

**BRIEF FOR THE HON. FAYVAL WILLIAMS  
MINISTER OF SCIENCE, ENERGY AND TECHNOLOGY**

**In respect of:  
“The Data Protection Act, 2020”**

1. Mister Speaker, I am pleased to pilot this Bill entitled the Data Protection Act, 2020, which is aimed at protecting the privacy of personal data through this Honourable House.

**Background**

2. Mister Speaker, the right to privacy has been universally recognised as one of the inalienable rights of humans and has been recognised as such by the United Nations in its 1948 Universal Declaration of Human Rights.
3. In recognition of the Universal Declaration of Human Rights, the Jamaican Constitution was amended in 2011 to provide for a new Charter of Fundamental Rights and Freedoms, which in section 13(3)(j) provides that everyone has the right to “*respect for and protection of private and family life and privacy of the home*” and “*protection of privacy of other property and of communication*” thereby Mister Speaker enshrining the rights which have long enjoyed legal protection by citizens of other countries.
4. Notwithstanding this amendment to the Constitution, modern jurisprudence has long recognised that simply providing and protecting the right to privacy is not sufficient to adequately safeguard such a right and hence there emanated the need for legislation to treat with the protection of personal data and information concerning persons.

5. Mister Speaker, Jamaica's impetus for promulgating data protection legislation are many and varied. While informed by the Jamaican Constitution, other factors have played a part. These include:
- a) the advancement in technology and the increasing ability to process, store and distribute data;
  - b) the increase in electronic commerce; and
  - c) obligations imposed by bi-lateral and multilateral agreements, specifically, trade agreements.

The objects of the Bill are therefore to:

- define the general principles for the treatment of personal data; and
- provide for transparent oversight that will enable the public and private sectors to strengthen the protection of personal data.

***Mister Speaker I will now turn to the clause-by-clause presentation.***

### **Clause 1**

Mister Speaker, clause 1 establishes the short title of the Bill, that is, "*The Data Protection Act, 2020*" and notes that same shall come into operation on a day appointed by the Minister by notice published in the Gazette. It also makes provision for different days to be appointed for different provisions of the Bill and different types of personal data.

### **Clause 2**

Mister Speaker, clause 2 seeks to introduce definitions for terms used throughout the Bill. For example, "biometric data", "data controller"; "data subject"; "personal data"; "processing" and "sensitive personal data".

For the purposes of the legislation Mister Speaker, a "data controller" is the person or public authority who, either alone or jointly with others, determines the purpose and the manner in which personal data is or is to be processed

as well as the person on whom an obligation is placed by law to process same.

A “data subject” is a named or otherwise identifiable individual who is the subject of personal data.

“Personal data” means information (however stored) relating to a living individual, or an individual who has been deceased for less than thirty (30) years, who can be identified from that information alone or from that information and other information in the possession of, or likely to come into the possession of, the data controller.

### **Clause 3**

Mister Speaker, clause 3 indicates that the Bill is applicable to the processing of personal data by data controllers:

- a) who are established in Jamaica or anywhere that Jamaican law is applicable by virtue of international public law; or
- b) who, although not established in Jamaica,
  - i. uses equipment located in the island for the processing of personal data (otherwise than for transit through Jamaica); or
  - ii. processes personal data of an individual in Jamaica, and the processing activities are:–
    - related to the offering of goods or services to individuals in Jamaica, regardless of whether a fee is required; or
    - related to the monitoring of the behaviour of individuals insofar as their behaviour takes place within Jamaica.

The clause also:

- defines “established in Jamaica” as including residency or incorporation under the laws of Jamaica; and
- requires a data controller established outside of Jamaica to appoint a representative established in Jamaica.

## **Clause 4**

Mister Speaker, clause 4 of the Bill establishes the Office of the Information Commissioner (“the Commissioner”) as a body corporate in accordance with the Interpretation Act and outlines the duties of the Commissioner. These duties include:

- a) monitoring compliance with the legislation and attendant regulations;
- b) providing advice to the Minister;
- c) disseminating information to the public concerning, among other things, the operation of the legislation; and
- d) preparing and disseminating, directing the preparation and dissemination, or encouraging the preparation and dissemination of guidelines that promote good practice.

To enable supervision of the Commissioner in the performance of his/her duties, the clause provides for the establishment of a Data Protection Oversight Committee.

## **PART II - Rights of Data Subjects and Others**

Mister Speaker, Part Two of the Bill, which encompasses clauses 5 to 13, establishes the rights of data subjects regarding their personal data.

## **Clause 5**

Clause 5 Mister Speaker, specifies the individuals who are empowered to exercise the rights conferred by the legislation on behalf of another individual.

In the case of a minor, his/her rights can be exercised by a parent or legal guardian, or by the minor, himself/herself, in any case where the law recognises the capacity of the minor to act in the matter to which the data relates.

