 8 MISCELLANEOUS**

### **Appeals to Court**

58.(1) Subject to subsection (2), an appeal lies to the Court against -

- (a) a requirement specified in an enforcement notice or an information notice;
- (b) a prohibition specified in a prohibition notice;
- (c) a decision of the Commissioner in relation to a complaint; or
- (d) any decision of the Commissioner in respect of the performance of his or her duties and powers under this Act.

(2) An appeal shall be brought within thirty days from the service on the person concerned of the relevant notice, or, as the case may be, the receipt by such person of the notification of the relevant refusal or decision.

(3) Where -

- (a) a person appeals to the Court pursuant to paragraph (a), (b), (c) or (d) of subsection (1);
- (b) the appeal is brought within the period specified in the notice; and
- (c) the Commissioner has included a statement in the relevant notice or notification to the effect that by reason of special circumstances he or she is of opinion that the requirement or prohibition specified in the notice should be complied with, or the refusal specified in the notification should take effect, urgently,

the Court, may determine that non-compliance by the person with requirement or prohibition specified in the notice during the period ending with the determination of withdrawal of the appeal or during any other period as may be determined by the Court shall not constitute an offence.

### **Annual report**

59. (1) The Commissioner shall, not later than three months after the end of every calendar year, lay an annual report of the activities of his or her office in Parliament.

(2) Without limiting the generality of subsection (1), the report pursuant shall include -

- (a) a statement about the operation of approved and issued codes of practice;
- (b) any recommendation that the Commissioner thinks fit relating to the compliance with this Act.

### **General penalty**

60.(1) Any person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Regulations**

61. (1) The Minister may, after consultation with the Commissioner, make Regulations for giving effect to the purpose of this Act and for prescribing anything required or authorized by this Act to be prescribed.

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

- (a) rules and procedures relating to access to data held by the data controller;
- (b) guidelines for the disposal of personal information held by a data controller;



- (c) guidelines for the contents of any notifications or applications made pursuant to this Act;
- (d) the fees that may be levied by the Commissioner;
- (e) the administrative fines that may be imposed by the Commissioner and the administrative violations in respect of which such fines may be imposed;
- (f) the extension of the application of this Act to any particular activity or sector;
- (g) the issuing and approval of codes and guidelines; and
- (h) guidelines and rules relating to the provisions of this Act.

(3) Regulations made under this section this Act shall be subject to the negative resolution of Parliament.

## **SCHEDULE**

*(Section 13)*

I, ....., make oath/solemnly affirm/declare that I will faithfully and honestly fulfill my duties as authorized officer/Commissioner in conformity with the [*Privacy and Data Protection Act 2008*] and that I shall not without the due authority in that behalf disclose or make known any matter or thing which comes to my knowledge by reason of my duties as such.

# **PRIVACY AND DATA PROTECTION BILL**

## **SAINT LUCIA**

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**No. of 2009**

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# SAINT LUCIA

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No. of 2009

**AN ACT** to make provision for the protection of individuals in relation to personal data and to regulate the collection, holding, use, processing, correction and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and for related matters.

**BE IT ENACTED** by the Queen's Most Excellent Majesty by and with the advice of the House of Assembly and the Senate of Saint Lucia and the authority of the same as follows-

## PART 1 PRELIMINARY

### Short title and commencement

1. (1) This Act may be cited as the Privacy and Data Protection Act 2009.

(2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

### Interpretation

2. In this Act -

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

“authorized officer” means an officer or employee to whom the Commissioner has delegated his or her powers under section 10 or an officer or employee or person assisting under section 48 acting under the direction of the Commissioner;

“Commissioner” means the Data Protection Commissioner appointed pursuant to section 6;

“Court” means the High Court or a judge of the High Court;

“data ” includes representations of facts, information or concepts that are being prepared or have been prepared in a form suitable for use in an electronic system including computer programme, text, images, sound, video and information within a database or electronic system;

“data controller” means a person who, either alone or with others process data or determines the purposes for which and the manner in which any personal data is or is to be processed;

“data subject” means the natural person who is the subject of personal data;

“document” means any medium in which information is recorded, whether printed or on tape or film or by electronic means or otherwise and also means 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 establishment which holds the record;

“enforcement notice” means a notice issued b the Commissioner under section 53;

“information notice” means a notice issued by the Commissioner under section. 41

“Minister” means the Minister with responsibility for Information and Broadcasting;

“permanent secretary” means the officer for the time being exercising the highest level of administrative functions within any public authority;

“personal data” means information about a data subject that is recorded in any form including, without restricting the generality of the foregoing-

- (a) information relating to the race, national or ethnic origin, religion, age, sexual orientation, sexual life or marital status of the data subject;
- (b) information relating to the education, medical, criminal or employment history of the data subject or information relating to the financial transactions in which the individual has been involved or which refers to the data subject;
- (c) any identifying number, symbol or other particular designed to the data subject;
- (d) the address, fingerprints Deoxyribo Nucleic Acid, or blood type of the data subject;
- (e) the name of the data subject where it appears with other personal data relating to the data subject or where the disclosure of the name itself would reveal information about the data subject;

- (f) correspondence sent to an establishment by the data subject 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 data subject;

“prescribed” means prescribed by the Regulations;

“processing” in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including –

- (a) organization, adaptation or alteration of the information or data;
- (b) retrieval, consultation or use of the information or data;
- (c) disclosure of the information or data by transmission, dissemination, or otherwise making available; or
- (d) alignment, combination, blocking, erasure or destruction of the information or data;

“public authority” includes any body, for the purposes of this Act-

- (a) established by or under the Constitution;
- (b) established by statute;
- (c) which forms part of any level or branch of Government;
- (d) owned, controlled or substantially financed by funds provided by Government or the State; or
- (e) carrying out a statutory or public authority function;

except that a body referred to in paragraph (e) is a public authority only to the extent of its statutory or public functions;

“Regulations” means Regulation made pursuant to section 61;

“Register” means the Register of Data Controllers required to be kept pursuant to section 15;

“relevant person”, in relation to a data subject, means –

- (a) where the data subject is a minor, a person who has parental authority over the minor or has been appointed as his or her guardian by the Court;
- (b) where the data subject is physically and mentally unfit, a person who has been appointed his or her guardian by the Court;
- (c) in any other case, a person duly authorized in writing by the data subject to make a request under section 29.

