

WRITTEN RESPONSE TO REPORT OF THE JOINT SELECT COMMITTEE ON FINANCE AND LEGAL AFFAIRS ON AN INQUIRY INTO THE STATUS OF UNPROCLAIMED LEGISLATION (PART 1): THE PLANNING AND FACILITATION OF DEVELOPMENT ACT 2014 AND THE DATA PROTECTION ACT CHAPTER 22:04, FIRST SESSION (2020/2021), TWELFTH PARLIAMENT

1. This written response is made in conformity with the Standing Orders¹ of the Parliament of Trinidad and Tobago regarding the Joint Select Committee's ("the Committee") Second Report on the Data Protection Act Chap 22:04 ("the Act").
2. The Office of the Prime Minister-Communications ("OPM-C") and the Ministry of Public Administration and Digital Transformation previously shared responsibility for the administration of data protection². Consequently, since the formation of the standalone Ministry of Digital Transformation, the portfolio has been shared once more³.
3. The OPM-C after the provision of our written response, appearance before the Committee and the reading of the Report, notes the Committee's findings and recommendations. However, there is a more nuanced view towards the recommendation of the HIPCAR project which will be further amplified below.

FINDINGS

Finding 1:

Although model Caribbean regional guidelines for a legislative framework for data protection is available in the HIPCAR framework, the OPM, appeared indecisive on whether Trinidad and Tobago is ready to pursue those recommendations in seeking to modify the existing Act.

4. The OPM-C notes the Committee's allusion to the HIPCAR framework and its point of reference for the amendments to the Act. It is also noted that the HIPCAR Project began in 2008 and was completed in 2013. It is our considered view, that while the HIPCAR legislative framework may be considered a good starting point, it must be borne in mind that the law and technologies have advanced past the contemporary point. Technology has exploded at an exponential rate and

¹ Standing Order 100 (6) of the Senate; Standing Order 110(6) of the House of Representatives

² Gazette No. 158, Vol. 59, 9th September 2020

³ Gazette No. 111, Vol. 60, 19th July 2021

technologies such as the Internet of Things, sandboxing, artificial intelligence and data driven algorithms would not have been contemplated when the model legislation was first drafted.

5. It is worth stating that the European Union's General Data Protection Regulations would have been updated in light of the advancement of technology. The Consultant in their terms of reference, would have used Caribbean territories with updated privacy laws such as Jamaica, Barbados and Bahamas in arriving at the suitable proposed amendments for the Data Protection Act. Any semblance of reticence on the part of the OPM would be more construed with that of a nuanced approach to determine whether the recommendations of the HIPCAR project would have adequately met the needs of the Trinidad and Tobago.

Finding 2

Notwithstanding efforts to undertake a Cross-Ministerial collaborative approach to amending Data Protection legislation, there appeared to be a breakdown in communication between the MoAGLA and OPM regarding each entity's role and function.

6. It is unfortunate that both Ministries' attempts at leading the amendment to the Act led to cross purposes and created an atmosphere of dissonance. In this regard, a Ministerial Meeting between the OPM-C and the Ministry of Digital Transformation was held on November 15, 2021 where this issue among others were raised.
7. One of the decisions taken was to convene a further meeting between the Honourable Attorney General, the Minister of Digital Transformation and the Minister with the responsibility for Communications to arrive at the best possible approach to move the amendments to the Act in a coherent and efficient manner.

Finding 3

Key legislative pre-cursors to provide a suitable foundation for the classification of data were not realized in advance of the passage of the DPA Chap. 22:04. Notwithstanding an organization's adherence to the General Privacy Principles, there is no system in place to guide the categorization of data according to sensitivity and importance.

8. The OPM-C notes that with regard to this finding, it recognizes that the classification of data, records and information is fundamental and underpins the efficacious functioning of the Act. Therefore, steps have been taken to formulate a National Policy for Archives, Records and Information Management. It is expected that once this Policy has been developed and agreed to by Cabinet, it may take on legislative form and will guide how records are treated across the Public Service; and the categorization of data according to both sensitivity and importance.

Finding 4

The findings of the Consultant's initial report suggested that in spite of the interest of many private sector enterprises in the use of artificial intelligence to improve business performance, such a feature appeared to have low implementation support for widespread use in the Public Service

9. This finding emphasizes the need for the embracing of technology and new digital strategies to re-tool the Public Service and to modernize its business processes to align with the paradigm shift towards digitalization and digital transformation. It would require re-tooling of staff in the Public Service and as such the objectives and projects of the Ministry of Digital Transformation takes on a more significant and pivotal role.

Finding 5

Based on the multiplicity of stakeholder concerns it appears that the perception of legislation to regulate Data Protections being viewed by the majority of stakeholders as an economic encumbrance as opposed to business facilitator, sentiments which may have an impact on the rate of compliance

10. This finding was a prevailing view when the Consultancy first began and the stakeholders submitted their views regarding the proposed amendments to the Act. After the second stakeholder consultation with the Private Sector, their views were more positive and pleased regarding the contemplated amendments which were done by the Consultant, which included the enhancement of the Privacy Principles, the incorporation of the processes to facilitate artificial intelligence and automated processing to name a few.

Finding 6

Despite the guidance that a Readiness Assessment would provide in terms of determining the status quo with respect to the current provisions for data protection, the OPM did not find it worthwhile to undertake such a study in advance of the consultancy, being of the view that the Report of the Consultant would be far more instructive in guiding the way forward

11. The OPM-C notes this finding and would accord it consideration in the approach of amendments to other pieces of legislation in the future.