The rights of an individual with a mental infirmity may be exercised by the

person's nearest relative, within the meaning of section 3(3) of the Mental Health Act, while the rights of any other individual may be exercised by their legal personal representative or any individual to whom he/she delegates, in writing, the power to so do.

## **Clause 6**

Mister Speaker, clause 6 establishes the right of an individual to access his/her personal data. Upon making a written request to a data controller an individual:

- a) is entitled to be informed, free of charge, whether the data controller is processing personal data related to him/her, and if so, to be provided with:
  - a description of the data;
  - the purpose or purposes for which same are being processed; and
  - the person or persons to whom the data have been or may be disclosed.
- b) is entitled, upon the payment of a fee, to be provided, in an intelligible form, with the data that relates to him/her.
- c) is entitled, upon the payment of a fee and where technically feasible, to have the data transmitted to another data controller specified in the request. This Mister Speaker, is the right of data portability.
- d) is entitled to be informed, upon the payment of a fee, of the logic involved in a decision, where the processing:
  - is by automatic means for the purpose of evaluating matters such as the work performance and credit worthiness of the individual; and

- is, or is likely, to be the sole basis for any decision significantly affecting the individual.

The data controller is required to comply with an access request promptly, but no later than thirty (30) days, or such longer maximum period as may be prescribed.

### **Clause 7**

Mister Speaker, clause 7 addresses the manner in which and the extent to which information requested under clause 6 is to be provided. It takes into account the need to provide the data in a form that would render the information readily accessible to persons with a disability.

### **Clause 8**

Mister Speaker, clause 8 addresses the grounds on which the data controller is allowed to refuse an access request made pursuant to clause 6. The grounds include:

- a) where the data controller requires further information to satisfy himself as to the identity of the individual making the request and to locate the information requested;
- b) where disclosing the information may involve disclosing information relating to another individual and the consent of that individual has not been obtained, or it is not reasonable to disclose the information without consent;
- c) where the request is identical or similar to a previous request and a reasonable interval has not elapsed since compliance with the previous request; and
- d) where disclosing the logic for any decision would constitute disclosure of a trade secret.

## **Clause 9**

Mister Speaker, clause 9 outlines what “consent” means when same is required to enable processing of personal data. In this regard,

- it is defined as any “*informed, specific, unequivocal, freely given, expression of will*” by which a data subject agrees to the processing of his/her personal data; and
- it includes any consent given by an individual acting on behalf of the data subject, a minor, or a person with a mental impairment.

## **Clause 10**

Mister Speaker, clause 10 establishes the right to prevent direct marketing. In this regard a data controller is prevented from processing personal data for the purpose of direct marketing unless the data subject gives consent, or is a customer of the controller.

“Direct marketing” occurs when a data subject is approached personally or by any means of communication (whether electronic or otherwise) for the direct or indirect purpose of:

- a) promoting or offering to supply, in the ordinary course of business, any goods or services; or
- b) requesting a donation of any kind for any reason.

Mister Speaker, a data controller is precluded from approaching a data subject more than once in order to request his/her consent.

Where the data subject is a customer of the data controller, his/her personal data may only be processed:

- a) if his/her contact details were obtained in the context of the sale of any goods or services;
- b) for the purpose of direct marketing the controller’s own similar goods or services; and

- c) if the data subject has been given a reasonable opportunity to object, free of charge and without unnecessary formality, to such use-
  - (i) at the time the personal data was collected; and
  - (ii) on the occasion of each communication with the data subject for the purpose of direct marketing if the data subject has not refused such use.

### **Clause 11 – Right to prevent processing**

Mister Speaker, clause 11 gives data subjects the right to prevent the processing of data in certain specified circumstances. These circumstances include:

- a) where the processing is causing or likely to cause substantial damage or distress and the damage or distress caused or likely to be caused is unwarranted;
- b) where the data is incomplete or irrelevant;
- c) where the processing of the data for that purpose is prohibited by law; and
- d) where the data has been retained for longer than required by the law.

A data controller who receives a notice to cease or not to begin processing must give effect to same within twenty-one (21) days of receiving the notice, and provide a written statement of the action taken.

Mister Speaker, processing cannot be prevented in certain instances. These include where:

- a) consent has been given by the data subject;
- b) processing is necessary for the performance of a contract or taking steps to enter into a contract;
- c) processing is necessary for complying with legal obligations imposed on the data controller;
- d) the data subject has published the data concerned; and
- e) processing is necessary to protect the vital interest of the data subject.

## **Clause 12**

Clause 12 Mister Speaker, entitles a data subject to request that a data controller ensures that no decision which would significantly affect him/her is taken solely on the basis of the results of automated processing. These decisions include, matters related to the evaluation of the data subject's work performance, credit worthiness, reliability or conduct.

If the data controller has received no notice to that effect from the data subject, the controller is obliged to inform the data subject that the decision was based on automated processing. The data subject then has thirty (30) days to request in writing that the decision be reconsidered or be made using non-automated processing. The data controller then has thirty (30) days to respond to the data subject's request.