### **Application**

3. (1) Except as otherwise provided in this Act applies to a data controller in respect of any data if-

- (a) the data controller is established in Saint Lucia and the data is processed in the context of the business of that establishment; or
- (b) the data controller is not established in Saint Lucia but uses equipment in Saint Lucia for processing data otherwise than for the purpose of transit through Saint Lucia.

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

### **Established in Saint Lucia**

4. For the purposes of section 3 each of the following is to be treated as established in Saint Lucia-

- (a) an individual who is ordinarily resident in Saint Lucia or the Caribbean Community;
- (b) a body incorporated under the Companies Act, Cap. 13.01;
- (c) a partnership or other unincorporated association formed under the laws of Saint Lucia; and
- (d) any person who does not fall within paragraphs (a), (b) and (c) but maintains in Saint Lucia an office, branch or agency through which he carries on any activity related to data processing.

### **Crown to be bound**

5. This Act binds the State.

## **PART 2 THE DATA PROTECTION COMMISSIONER**

### **Data Protection Commissioner**

6. (1) Subject to subsection (2), there shall be a Data Protection Commissioner who shall be appointed by the Governor General after consultation with the Prime Minister and the Leader of the Opposition.

- (2) A person is not qualified to hold office as Commissioner if he or she-
- (a) is a Minister, Parliamentary Secretary, or a Member of the House of Representatives;
  - (b) is a judge or magistrate of the courts of justice;
  - (c) is an officer in the public service;
  - (d) is a member of a local authority;



- (e) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his or her functions as a Commissioner;
- (f) is an undischarged bankrupt;
- (g) has at any time been convicted of any offence involving dishonesty or moral turpitude.

(3) The Commissioner shall be assisted by such public officers as may be necessary who shall be under the administrative control of the Commissioner.

(4) The Commissioner shall not hold any other office of emolument whether in the public service or otherwise and shall not engage in any other occupation for reward.

(5) The Prime Minister shall, after he or she has consulted the Leader of the Opposition, appoint a person who is qualified to be appointed as a temporary Commissioner if –

(a) the Commissioner resigns or if his or her office is otherwise vacant;

(b) the Commissioner is for any reason unable to perform the functions of his office; or

(c) the Commissioner considers it necessary, on a temporary basis, not to carry out any of his or her functions because of such circumstances, that if the Commissioner was a judge of the High Court, the Commissioner would abstain;

and any person so appointed shall cease to be a temporary Commissioner when a Commissioner is appointed to fill the vacancy or, as the case may be, when the Commissioner who was unable to perform the functions of his or her office resumes those functions or, in the case of a temporary purpose, the temporary Commissioner has performed the function assigned to him or her.

(6) The appointment of a temporary Commissioner for a temporary purpose as provided in subsection (5) (b) and (c) shall be exercised only on a certificate signed by the Commissioner to the effect that, in his or her opinion, it is necessary for the due conduct of the business of the Commissioner under this Act, that a temporary Commissioner be appointed.

### **Legal personality and representation of the Commissioner**

7. (1) The Commissioner shall have a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of his or her functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of his or her functions under this Act.

(2) Any document purporting to be an instrument made or issued by the Commissioner and signed by him or her shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Commissioner.

### **Tenure of office**

8. (1) The Commissioner shall hold office for a term not exceeding five years and shall be eligible for reappointment on the expiration of his or her term of office.

(2) Subject to the provisions of subsection (2), the Commissioner vacates his or her office-

- (a) at the expiration of the term for which he or she was appointed;
- (b) if he or she becomes disqualified by virtue of subsection 6(2); or
- (c) if he or she is appointed to any other office of emolument or engages in any other occupation for reward;

(3) The Commissioner shall not be removed from his or her office except by the Governor General after consultation with the Prime Minister and the Leader of the opposition on the ground of inability to perform the functions of his or her office, whether arising from infirmity of body or mind or any other cause, or misbehaviour.

### **Protection of the Commissioner**

9. No action or other proceeding for damages shall be instituted against a Commissioner for an act done in good faith in the performance of a duty or in the exercise of a power or discretion under this Act.

### **Delegation of Powers by Commissioner**

10. The Commissioner may delegate any of his or her investigating and enforcement powers conferred upon him or her by this Act to any authorized officer and to any police officer designated for that purpose by the Commissioner.

### **Independence of functions**

11. In the exercise of his or her functions under this Act the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority.

### **Functions of the Commissioner**

12. The Commissioner shall-

- (a) ensure compliance with this Act and the Regulations;
- (b) create and maintain a register of data controllers;
- (c) exercise control on all data processing activities and either of his or her own motion or at the request of a data subject, verify whether the processing of data is carried on in accordance with the provisions of this Act or the Regulations;