Finding 7

Data obtained by the OPM in relation to amending the Data Protection legislation point to citizens' low awareness of how data could be mined from various public sources of information and used in business planning and marketing

12. The findings of the Committee with regards to the low awareness by citizens of the usage of their data are well founded and steps will be taken with the Ministry of Digital Transformation to bring awareness to the general population this issue.

Finding 8

The OPM alluded that a 'soft' approach may be undertaken with respect to data sovereignty and information stored by third parties in local or foreign based cloud systems due to the lack of leverage that smaller jurisdictions such as Trinidad and Tobago have in international ICT governance.

13. The OPM-C notes the findings of the Committee regarding the issue of data sovereignty and the adequacy provisions. However, it cannot be overstressed that due to the size of Trinidad and Tobago, this country cannot give adequacy decisions as what pertains in countries for example France, the United Kingdom and Germany. Instead, the Consultant has placed proposed amendments which would realize a lesser reliance on data localization and provisions to ensure data which may be stored in foreign jurisdictions are adequately protected.

RECOMMENDATIONS

Recommendation 1

The Committee is of the view that multiple stakeholder agencies working towards a common goal must implement processes that facilitate information exchange and dialogue. Therefore, an appropriate Communication strategy should be developed and implemented to foster dialogue among the OPM, the MTI, MoAGLA and MPADT with a view to adopting a well-informed and definitive position on the way forward for Data Protection Legislation in Trinidad and Tobago.

14. The OPM-C notes the recommendations made by the Committee and wishes to advise of the following developments:

- a. Following the Ministerial Meeting on November 15, 2021, both the Minister of Digital Transformation and Minister in the Office of the Prime Minister with responsibility for Communications agreed that the portfolio for data protection should rest with the Minister of Digital Transformation as it would encompass the initiatives and projects that are currently being undertaken by that Ministry which would impact upon the citizens' data;
- b. That both Ministers meet with the Attorney General to assist with the proper delineation of the portfolio in the Gazette and removing it from within the ambit of the Office of the Prime Minister;
- c. It was also agreed that the Finalized Report from the Consultant as well as the proposed draft amendments and policy would be sent to the Minister of Digital Transformation for his consideration and review before a further meeting with the Office of the Attorney General to arrive at a sustained course of action; and
- d. Each Ministry will undertake to develop a communication strategy, which will inform how the amendments will impact upon the mandates of their Ministry and the OPM-C will develop an overarching communication plan to inform the population on their privacy rights and what the amendments mean in the course of daily transactions.

Recommendation 2

The Committee acknowledges the value of a system for the classification of personal data that is held by third parties and thus acknowledges the merit in the creation of a classification system, by way of policy or legislation, to guide the treatment of data.

15. The OPM-C in conjunction with the Ministry of Trade and Industry (“MTI”) has sought to procure a Consultant to develop a National Policy for Archives, Records and Information Management and Implementation Plan for Trinidad and Tobago. This is being done under the Strengthening of the Single Electronic Window which would be financed by the International Development Bank. The role of the MTI in this instance is to secure the financing for the Consultant, with the OPM-C being the lead on this Consultancy. An Expression of Interest was advertised in the daily newspapers (Trinidad Guardian and Newsday) as well as the MTI’s website. It is expected that this Policy would identify what systems would be best used to classify data, according to international best practices and would inform the need for any legislative intervention.

Recommendation 3

The Committee advises that the OPM emphasise the benefits that would be derived from enhanced data protection legislation in order to build private sector support and buy in for the proposed reforms. The benefits highlighted should include:

- a. Building of consumer trust which in turn boosts online trade;**
- b. Reduction of bureaucratic processes and procedures;**
- c. Provisions to ensure that SMEs can compete in the digital market;**
- d. Simplification of international data transfers;**
- e. Provisions to ensure long-lasting data protection solutions which can augment returns on investment.**

16. The OPM-C observed after the second Private Sector consultation, there was a high degree of private sector support for the amendments to the existing legislation. As iterated above in paragraph 10, the proposed amendments had factored in their concerns and took into account these recommendations which were made above by the Committee.

Recommendation 4

Pending the completion of amendments (if any) to the Data Protection Act, the OPM in collaboration with the Ministry of Digital Transformation should undertake a comprehensive public education and awareness raising initiative that would enable citizens to understand their privacy rights, how they work and what they should expect from organizations with respect to the use of their data. The Ministerial Response of the OPM should provide Parliament with a status update on the proposed plan/strategy for implementing this recommendation

17. The OPM-C and Ministry of Digital Transformation, along with the Ministry of Trade and Industry and the Office of the Attorney General, are in the process of collaborating to arrive at a suitable campaign to educate the populace of their privacy rights and to understand how their personal data may be used.

Recommendation 5

Following in the vein of the HIPCAR framework, model guidelines can be proposed at a regional level to build a local data economy, encourage the development of technical standards, increase interoperability and ensure data integrity as part of a region wide initiative. The Committee recognizes that:

- A. There is value in open data flows between countries as *'Countries that regulate data processing too rigidly and with specific restrictions on cross-border data transfers provide reciprocal restrictions by other countries, resulting in reduced access to global data and technology,'* and**
- B. Piloting key initiatives in the data governance regime can be driven by policy initiatives at the level of CARICOM.**

18. The OPM-C notes the need for a harmonization of laws to assist with the ease of doing business across the Caribbean. However, policy initiatives at the level of CARICOM requires the input of the Ministry of Foreign and CARICOM Affairs, the Ministry of the Attorney General and Legal Affairs and the approval of Cabinet before this can eventually come to fruition.

The OPM-C notes all the findings and recommendations in the Report and would ensure that the steps taken to amend the Data Protection Act will be collaborative and seamless for the benefit of both the private and public sectors of the nation.

February 7, 2022