Mister Speaker it is to be noted that there are exemptions to this right. The request can be denied if, for example,

- the decision is authorised or required by law;
- the decision is made in the course of considering whether to enter into a contract or performing a contract; or
- the effect of the decision is to grant a request of the data subject.

## **Clause 13**

Mister Speaker clause 13 provides that an individual may in writing to a data controller, request that the controller rectify any inaccuracy in any data in its possession or control and of which the individual is the data subject.

The data controller has thirty (30) days to determine whether a rectification is required and to notify the individual of the manner in which his/her request was handled.

### **PART III - Requirements for Data Controllers**

Mister Speaker, Part Three of the Bill, which encompasses clauses 14 to 20, outlines the requirements that data controllers are obliged to meet.

#### **Clauses 14, 15, 16, 17 and 18**

Mister Speaker, clauses 14 to 18 address the issue of registration. In this regard, **clause 15** prevents a data controller from processing personal data unless the registration particulars of that data controller are included in the Register to be maintained by the Commissioner.

The “registration particulars” that are to be provided are outlined in **clause 16** and include:

- a) the data controller's name, address and other relevant contact information;
- b) a description of the personal data being or to be processed and the category or categories of data subjects to which they relate;
- c) a description of the purpose or purposes of the processing;
- d) a description of any person or persons to whom the controller intends or wishes to disclose the data;
- e) the names of any countries to which the controller directly or indirectly transfers, intends to, or wishes to directly or indirectly transfer the data; and
- f) a general description of the technical and organisational measures to be taken to ensure security of processing.

Mister Speaker, it is to be noted that the Minister, after consultation with the Commissioner and subject to affirmative resolution, may designate the processing or the data controllers that are not required to register. However, processing that are so designated must be processing that are unlikely to prejudice the rights and freedoms of data subjects.

It is to be further noted that if a data controller, who has not provided the registration particulars, is requested in writing to do so, the controller shall make the particulars available to the person free of charge, within thirty (30) days after receiving the request.

It is an offence to fail to provide the registration particulars when requested and in this regard, a data controller can be liable upon conviction to a fine not exceeding \$1,000,000.

Mister Speaker, **clause 17** mandates the Commissioner to maintain a register of data controllers who have provided the registration particulars required under clause 16. An annual fee is required for the maintenance of the required particulars of controllers in the Register.

**Clause 18** Mister Speaker, makes it an offence to process data without registering, where registration is required. The offence attracts a fine of \$2,000,000 or imprisonment for a term not exceeding six (6) months.

### **Clause 19**

Mister Speaker, clause 19 empowers the Minister to designate, by order subject to affirmative resolution, certain processing as “specified processing”, that is, processing which is likely to cause substantial damage or distress or to otherwise significantly prejudice the rights and freedoms of data subjects.

The clause requires the Commissioner to assess whether processing being undertaken by a data controller is “specified processing” and to communicate the outcome of his assessment to the controller within thirty (30) days or such longer period as determined by the Commissioner.

It is an offence, Mister Speaker, to carry out specified processing without providing the registration particulars and without receiving a notification from the Commissioner. An individual convicted, upon summary conviction, of this offence can be liable to a fine not exceeding \$5,000,000 or imprisonment for

a term not exceeding five (5) years and on conviction on indictment, to a fine or to imprisonment for a term not exceeding ten (10) years.

## **Clause 20**

Clause 20 Mister Speaker, makes provision for the appointment by data controllers of an appropriately qualified person as a data protection officer. The officer is responsible for monitoring, in an independent manner, the data controller's compliance with the provisions of the legislation.

The functions of the data protection officer include:

- a) consulting with the Commissioner to resolve any doubt about how the provisions of the legislation, and any regulations made thereunder, are to be applied;
- b) ensuring that any contravention of the data protection standards or any provisions of the legislation by the data controller is dealt with; and
- c) assisting data subjects in the exercise of their rights.

Mister Speaker, not every data controller will be required to appoint a data protection officer. Those that are required are:

- public authorities;
- controllers that process or intend to process sensitive personal data or data relating to criminal convictions;
- controllers that process personal data on a large scale; and
- controllers that are designated by the Commissioner as requiring a data protection officer.

The data controllers that are specifically exempt are those who:

- process personal data only for the purpose of a public register; and
- are non-profit organisations established for political, philosophical, religious or trade union purposes.

## **Part IV - Standards for Processing Personal Data**

Mister Speaker, Part Four of the Bill, which covers clauses 21 to 31, establishes eight (8) standards that data controllers will be required to adhere to for the protection of personal data.

### **Clause 21**

Clause 21 imposes a duty on data controllers to comply with the data protection standards. A controller who processes personal data in contravention of any of the data protection standards or any of the provisions of Part Four shall be liable:

- a) upon summary conviction, to a fine not exceeding \$2,000,000 or to imprisonment for a term not exceeding two (2) years; or
- b) upon conviction on indictment, to a fine or to imprisonment for a term not exceeding seven (7) years.