- (d) instruct the data controller to take such measures as may be necessary to ensure that the processing of data is in accordance with this Act or the Regulations; and
- (e) investigate reports and claims from data subjects or associations representing data subjects on violations of this Act or the Regulations and take remedial action as the Commissioner deems necessary or as may be prescribed under this Act, and to inform the data subjects or associations of the outcome;
- (f) issue such directions or public statements as may be required of the Commissioner for the purposes of this Act;
- (g) take such measures as may be necessary so as to bring the provisions of this Act to the knowledge of the general public, the provisions of this Act;
- (h) promote by education and publicity, an understanding and acceptance of the data protection principles and of the objects of those principles;
- (i) advise the Government on any legislative measures that are required to be taken relating to this privacy and data protection;
- (j) either of his or her own motion or upon request, report to the Minister as the need arises on any matter affecting the privacy of a data subject, including any recommendations relating to the need for or the desirability of, taking legislative, administrative or other action to give protection, or better protection, to the privacy of the data subject;
- (k) collaborate with supervisory authorities of other countries to the extent necessary for the performance of his or her duties, in particular by exchanging all useful information, in accordance with any convention to which Saint Lucia is a party or any other international obligation of Saint Lucia;
- (l) generally monitor compliance by governmental and non-governmental bodies with the provisions of this Act;
- (m) prepare and issue or approve, in consultation with the Minister, appropriate codes of practice or guidelines for the guidance of business persons and institutions handling personal data;
- (n) undertake research into and monitor developments in data processing and computer technology to ensure that any adverse effects of such developments on the privacy of data subjects are minimized, and include the results of such research and monitoring, if any, in the annual report required pursuant to section 59;
- (o) provide advice, with or without request, to a Minister or a public authority on any matter relevant to the operation of this Act and report to the Minister as the need arises on the desirability of the acceptance by Saint Lucia of any international instrument relating to the privacy of data subjects;
- (p) do any thing incidental or conducive to the performance of any of the preceding functions; and
- (q) exercise and perform such other functions as are conferred or imposed on the Commissioner by or under this Act, or any other enactment.

### **Confidentiality and oath**

13. (1) The Commissioner and every authorized officer shall take the oath specified in the Schedule before the Governor General.

(2) A person who is or has been the Commissioner, an officer of the Commissioner's staff or an agent of the Commissioner shall not make use of or divulge, either directly or indirectly, any data obtained as a result of the exercise of a power or in the performance of a duty under this Act, except -

- (a) in accordance with this Act or any other enactment; or
- (b) as authorized by the order of a Court.

(3) A person who, without lawful excuse, contravenes subsection (2), commits an offence and is liable on conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Powers of Commissioner**

14. The Commissioner shall have power, for the purpose of carrying out his or her functions to do all such acts as appear to him or her to be requisite, advantageous or convenient for, or in connection with the carrying out of these functions.

## **PART 3 REGISTRATION OF DATA CONTROLLERS**

### **Register of data controllers**

15. The Commissioner shall keep a register to be known as the Register of Data Controllers in which the Commissioner shall cause to be entered in relation to each data controller, the following particulars-

- (a) the name and address;
- (b) the date of registration;
- (c) a description of the personal data processed by or on behalf of the data controller and of the category or categories of personal data subjects to which they relate;
- (d) a description of the purpose or purposes for which the personal data is processed;
- (e) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the personal data; and
- (f) the names, or a description of, any countries or territories outside the Saint Lucia to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the personal data.

### **Application for registration**

16.(1) An application for registration as a data controller shall be made in writing to the Commissioner and the person shall furnish such particulars as required under section 15.

(2) Subject to subsection (3), the Commissioner shall grant an application for registration, unless the Commissioner reasonably believes that -

- (a) the particulars proposed for inclusion in an entry in the Register are insufficient or any other information required by the Commissioner either has not been furnished, or is insufficient;
- (b) appropriate safeguards for the protection of the privacy of the data subjects concerned are not being, or will not continue to be, provided by the data controller; or
- (c) the person applying for registration is not a fit and proper person in the determination of the Commissioner.

(3) Upon registration of an application, the applicant shall pay the prescribed fee.

(4) Where the Commissioner refuses an application for registration, the Registrar shall, as soon as reasonably practicable, notify in writing the applicant of the refusal -

- (a) specifying the reasons for the refusal; and
- (b) informing the applicant that the applicant may appeal against the refusal under section 58.

### **Duration of registration**

17.(1) Registration shall be for a period not exceeding one year and on the expiry of that period, the relevant entry shall be cancelled unless the registration is renewed.

(2) The period specified under subsection (1) shall be calculated -

- (a) in the case of a first registration, from the date on which the relevant entry was made in the Register; and
- (b) in the case of a registration which has been renewed, from the date on which it was renewed.

(3) The Commissioner may, subject to this Act, renew a registration upon application by the data controller, and on payment the prescribed fee.

### **Failure to register or to renew registration**

18. (1) A data controller shall not, without reasonable excuse, process any personal data without being registered under this Part.

(2) A data controller who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Certificate issued by Commissioner**

19. In any proceedings in which the registration of a person as a data controller is in question, a certificate under the hand of the Commissioner that there is no entry in the register in respect of the person as a data controller shall be conclusive evidence of that fact.

### **Inspection of the Register**

20. (1) The Commissioner shall keep the Register in the office of the Commissioner and shall at all reasonable times make it available for inspection by any person free of charge.

(2) A person may, on payment of the prescribed fee, obtain from the Commissioner a certified copy of, or of an extract from, an entry in the Register.

## **PART 4 OBLIGATION ON DATA CONTROLLERS**

### **Collection of personal data**

21. (1) Subject to Part 6, a data controller shall not collect personal data unless -

- (a) it is collected for a lawful purpose connected with a function or activity of the data controller; and
- (b) the collection of the data is necessary for that purpose;

(2) Where a data controller collects personal data directly from a data subject, the data controller shall at the time of collecting personal data ensure that the data subject concerned is informed of

-

- (a) the fact that the personal data is being collected;
- (b) the purpose for which the personal data is being collected;
- (c) the intended recipients of the personal data;
- (d) the name and address of the data controller;
- (e) whether or not the supply of the personal data by that data subject is voluntary or mandatory;
- (f) the consequences for that data subject if all or any part of the requested personal data is not provided;
- (g) whether or not the personal data collected will be further processed and whether or not the consent of the data subject will be required for the further processing; and
- (h) the data subject's right of access to, the possibility of correction of and destruction of, the personal data to be provided.

- (3) A data controller shall not be required to comply with subsection (2) -
- (a) in respect of a data subject where –
    - (i) compliance with subsection (2) in respect of a second or subsequent collection will be to repeat, without any material difference, what was done to comply with that subsection in respect of the first collection; and
    - (ii) not more than twelve months have elapsed between the first collection and this second or subsequent collection; or
  - (b) where –
    - (i) compliance is not reasonably practicable at the time of collection, provided that the data controller makes available to the data subject all the relevant information specified in subsection (2) as soon as practicable; or
    - (ii) the personal data is used in a form in which the data subject concerned cannot or could not reasonably expect to be identified.
- (4) Where personal data is not collected directly from the data subject concerned, the data controller or any person acting on his behalf shall ensure that the data subject is informed of the matters specified in subsection (2).
- (5) Subsection (3) shall not operate to prevent a second or subsequent collection from becoming a first collection where the data controller has complied with subsection (2) in respect of the second or subsequent collection.
- (6) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Consent for processing of personal data**

22. (1) Subject to subsections (2), (3) and (4), a data controller shall not process personal data unless the data controller has obtained the express consent of the data subject.
- (2) A data controller may process personal data without obtaining the express consent of the data subject where the data subject has published the personal data.
- (3) A data controller may process personal data, without obtaining the express consent of the data subject, for health and hospital care purposes, provided that the personal data is processed

by a health care professional subject to the obligation for professional secrecy or professional confidentiality and the processing is necessary for-

- (a) preventative medicine and the protection of public health;
- (b) medical diagnosis;
- (c) health care or treatment; or
- (d) management of health and hospital care services.

(4) A data controller may process personal data without obtaining the express consent of the data subject where the processing is necessary –

- (a) for the performance of a contract to which the data subject is a party;
- (b) in order to take steps required by the data subject prior to entering into a contract;
- (c) in order to protect the vital interests of the data subject or another person, in a case where-
  - (i) consent cannot be physically or legally be given by or on behalf of the data subject; or
  - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject;
- (d) for compliance with any legal obligation to which the data controller is subject;
- (e) for the administration of justice;
- (f) for the performance of an activity that is carried out in the public interest or in the exercise of official authority vested in the data controller or in a third party to whom the personal data is disclosed; or
- (g) for a purpose that concerns a legitimate interest of the data controller or of such a third party to whom personal data is provided, except where such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right to privacy;

(5) Where the processing of personal data is done pursuant to paragraphs (f) and (g) of subsection (4), the data subject, except where otherwise provided in any other law, shall be entitled to object at any time to the data controller on compelling legitimate grounds to the processing of the personal data.

(6) Where the processing of personal data takes place with the consent of the data subject, the data subject may at any time revoke his or her consent for compelling legitimate grounds relating to his or her particular situation.

(7) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

(8) For the purposes of this section "health care professional" has the meaning given to it pursuant to the Health Practitioners Act 2006, No. 33.

### **Accuracy of personal data**



23. A data controller shall take all reasonable steps to ensure that personal data within the data controller's possession is -

- (a) accurate; and
- (b) kept up to date where such data requires regular updating.

(2) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Use of personal data**

24. The data controller shall ensure that personal data is -

- (a) kept only for one or more specified and lawful purposes for which the personal data has been collected and processed;
- (b) not used or disclosed in any manner incompatible with the purposes for which the personal data has been collected and processed;
- (c) adequate, relevant and not excessive in relation to the purposes for which the personal data has been collected and processed; and
- (d) not kept for longer than is necessary for the purposes for which the personal data has been collected and processed.

(2) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Security of personal data**

25.(1) A data controller shall –

- (a) take appropriate security and organizational measures for the prevention of unauthorized access to, alteration of, disclosure of, accidental loss, and destruction of the personal data in the data controller's control; and
- (b) ensure that the measures provide a level of security appropriate to –
  - (i) the harm that is likely to result from the unauthorized access to, alteration of, disclosure of, destruction of the data and its accidental loss; and
  - (ii) the nature of the data concerned.

(2) A data controller shall take all reasonable steps to ensure that any person employed by the data controller is aware of and complies with the relevant security measures.

(3) Without prejudice to subsection (1), in determining the appropriate security measures, in particular, where the processing involves the transmission of personal data over an information and communication network, a data controller shall have regard to -

- (a) the state of technological development available;
- (b) the cost of implementing any of the security measures;
- (c) the special risks that exist in the processing of the personal data; and
- (d) the nature of the personal data being processed.

(4) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Duty to destroy personal data**

26. Where personal data is no longer required for the purpose for which it was collected, the data controller shall forthwith destroy the personal data and render it inaccessible electronically destroy the personal data as soon as reasonably practicable.

(2) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

### **Access to, disclosure of, or sale of personal data**

27. (1) A data controller shall not, without lawful excuse, disclose personal data in any manner that is incompatible with the purposes for which the personal data has been collected.

(2) Subject to subsection (4), a person shall not -

- (a) obtain access to personal data, or obtain any information constituting such personal data, without prior authority of the data controller by whom the personal data is kept or disclose that personal data or information to another person.

(3) Subsection (2) shall not apply to a person who is an employee or agent of a data controller or processor and is acting within his mandate.

(4) A person shall not offer personal data for sale where the personal data has been obtained in breach of subsection (1).

(5) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

(6) For the purposes of subsection (5), an advertisement indicating that personal data is or may be for sale, constitutes an offer for the sale of personal data.