Mister Speaker, data controllers are required to notify the Commissioner of any contravention of the standards and/or any security breach which affects or may affect personal data, within 72 hours after becoming aware of the contravention or breach. They are also required to notify each data subject, within such time as prescribed, of the contravention or security breach upon becoming aware of, or having reason to become aware of same.

### **Clauses 22, 23 and 24**

Mister Speaker, clauses 22 to 24 address the first standard, which is, personal data shall be processed fairly and lawfully.

The standard essentially considers the method by which personal data are collected. In this regard, the data must not have been obtained by deception or misleading the individual as to the purpose for which the data is being collected.

In ensuring that personal data is processed fairly, at least one of the conditions set out in **clause 23** must be present, that is,

- a) the data subject has given consent;
- b) the processing is necessary for the performance of or entering into a contract;
- c) the processing is necessary for complying with legal obligations imposed on the data controller;
- d) the processing is necessary for protecting the vital interest of the data subject;
- e) the processing is necessary for the administration of justice, or the exercise of any functions of a public nature to be exercised in the public interest; and
- f) the data subject has published the data concerned.

**Clause 24** Mister Speaker, outlines additional conditions, one of which must be present, when processing sensitive personal. On such condition is that the data subject has given his/her written consent.

### **Clause 25**

Mister Speaker, clause 25 establishes the second data protection standard, which is, personal data shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with those purposes.

### **Clause 26**

Mister Speaker, clause 26 provides for the third data protection standard, which is, personal data shall be adequate, relevant and limited to what is necessary for the purposes for which they are processed.

## **Clause 27**

Clause 27 Mister Speaker, establishes the fourth data protection standard, which is, data shall be accurate and, where necessary, kept up to date.

## **Clause 28**

Mister Speaker, clause 28 provides for the fifth data protection standard, which is, personal data shall not be kept for longer than is necessary for the purpose and shall be disposed of in accordance with regulations made under clause 74 of the legislation.

## **Clause 29**

Clause 29 Mister Speaker, establishes the sixth data protection standard, which is, personal data shall be processed in accordance with the rights of data subjects as established under the legislation.

## **Clause 30**

Mister Speaker, clause 30 provides for the seventh data protection standard, which is, that appropriate technical and organisational measures shall:

- be taken against unauthorised or unlawful processing and accidental loss or destruction of, or damage to, personal data; and
- be taken to ensure that the Commissioner is notified, without undue delay, of any breach of the data controller's security measures which affect or may affect any personal data.

The clause also provides guidance on the types of technical and organisational measures that can be taken and the requirements that must be met where processing is carried out by a data processor on behalf of a data controller.

Mister Speaker, it is an offence to wilfully and without lawful authority, breach any pseudonymisation or encryption applied to any personal data. A person so convicted shall be liable before a Parish Court, to a fine not exceeding \$2,000,000 or before a Circuit Court, to a fine.

### **Clause 31**

Mister Speaker, clause 31 establishes the eighth and final data protection standard, which is, personal data shall not be transferred to a state or territory outside of Jamaica unless that state or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

The adequacy of the protection is determined by a list of factors which includes:-

- the nature of the personal data;
- the state or territory of origin or final destination of the personal data;
- the purposes for which and the period during which the personal data are intended to be processed;
- the law in force in the state or territory in question; and
- the security measures taken in relation to personal data in the destination state or territory.

Mister Speaker, it should be noted that there are exceptions to this standard.

The exceptions include:

- where the data subject consents to the transfer;
- where the transfer is necessary for reasons of substantial public interest; and
- where the transfer is for the purposes of national security or the prevention, detection or investigation of crime.

Mister Speaker, the clause permits the Minister, by order published in the Gazette, to prescribe the states and territories which shall be taken to have an adequate level of protection.

## **PART V - Exemptions to Data Protection Standards or to Disclosure to Data Subject Requirements**

Mister Speaker, Part Five, which comprises clauses 32 to 43, examines the instances in which a data controller will not be required to comply with certain provisions of the legislation.

### **Clause 32**

Clause 32 Mister Speaker, represents the interpretation clause for this Part Five. It notes that the “disclosure to data subject requirements” shall have effect notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding, of information.

“Disclosure to data subject requirements” means the information which data controllers are required to provide to data subjects pursuant to clauses 22(6) and the data subject’s right of access under clause 6.

### **Clause 33**

Clause 33 Mister Speaker, empowers the Minister of national security, after consultation with the Minister of technology, to issue certificates, exempting any personal data from all or any of the provisions of the data protection standards; Parts 2, 3 and 6; and clause 61.

The certificate must, among other things, identify the personal data to which it applies and specify the provisions of the legislation from which the data is exempt.

In a case where an appeal is made against the issuing of a certificate and it is found that the Minister did not have reasonable grounds for issuing same, the Court may allow the appeal and quash the certificate.