## **Transfer of personal data**

28. (1) Subject to subsection (2), a data controller shall not transfer personal data to a country or territory outside Saint Lucia unless-

- (a) with the written consent of the Commissioner; and
- (a) that country 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) Subsection (1) (b) shall not apply where –

- (a) the data subject has given his or her consent to the transfer;
- (b) the transfer is necessary –
  - (i) for the performance of a contract between the data subject and the data controller, or for the taking of steps at the request of the data subject with a view to the data subject entering into a contract with the data controller;
  - (ii) for the conclusion of a contract between the data controller and a person, other than the data subject, which is entered at the request of the data subject, or is in the interest of the data subject, or for the performance of such a contract;
  - (iii) it is in the public interest or section 34 applies;
- (c) the transfer is made on such terms as may be approved by the Commissioner as ensuring the adequate safeguards for the protection of the rights of the data subject.

(3) For the purposes of subsection (2)(c), the adequacy of the level of safeguards of a country or territory shall be assessed in the light of all the circumstances surrounding the transfer of personal data, having regard in particular to -

- (a) the nature of the personal data;
- (b) the purpose and duration of the proposed processing;
- (c) the country or territory of origin and country of final destination;
- (d) the rules of law in force in the country or territory in question; and
- (e) any relevant codes of conduct or other rules and security measures which are complied with in that country or territory.

## **PART 5 RIGHTS OF DATA SUBJECTS AND OTHERS**

### **Right to access to personal data**

29. (1) Subject to section 30, a data controller shall on the written request of a data subject or a relevant person or relevant person -

- (a) provide a written response to the data subject setting out the following-
  - (i) whether the data kept by the data controller includes personal data relating to the data subject and a description of that personal data, if any;
  - (ii) the purposes for which the personal data is being or is to be processed;

- (iii) the source from which the information is being collected;
- (iv) the logic that is involved in any automatic processing of personal data concerning the data subject;
- (v) the recipients or classes of recipients to whom they are or may be disclosed; and
- (b) permit the data subject or relevant person to examine the personal data in accordance with the Regulations or supply the data subject or the relevant person with a copy of any personal data referred to in paragraph (a) on payment of the prescribed fee.

(2) A request made under subsection (1) (a) and (b) shall be treated as a single request.

(3) Where access to personal data is given under this Act and the data subject has a sensory disability and requests that access be given in an alternative format, access shall be given in an alternative format if-

- (a) the personal data already exists in an alternative format that is acceptable to the data subject; or
- (b) the data controller considers it to be reasonable to cause the personal information to be converted.

(3) Where any personal data referred to under subsection (1) is expressed in terms that are not intelligible without explanation, the data controller shall supply the personal data with an explanation of those terms.

(4) A fee paid by a person to a data controller under this section shall be returned to the person where a request made under subsection (1) is not complied with.

(5) The information to be supplied pursuant to a request under this section shall be supplied by reference to any personal data at the time when the request is received, except that it may take account of any amendment or deletion made between that time and the time when the information is supplied.

### **Compliance with request for access to personal data**

30. (1) Subject to subsection (2) and section 31 and to the payment of the prescribed fee, a data controller shall comply with a request made under section 29 not later than thirty days after the receipt of the request.

(2) Where a data controller is unable to comply with the request within the period specified in subsection (1), the data controller shall -

(a) before the expiry of the specified period -

- (i) inform the data subject that the data controller is unable to comply with the request and shall, if required, state the reasons for inability to comply;
- (ii) seek

consent of the data subject for an extension of time for compliance by the data controller; or

(iii) apply to the Commissioner forthwith for an extension of time for compliance by the data controller.

### **Denial of access to personal data**

31.(1) A data controller may refuse a request made under section 29 where -

- (a) the data controller is not supplied with such information as the data controller may reasonably require in order to satisfy himself or herself as to the identity of the person making the request, and to locate the information which the person seeks;
- (b) compliance with such request will be in contravention with his confidentiality obligation imposed under this Act or any other enactment.

(2) Where a data controller cannot comply with a request made under section 29 without disclosing personal data relating to another person, the data controller may refuse the request unless -

- (a) the other individual has consented to the disclosure of his or her personal data to the person making the request; or
- (b) the data controller obtains the written approval of the Commissioner.

(3) In determining for the purposes of subsection (2) (b) whether it is reasonable for the Commissioner to approve a request without the consent of the other individual concerned, regard shall be had, in particular, to -

- (a) any duty of confidentiality owed to the other individual;
- (b) any steps taken by the data controller with a view to seeking the consent of the other individual;
- (c) whether the other individual is capable of giving consent; and
- (d) any express refusal of consent by the other individual.

(5) A data controller shall not comply with a request made under section 29 where -

- (a) the data controller is being requested to disclose information given or to be given in confidence for the purposes of –
  - (i) the education, training or employment, or prospective education, training or employment, of the data subject;
  - (ii) the appointment, or prospective appointment, of the data subject to any office; or
  - (iii) the provision, or prospective provision, by the data subject of any service;
- (b) the personal data requested consists of information recorded by candidates during an academic, professional or other examination;

- (c) such compliance would, by revealing evidence of the commission of any offence other than an offence under this Act, expose him or her to proceedings for that offence.

(6) A notification by the data controller of a refusal of a request made by a data subject shall be in writing and shall include a statement of the reasons for the refusal and an indication that the data subject may complain to the Commissioner about the refusal.

### **Right of rectification, etc. of inaccurate personal data**

32. (1) Where personal data processed by a data controller to which access has been given under any enactment, contains personal data of a data subject which the data subject claims-

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

the data controller shall, upon application of the data subject, cause such data to be rectified, blocked, erased, destroyed, rendered inaccessible or annotated as appropriate.

(2) Where a data controller is aware that a third party holds personal data to which subsection (1) (a) and (b) applies, he or she shall, as soon as reasonably practicable, require the third party to rectify, block, erase, destroy, render inaccessible or annotate the data, as appropriate.