### **Clause 34**

Mister Speaker, clause 34 provides that personal data processed for:

- the prevention, detection or investigation of crime;
- the apprehension or prosecution of offenders;
- the assessment or collection of any tax or duty,

are exempted from the first data protection standard (that is, data shall be processed fairly and lawfully); clause 6 (regarding the right of access to personal data); and the “non-disclosure provisions”.

The “non-disclosure provisions” are:

- a) the first data protection standard, except to the extent that disclosure is required for compliance with the conditions outlined in clauses 23 and 24;
- b) the second to fifth data protection standards;
- c) clause 11(right to prevent processing); and
- d) clause 3(3) and 13(4) (rectification of inaccuracies).

Mister Speaker, personal data processed for the purpose of discharging statutory functions are exempt from the “disclosure to data subject requirements”.

### **Clause 35**

Mister Speaker, clause 35 exempts from the “disclosure to data subject requirements” personal data processed for the purposes of discharging, among others:

- a function conferred by law;

- a function of a public nature;
- a function designed to protect the public from maladministration by public authorities.

### **Clause 36**

Mister Speaker, clause 36 provides that personal data which are processed **only** for special purposes (that is, journalism, artistic or literary purposes) are exempt from:

- all the data protection standards, except the seventh standard (which relates to security safeguards);
- clause 6
- clause 11
- clause 12 (regarding rights in relation to automated decision taking); and
- clause 13(3) and 13(4).

Mister Speaker, the exemption is applicable if:

- the processing is with a view to publishing any journalistic, literary or artistic material;
- the publication would be in the public interest; and
- in all the circumstances, compliance with the previously mentioned provisions of the legislation would be incompatible with the special purposes.

### **Clause 37**

Clause 37 Mister Speaker, offers exemptions for personal data which are processed only for research purposes (which includes statistical and historical purposes) provided the following relevant conditions are met:

1. That the data are not processed to support measures or decisions regarding particular individuals; and

2. That the data are not processed in such a way that substantial damage or distress is, or is likely to be, caused to any data subject.

Where the conditions are satisfied:

- the processing will not be regarded as incompatible with the second data protection standard, that is, the purpose limitation standard;
- the personal data can be kept indefinitely, notwithstanding the terms of the fifth data protection standard, that is, the retention limitation standard; and
- the personnel data are exempt from clause 6 (right of access to personal data), provided also that the results of the research or any resulting statistics are not made available in a form which identifies data subjects.

With respect to processing for archival and historical purposes a data controller may disclose personal data if the relevant conditions are met and—

- a) the personal data relates to an individual who has been deceased for thirty (30) years or such number of years as prescribed; or
- b) the personal data are in a record which has been in existence for thirty (30) years or such number of years as may be prescribed.

### **Clause 38**

Mister Speaker, clause 38 exempts personal data consisting of information which the data controller is obliged under any enactment to make available to the public from:

- the disclosure to data subject requirements;
- the fourth data protection standard (which speaks to data being accurate and kept up to date);
- clause 13(3) and (4); and
- the non-disclosure provisions.

### **Clause 39**

Clause 39 Mister Speaker, provides for exemption from the non-disclosure provisions where disclosure:

- is required by or under any law, by any rule of law or by the order of a court;
- is necessary for the purpose of, or in connection with legal proceedings (including prospective legal proceedings); and
- is necessary for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

### **Clause 40**

Mister Speaker, clause 40 exempts personal data from certain provisions of the legislation if the exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

The exemptions would relate to:

- the first data protection standard (except to the extent that consent from the data subject is required);
- the second to fifth data protection standard; and
- clauses 6, 11, and 13(3) and 13(4).

### **Clause 41**

Clause 41 Mister Speaker, exempts personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes) from the data protection standards and the provisions of Parts 2 and 3 of the Bill.

## **Clause 42 and the Second Schedule**

Mister Speaker, **clause 42** provides for other miscellaneous matters that are exempt from certain provisions of the Bill. Those matters are outlined in the **Second Schedule** and include exemptions for:

- a) confidential references given by the data controller;
- b) personal data that would prejudice the combat effectiveness of the Jamaica Defence Force;
- c) personal data processed for the purposes of making appointments of judges and Queen's Counsel, and the conferring of honours or awards;
- d) personal data processed for corporate finance services;
- e) personal data concerning which legal professional privilege could be claimed; and
- f) circumstances in which, by granting access, a person would incriminate himself in respect of an offence other than one under the Bill.

## **Clause 43**

Mister Speaker, clause 43 empowers the Minister to, by order, exempt from the "disclosure to data subject requirements", personal data, the disclosure of which is statutorily prohibited or restricted, if the Minister considers it necessary for safeguarding the interests of the data subject or the rights and freedoms of any other individual.

## **Part VI - Enforcement**

Mister Speaker Part Six, which encompasses clauses 44 to 55, makes provision for the Commissioner to issue enforcement, assessment or information notices.