(3) Where a data controller or a third party fails to rectify, block, erase or destroy personal data to which subsection (1) (a) and (b) applies, a data subject may apply to the Commissioner to have such data rectified, blocked, erased, destroyed, rendered inaccessible or annotated as appropriate.

(4) Upon being satisfied by an application under subsection (3) that the personal data to which subsection (1) (a) and (b) applies, the Commissioner shall, direct the data controller to rectify, block, erase, destroy or annotate those data and any other personal data in respect of which he or she is data controller.

(5) Where the Commissioner -

- (a) issues a direction under subsection (4); or
- (b) is satisfied on the application by an individual that personal data of which the individual is the data subject were inaccurate and have been rectified, blocked, erased, destroyed or annotated,

the Commissioner may direct the data controller to notify third parties to whom the data have been disclosed, of the rectification, blocking, erasure, destruction or annotation.

### **Right to prohibit processing of personal data**

33. (1) A person may, at any time, by notice in writing revoke consent to the processing of personal data in respect of which he or she is a data subject.

(2) Where the data controller receives a notice under subsection (1), the data controller shall, as soon as reasonably practicable, and in any event not more than thirty days after the request is received, stop processing the personal data and delete the personal data and render it inaccessible.

(3) The data controller shall forthwith, in writing, notify the data subject in writing of any action taken under subsections (2).

(4) A data controller who contravenes this section commits an offence and is liable to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months.

## **PART 6 EXEMPTIONS**

### **National Security**

34. The Minister may by Order published in the *Gazette* exempt a data controller from complying with any provision of this Act in the interest of national security.

### **Crime and taxation**

35. A data controller which is a public authority shall be exempt from the provisions of Parts 3, 4 and 5 if the processing of data is required for-

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders; or
- (c) the assessment or collection of any tax, duty or any imposition of a similar nature,

### **Health and social work**

36.(1) A data controller shall be exempt from the application of section 29 where the personal data to which access is being sought relates to the physical or mental health of the data subject and the application of that section is likely to cause serious harm to the physical or mental health of the data subject or of any other person.

(2) The Minister may, by Order published in the *Gazette*, waive the obligations imposed under section 29, on a public authority, voluntary organizations and any other similar body as may be prescribed, where the public authority, voluntary organization or other body carries out social work in relation to a data subject, and the application of that section is likely to prejudice the carrying out of the social work.

### **Regulatory activities**

37. The processing of personal data by a data controller for the purpose of discharging any of the relevant functions -

- (a) designed for protecting members of the public against -
  - (i) financial loss due to dishonesty, malpractice or other serious improper conduct, or by the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate;
  - (ii) financial loss due to the conduct of discharged or undischarged bankrupts; or
  - (iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorized to carry on any profession or other activity;
- (b) conferred on the Central Bank, the Director of Financial Services and the Financial Intelligence Unit, by or under any enactment;
- (c) for protecting charitable trusts and other bodies involved in charitable work against misconduct or mismanagement in their administration;
- (d) for protecting the property of charitable trusts and other bodies specified in paragraph (c) from loss or misapplication;
- (e) for the recovery of the property of charitable trusts and other bodies specified in paragraph (c);
- (f) for securing the health, safety and welfare of persons at work;
- (g) for protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work; or
- (h) designed for –
  - (i) protecting members of the public against conduct which adversely affect their interests by persons carrying on a business;



- (ii) regulating agreements or conduct which have as their object or effect the prevention, restriction or distortion of competition in connection with any commercial activity; or
- (iii) regulating conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market,

is exempt from the application of Part 4 to the extent that such an application would be likely to prejudice the proper discharge of such functions.

### **Disclosure required by law or in connection with legal proceedings**

38. A data controller is exempt from Part 4 where, the disclosure of personal data is—
- (a) required under any enactment or by a Court order;
  - (b) necessary for the purpose of, or in connection with, any on- or prospective legal proceedings;
  - (c) necessary for the purpose of obtaining legal advice; or
  - (d) necessary for the purpose of establishing, exercising or defending legal rights.

### **Legal professional privilege**

39. A data controller is exempt from Parts 3 and 4, where the data consist of information in respect of which a claim to legal professional privilege or confidentiality as between client and legal practitioner could be maintained in legal proceedings, including prospective legal proceedings.

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### **Domestic purposes**

40. An individual is exempt from the provisions of Parts 3, 4 and 5 where the data is processed by the individual only for the purposes of that individual's personal, family or household affairs or for recreational purposes.

## **PART 7 INVESTIGATION AND ENFORCEMENT**

## **Power of Commissioner to obtain information**

41. (1) The Commissioner may, by a written information notice served on any person, request that person to furnish to him or her in writing in the time specified-

- (a) access to personal data;
- (b) information about and documentation of the processing of personal data;
- (c) information related to the security of processing of personal data; and
- (d) any other information in relation to matters specified in the notice as is necessary or expedient for the performance by the Commissioner of his or her functions and exercise of his or her powers and duties under this Act.

(2) Where the information requested by the Commissioner is stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the person named in the information notice shall produce or give access to the information in a form in which it can be taken away and in which it is visible and legible.

(3) A notice required or authorized 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 him or her by;
  - (i) delivering, personally to the person;
  - (ii) sending it to the person by post addressed to the person at his or her usual or last known place of business; or
  - (iii) leaving it for the person at or her last known place of business that place;
- (b) if that person is a body corporate or partnership, be served by -
  - (i) sending it by post to the proper officer of the company at its principal office;
  - (ii) addressing it to the proper officer of the partnership and leaving it at the office of the proper officer.

## **Contents of information notice**

42. (1) Subject to subsection (2), the information notice specified in section 41 shall state-

- (a) that the person to whom the notice is addressed has a right of appeal under section 58 against the requirement specified in the notice within thirty days from the service of the notice on him or her; and
- (b) the time for compliance with a requirement specified in the information notice, which time shall not be expressed to expire before the end of the period of thirty days specified in paragraph (a).

(2) Where a notice of appeal against a decision made under section 41, is lodged with the Commissioner, the information required need not be furnished, and section 43 shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(3) Where the Commissioner considers that by reason of special circumstances the information is required urgently for the proper performance of his or her functions and exercise of his or her powers under this Act, the Commissioner may apply to a Judge in Chambers for communication of the information.

(4) A law in force in Saint Lucia or rule of law prohibiting or restricting the disclosure of information shall not preclude a person from furnishing to the Commissioner any information that is necessary or expedient for the performance by the Commissioner of his or her functions and this subsection shall not apply to information that in the opinion of the Minister or the Minister responsible for national security is, or at any time was, kept for the purpose of safeguarding the security of Saint Lucia or information that is privileged from disclosure in proceedings in any court.

### **Failure or refusal to comply with information notice**

43. (1) A person shall not, without reasonable excuse, fail or refuse to comply with a requirement specified in an information notice.

(2) A person shall not, in purported compliance with an information notice furnish information to the Commissioner that the person knows to be false or misleading in a material respect.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable shall commit an offence and shall be liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

(4) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that he or she exercised all due diligence to comply with the information notice.

### **Insufficient information pursuant to the information notice**

44. If the Commissioner cannot, pursuant to a request under section 41(1), obtain sufficient information in order to conclude that the processing of personal data is lawful, the Commissioner may prohibit the data controller from processing personal data in any other manner than by storing the personal data.

### **Complaints to Commissioner and powers of investigation**

45. (1) The Commissioner may, on complaint by a data subject or at the Commissioner's instance, investigate, or cause to be investigated, whether any provisions of this Act or the Regulations have been, are being or are likely to be contravened by a data controller in relation to a data subject.

(2) Where a complaint is made to the Commissioner under subsection (1), the Commissioner shall -

- (a) investigate the complaint or cause it to be investigated by an authorized officer, unless the Commissioner is of the opinion that it is frivolous or vexatious; and
- (b) as soon as reasonably practicable, notify the data subject concerned in writing of his or her decision in relation to the complaint and that the data subject may, if aggrieved by the Commissioner's decision, appeal against the decision to the Court under section 58.

(3) Nothing in this Act precludes the Commissioner from receiving and investigating complaints that are submitted by a person authorized in writing by the data subject concerned to act on behalf of the data subject, and a reference to a data subject in any other section of this Act includes a reference to the person so authorized.

### **Form of complaint**

46. (1) A complaint pursuant to this Act shall be made to the Commissioner in writing unless the Commissioner authorizes 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.

### **Notice of investigation**

47. Before commencing an investigation of a complaint pursuant to this Act, the Commissioner shall notify, in the case of a public authority, the Permanent Secretary and in any other case, the Chief Executive Officer, of the intention to carry out the investigation and shall include in the notification the substance of the complaint.

### **Powers to request assistance**

48. (1) For the purposes of gathering information or for the proper conduct of any investigation concerning compliance with this Act, the Commissioner may seek the assistance of such persons or authorities, as the Commissioner thinks fit and that person or authority may do such things as are reasonably necessary to assist the Commissioner in the performance of the Commissioner's functions.

### **Powers of entry and search**

49. (1) Subject to subsection (2), an authorized officer who is accompanied by a police officer may, at any time, enter any premises, for the purpose of discharging any functions or duties under this Act or the Regulations.

(2) An authorized officer shall not enter any premises unless he or she is accompanied by a police officer and shows to the owner or occupier of the premises, a warrant issued by a Magistrate, under section 50.

### **Warrant to enter and search premises**

50. (1) If a Magistrate is satisfied by information on oath supplied by the Commissioner or an authorized officer that there are reasonable grounds for suspecting that an offence under this Act has been or is being committed, and that evidence of the contravention or of the commission of the offence is to be found on any premises specified by the Commissioner or an authorized officer, the Magistrate may issue a warrant authorizing the entry and search of premises.

(2) A warrant issued under subsection (1) authorizes a police officer accompanied by the Commissioner or an authorized officer at any time within seven days of the date of the warrant to enter the premises at a reasonable time to -

- (a) request the owner or occupier to produce any document, record or data;
- (b) examine any such document, record or data and, either on the premises or elsewhere, take copies or extracts from them;
- (c) inspect, examine, operate and test any data equipment found therein;
- (d) request the owner of the premises entered into, or any person employed by him or her, or any other person on the premises, to give to the authorized officer all reasonable assistance and to answer all reasonable questions either orally or in writing.

(3) The police officer shall at the time of execution of the warrant, show the warrant and supply with a copy of the warrant to the person who occupying the premises in respect of which a warrant is issued.

(4) The authorized officer shall provide an inventory of the type of data collected or seized to the data controller or the occupier of premises who supplies the data to the authorized officer.

### **Matters exempt from inspection and seizure**

51. (1) The powers of inspection and seizure conferred by a warrant are not be exercisable in respect of personal data which by virtue of section 34 is exempt from any of the provisions of this Act.

(2) The powers of inspection and seizure conferred by a warrant are not exercisable in respect of

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- (a) any communication between a professional legal adviser and his or her client in connection with the giving of legal advice to the client with respect to his or her obligations, liabilities or rights under this Act; or
- (b) any communications between a professional legal adviser and his or her client, or between such an adviser or his or her client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act.

### **Obstruction of authorized officer**

52. (1) A person shall not, in relation to the exercise of powers conferred by sections 14 and 41-
- (a) obstruct or impede an authorized officer in the exercise of any of the authorized officer's powers;
  - (b) fail to provide assistance or information requested by the authorized officer;
  - (c) refuse to allow an authorized officer to enter any premises in the exercise of the authorized officer's functions;
  - (d) give to an authorized officer any information which is false and misleading in a material respect.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Power of Commissioner to issue enforcement notice**

53. Where the Commissioner is of the opinion that a data controller has contravened or is contravening a provision of this Act, other than a provision the contravention of which is an offence, the Commissioner may, subject to section 54, serve an enforcement notice on the data controller, requiring the data controller person to take such steps as are specified in the enforcement notice within such time as may be so specified to comply with the provision concerned.