## **Clause 44**

Clause 44 Mister Speaker, empowers the Commissioner to issue enforcement notices in instances where the Commissioner is satisfied that a data controller has contravened, or is contravening, any of the data protection standards.

The Commissioner should consider whether the contravention has caused or is likely to cause any individual damage or distress at the point when deciding to serve an enforcement notice.

The notice issued may require the data controller to:

- take or refrain from taking specific steps within a specified time;
- refrain from processing any personal data or personal data of a specified description; or
- refrain from processing data for a specific purpose or in a specific manner, after a specified time.

Compliance with an enforcement notice is not required until the expiration of the period within which an appeal can be brought. If there is an appeal, the notice need not be complied with pending the determination or withdrawal of the appeal.

Notwithstanding, compliance with the notice will be required if the Commissioner includes a statement to the effect that by reason of special circumstances the enforcement notice should be complied with and specifies a time, no less than seven (7) days, within which compliance is required.

## **Clause 45**

Mister Speaker clause 45 imposes an obligation on a data controller, unless exempted, to submit to the Commissioner annually a data protection impact assessment regarding all data in its custody and control.

Upon receipt of the data protection impact assessment, the Commissioner must review and issue directions to the data controller, where appropriate, regarding amendments to the controller's system of operations or activities or the implementation of other recommendations.

Additionally, the clause outlines the information that must be contained in the data protection impact assessment and empowers the Commissioner to specify, by notice published in the Gazette, the classes of personal data or data controllers which are required or not required to submit a data protection impact assessment.

### **Clause 46**

Mister Speaker, clause 46 enables any person who is, or believes himself to be, directly affected by any processing of personal data, to require the Commissioner to carry out an assessment of whether the legislation is being complied with.

Following his/her assessment, the Commissioner is required to notify the individual whether an assessment has been made and, if appropriate, the conclusion formed or action taken as a result of the request.

### **Clauses 47 and 48**

Mister Speaker, clauses 47 and 48 address the issuing of assessment notices.

Assessment notices may be served, pursuant to **clause 47**, for the purpose of enabling the Commissioner to determine whether the data controller is complying with the data protection standards.

The notice may require the data controller to, among other things,

- permit entry to any specified premises;

- assist the Commissioner to view any information of a specified description;
- provide a copy or copies of any of the documents viewed;
- permit the Commissioner to inspect or examine any of the documents, information, equipment or material; and to observe the processing of any personal data that takes place on the premises; and
- make available for interview such specified persons as are required.

Mister Speaker, **clause 48** indicates that the requirement imposed by an assessment notice will not have effect so far as compliance with same would result in the disclosure of any communication that is subject to legal professional privilege or would expose a person to proceedings for an offence by revealing evidence of the commission of that offence.

Additionally, an assessment notice cannot be served on a member of the judiciary or bodies falling within the definition of “security or intelligence services” under the Access to Information Act.

Mister Speaker, the Commissioner is required to issue a code of practice regarding the manner in which he/she will exercise his/her power to prepare and issue assessment notices.

### **Clause 49**

Mister Speaker clause 49, enables the Commissioner to serve an information notice on a data controller where he/she requires that certain specified information be furnished.

The notice may be served where the Commissioner, among other things:

- has received a request from a data subject for an assessment in relation to a data controller’s compliance with the legislation; or
- requires the information in order to determine whether a data controller is complying with the legislation.

Mister Speaker, it is to be noted that a person cannot be required to furnish the Commissioner with any information that is subject to legal professional privilege or that would expose him/her to proceedings for an offence by revealing evidence of the commission of that offence.

### **Clause 50**

Clause 50 empowers the Commissioner to make a determination as to whether personal data are not being processed:

- only for special purposes (that is, artistic, literary and journalistic purposes); or
- with a view to the publication of any journalistic, literary or artistic material.

Notice of the determination must be given to the data controller concerned and contain the particulars of the right of appeal.

The determination does not take effect until the end of the period within which an appeal can be brought and, where an appeal is brought, shall not take effect pending the determination or withdrawal of the appeal.

### **Clause 51**

Mister Speaker, clause 51 prevents the Commissioner from serving an enforcement notice where processing is being carried out for special purposes, unless:

- a determination whether personal data are not being processed only for special purposes or with a view to publication has taken effect; and
- the Court has granted leave for the notice to be served.

In order to grant leave, the Court must be satisfied that:

- a) the Commissioner has reason to suspect a contravention of the data protection standards which is of substantial public importance; and

- b) except where the case is one of urgency, that the data controller has been given, in accordance with rules of court, notice of the application for leave.

### **Clause 52**

Clause 52 provides that anyone who fails to comply with an enforcement, assessment or information notice commits an offence. In addition, a person who, makes a false statement or recklessly makes a statement which is false in a material respect in purported compliance with an information or an assessment notice, also commits an offence.

A person who has been charged with the aforementioned offences may be liable to a fine not exceeding \$1,000,000.

### **Clauses 53 and 54**

Mister Speaker, clauses 53 and 54 address the data controller's right of appeal. In this regard, a controller who has been served with an information, enforcement or assessment notice has the right to appeal to the Court against the notice.

The Court upon consideration, may allow or dismiss an appeal; substitute, cancel or vary the notice; or quash the determination of the Commissioner.

### **Clause 55**

Mister Speaker clause 55 and the Third Schedule empower the Commissioner to enter and inspect premises.

## **PART VII - Miscellaneous and General**

Mister Speaker, Part Seven, which encompasses clauses 56 to 77, makes provision for general matters relating to the operation of the Bill.

## **Clause 56**

Clause 56 requires the Commissioner to lay an annual report, and such other reports, as deemed necessary, before the Houses of Parliament.

Guidelines prepared by the Commissioner are also required to be laid before the Houses of Parliament.

## **Clauses 57 and 58**

Mister Speaker, clauses 57 and 58 treat with the matter of a data sharing code. In this regard, **clause 57** mandates the Commissioner to prepare and submit to the Minister, after the requisite consultations, a data sharing code containing practical guidance in relation to the sharing of personal data.

If the code is found to be in order, same shall be tabled before the Houses of Parliament for affirmative resolution. If found not to be in order, the Commissioner is required to prepare another code of practice.

Mister Speaker, it is to be noted that pursuant to **clause 58**, the failure on the part of any person to act in accordance with any provision of the data sharing code does not of itself render that person liable to any legal proceedings in any court or tribunal.

## **Clause 59**

Mister Speaker, clause 59 enables an individual who is an actual or prospective party to a proceeding regarding personal data processed for journalistic, literary or artistic purposes, to apply to the Commissioner for assistance in relation to that proceeding.

## **Clause 60**

Clause 60 Mister Speaker, empowers the Minister, after consultation with the Minister responsible for foreign affairs, to make regulations regarding co-operation between the Commissioner and authorities responsible for data protection in other countries.

## **Clause 61**

Mister Speaker clause 61, creates three (3) offences.

Firstly, an offence is committed if a person knowingly or recklessly, without the consent of the data controller concerned,

- a) obtains or discloses personal data, or any information contained therein; or
- b) procures the disclosure to another person of any information contained in personal data.

This offence will not be held to have been committed if the person is able to show, among others, that the obtaining, disclosing or procuring:

- was required or authorised by or under any law, by any rule of law, or by a court order; or
- was justified in the public interest.

Secondly, it is an offence to sell personal data which was obtained or procured without the data controller's consent.

Finally, an offence is committed if a person offers to sell, by advertisement or otherwise, personal data which was obtained or procured without the data controller's consent.

A person who commits any of these offences is liable:

- a) upon summary conviction in a Parish Court to a fine not exceeding \$5,000,000 or to imprisonment for a term not exceeding five (5) years; or
- b) upon conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding ten (10) years.

## **Clause 62**

Mister Speaker, clause 62 makes provision for the serving of fixed penalty notices if the Commissioner is satisfied:

- a) that a data controller has committed an offence to which the clause applies;
- b) that the contravention was of a kind likely to cause substantial damage or distress; and
- c) that the contravention was deliberate, or the data controller knew or ought to have known that there was a risk that the contravention would occur; and that same was likely to cause substantial damage or distress.

A data controller is not liable to be convicted of an offence if the fixed penalty is paid and requirements respecting which the offence was committed is complied with.

## **Clause 63 and the Fourth Schedule**

Mister Speaker **clause 63**, makes it an offence to require the production or supply of certain records as a condition of the provision of goods, facilities or services, unless the person can show that the imposition of the requirement was authorised by law or a court order, or was justified as being in the public interest.

The records to which the clause applies are outlined in the **Fourth Schedule** of the Bill and include convictions and returns of persons convicted of

criminal offences.

Upon conviction for this offence, a person shall be liable-

- a) to a fine not exceeding \$2,000,000 or to imprisonment for a term not exceeding two (2) years, upon summary conviction in a Parish Court;  
or
- b) to a fine or to imprisonment for a term not exceeding five (5) years, upon conviction on indictment.

### **Clause 64**

Mister Speaker, clause 64 deems void any contractual term or condition which requires an individual to produce or supply any health record or part thereof.

### **Clause 65**

Clause 65 Mister Speaker, provides for disclosure of information to the Commissioner or the Appeal Tribunal for the discharge of their functions under the Bill, unless:

- the disclosure is precluded under any law or rule of law;
- the information is protected from disclosure by legal professional privilege; or
- the disclosure would be self-incriminating.

### **Clause 66**

Mister Speaker clause 66, prevents the Commissioner and staff of the Office from disclosing any information obtained under or for the purpose of the legislation or that relates to an identified or identifiable individual or business, unless the disclosure is made with lawful authority.

Where a person knowingly or recklessly discloses information he/she shall be liable—

- upon summary conviction in a Parish Court, to a fine not exceeding \$2,000,000 or to imprisonment for a term not exceeding two (2) years; or
- upon conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding ten (10) years.