### **Contents of enforcement notice**

54. An enforcement notice shall be in writing and shall-
- (a) specify the provision of this Act that, in the opinion of the Commissioner, the data controller has contravened or is contravening and the reasons for the Commissioner having formed that opinion; and
  - (b) specify the action which the Commissioner requires the data controller to take;
  - (c) subject to subsection (2), inform the data subject of his or her right of appeal pursuant to section 58 and the time within which the appeal must be lodged.

(2) An enforcement notice may, without prejudice to the generality of section 53 or subsection (1), require the data controller-

(a) to rectify or erase any of the data concerned; or

(b) to supplement the personal data with such statement relating to the matters dealt with by them as the Commissioner may approve;

and with respect to the personal data that is inaccurate or not kept up to date, if the data controller complies with paragraphs (a) or (b), the data controller shall be deemed not to be in contravention of the provision.

(3) Subject to subsection (4), the time specified in an enforcement notice for compliance with a requirement specified in the enforcement notice shall not be expressed to expire before the end of the period for appeal specified in section 58 and, if an appeal is brought against the requirement, the requirement need not be complied with, pending the determination or withdrawal of the appeal.

(4) If the Commissioner —

(a) by reason of special circumstances, is of the opinion that a requirement specified in an enforcement notice shall be complied with urgently; and

(b) the enforcement notice includes a statement to that effect,

subsections (1)(b) and (2) shall not apply in relation to the enforcement notice, but the notice shall contain a statement of the right of appeal the applicant to under 58, and shall not require compliance with the requirement before the end of the period of seven days beginning on the date on which the notice is served.

(5) On compliance by a data controller with a requirement under subsection (2), the data controller shall, as soon as may be and in any event not more than thirty days after such compliance, notify -

(a) the data subject concerned; and

(b) any person, where the Commissioner considers it reasonably practicable to do so, to whom the data were disclosed during the period beginning twelve months before the date of the service of the enforcement notice concerned and ending immediately before such compliance, of the rectification, erasure or statement concerned, if such compliance materially modifies the data concerned.

(6) The Commissioner may cancel an enforcement notice and, if he or she does so, shall notify in writing the person on whom it was served accordingly.

### **Failure to comply with enforcement notice an offence**

55. (1) A person shall not, without reasonable excuse, fail or refuse to comply with a requirement specified in an enforcement notice.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding twenty five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

### **Investigations in private**

56. (1) All investigations of a complaint pursuant to this Act shall be conducted in private.

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

### **Referral to Commissioner of Police**

57. On completion of an investigation under this Act, the Commissioner shall, where the investigation reveals that an offence has been committed under this Act or the Regulations the Commissioner shall refer the matter to the Commissioner of Police for necessary action.

## **PART 8 MISCELLANEOUS**

### **Appeals to Court**

58.(1) Subject to subsection (2), an appeal lies to the Court against -

- (a) a requirement specified in an enforcement notice or an information notice;
- (b) a prohibition specified in a prohibition notice;
- (c) a decision of the Commissioner in relation to a complaint; or
- (d) any decision of the Commissioner in respect of the performance of his or her duties and powers under this Act.

(2) An appeal shall be brought within thirty days from the service on the person concerned of the relevant notice, or, as the case may be, the receipt by such person of the notification of the relevant refusal or decision.

(3) Where -



- (a) a person appeals to the Court pursuant to paragraph (a), (b), (c) or (d) of subsection (1);
- (b) the appeal is brought within the period specified in the notice; and
- (c) the Commissioner has included a statement in the relevant notice or notification to the effect that by reason of special circumstances he or she is of opinion that the requirement or prohibition specified in the notice should be complied with, or the refusal specified in the notification should take effect, urgently,

the Court, may determine that non-compliance by the person with requirement or prohibition specified in the notice during the period ending with the determination of withdrawal of the appeal or during any other period as may be determined by the Court shall not constitute an offence.

### **Annual report**

59. (1) The Commissioner shall, not later than three months after the end of every calendar year, lay an annual report of the activities of his or her office in Parliament.

(2) Without limiting the generality of subsection (1), the report pursuant shall include -

- (a) a statement about the operation of approved and issued codes of practice;
- (b) any recommendation that the Commissioner thinks fit relating to the compliance with this Act.

### **General penalty**

60.(1) Any person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.

### **Regulations**

61. (1) The Minister may, after consultation with the Commissioner, make Regulations for giving effect to the purpose of this Act and for prescribing anything required or authorized by this Act to be prescribed.

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

- (a) rules and procedures relating to access to data held by the data controller;
- (b) guidelines for the disposal of personal information held by a data controller;

- (c) guidelines for the contents of any notifications or applications made pursuant to this Act;
- (d) the fees that may be levied by the Commissioner;
- (e) the administrative fines that may be imposed by the Commissioner and the administrative violations in respect of which such fines may be imposed;
- (f) the extension of the application of this Act to any particular activity or sector;
- (g) the issuing and approval of codes and guidelines; and
- (h) guidelines and rules relating to the provisions of this Act.

(3) Regulations made under this section this Act shall be subject to the negative resolution of Parliament.

## **SCHEDULE**

*(Section 13)*

I, ....., make oath/solemnly affirm/declare that I will faithfully and honestly fulfill my duties as authorized officer/Commissioner in conformity with the [*Privacy and Data Protection Act 2008*] and that I shall not without the due authority in that behalf disclose or make known any matter or thing which comes to my knowledge by reason of my duties as such.