### **Clause 67**

Clause 67 Mister Speaker, makes provision for the institution of proceedings for an offence under the legislation by the Director of Public Prosecutions (DPP) or the Commissioner with the consent of the DPP.

### **Clause 68**

Mister Speaker, clause 68 provides for the liability of directors, managers, secretaries and other similar officers where a body corporate commits an offence. In this regard, a body corporate may be liable to a fine not exceeding 4% of its annual gross worldwide turnover for the preceding year of assessment in accordance with the Income Tax Act.

### **Clause 69**

Clause 69 Mister Speaker, provides for a person who suffers damage or distress, by reason of any breach of the legislation by a data controller, to receive compensation from the data controller.

### **Clause 70**

Clause 70 Mister Speaker, establishes a right of appeal to an Appeal Tribunal for persons aggrieved by a decision taken by the Commissioner, save and except, decisions regarding enforcement, assessment and information notices.

## **Clause 71**

Clause 71 Mister Speaker, specifies the manner in which notices authorised or required by the Bill are to be served by the Commissioner on natural or legal persons.

## **Clause 72**

Mister Speaker, clause 72 provides that the legislation binds the Crown. However, public authorities are exempt from liability to prosecution.

## **Clause 73**

Clause 73 Mister Speaker, indicates that the legalisation applies to the Houses of Parliament in respect of the processing of personal data and that the Clerk to the Houses is deemed to be the data controller for purpose of the legislation.

## **Clauses 74 and 75**

Mister Speaker, **clause 74** provides for regulations to be made for the better administration of the legislation, while **clause 75** empowers the Minister to, by order subject to affirmative resolution, amend any monetary penalty or fixed penalty imposed by the legislation.

## **Clause 76**

Clause 76 Mister Speaker, establishes a transition period of two (2) years to allow data controllers time to take the steps necessary to ensure full compliance with the legislation. Additionally, manually held data are exempted from certain provisions of the legalisation until a date appointed pursuant to clause 1 one of the Bill.

## **Clause 77**

Mister Speaker, clause 77 makes provision for the review of the legislation every five (5) years from the earliest day appointed pursuant to clause 1.

**Mister Speaker, I now turn very briefly to the Schedules in the Bill.**

### **FIRST SCHEDULE**

Mister Speaker the First Schedule is divided into two (2) Parts:

- **Part I** addresses the constitution of the office of the Information Commissioner and includes matters relating to appointment; tenure of office; remuneration; appointment of staff; seal of the Commissioner; funding; and protection from suit.
- **Part II** establishes a Data Protection Oversight Committee, the objective of which is hold the Commissioner accountable to the public in the performance of his/her functions under the Bill. In this regard, this Part speaks to, among other things:
  - ✓ the constitution and tenure of the Committee;
  - ✓ appointment thereto and removal and resignation therefrom;
  - ✓ its functions and powers;
  - ✓ procedures at meetings of the Committee;
  - ✓ remuneration and indemnity of the members; and
  - ✓ conflict of interest.

### **APPENDIX TO FIRST SCHEDULE**

The provisions of the Appendix to the First Schedule address the pension and other benefits to be paid to, or in respect of, a person who has held office as Commissioner.

## **SECOND AND FOURTH SCHEDULES**

Mister Speaker, I will not go into the details of the Second and Fourth Schedules as the provisions of same were addressed when the clauses to which they relate were considered.

## **THIRD SCHEDULE**

Mister Speaker, the Third Schedule outlines the procedures necessary to obtain and execute a warrant so as to enable the Commissioner:

- to enter and search premises;
- to inspect, examine, operate, and test any equipment found on the premises and which is used, or intended to be used, for the processing of personal data;
- to inspect and seize any documents;
- to require any person on the premises to provide such information as may reasonably be required for the purpose of determining whether the data controller has contravened, or is contravening, the data protection standards.

Mister Speaker, the Schedule specifically provides that the powers of inspection and seizure cannot be exercised in respect of:

- personal data which are exempt by virtue of a certificate issued by the Minister of National Security pursuant to clause 33; and
- any communication between an attorney-at-law and his client in connection with the giving of legal advice or in contemplation of proceedings under or arising out of this legislation.

## **FIFTH SCHEDULE**

Mister Speaker the Fifth Schedule addresses matters attendant to the Appeal Tribunal established pursuant to clause 70. These matters include:

- ✓ the constitution and tenure of the Tribunal;

- ✓ appointment thereto and removal and resignation therefrom;
- ✓ procedures at meetings of the Tribunal; and
- ✓ remuneration.

## **Conclusion**

Mister Speaker, as data is considered the “new gold” the passing of this Bill is critical to the Government’s attempt:

- to delineate the rights of individuals in relation to the processing of their personal and sensitive personal data; and
- to establish the parameters within which their data should be processed by data controllers in both the private and public sectors.

I therefore seek the support of the Members of this Honourable House in passing this Bill, subject to any amendments made here today.