

Data Protection Bill 2010

ARRANGEMENT OF SECTIONS

PART 1- DATA PROTECTION PRINCIPLES.....	5
PRINCIPLE 1: ACCOUNTABILITY	5
<i>Responsible party to give effect to principles.....</i>	<i>5</i>
PRINCIPLE 2: PROCESSING LIMITATION	5
<i>Lawfulness of processing</i>	<i>5</i>
<i>Minimality.....</i>	<i>5</i>
<i>Consent, justification and objection.....</i>	<i>5</i>
<i>Collection directly from data subject.....</i>	<i>6</i>
PRINCIPLE 3: PURPOSE SPECIFICATION	6
<i>Collection for specific purpose.....</i>	<i>6</i>
<i>Data subject aware of purpose of collection of information.....</i>	<i>6</i>
<i>Retention of records.....</i>	<i>6</i>
PRINCIPLE 4: FURTHER PROCESSING LIMITATION	7
<i>Further processing to be compatible with purpose of collection.....</i>	<i>7</i>
PRINCIPLE 5: INFORMATION QUALITY.....	8
<i>Quality of information.....</i>	<i>8</i>
PRINCIPLE 6: OPENNESS.....	8
<i>Notification to Regulator and to data subject.....</i>	<i>8</i>
PRINCIPLE 7: SECURITY SAFEGUARDS.....	9
<i>Security measures on integrity of personal information.....</i>	<i>9</i>
<i>Information processed by operator or person acting under authority.....</i>	<i>9</i>
<i>Security measures regarding information processed by operator</i>	<i>10</i>
<i>Notification of security compromises</i>	<i>10</i>
PRINCIPLE 8: DATA SUBJECT PARTICIPATION	11
<i>Access to personal information.....</i>	<i>11</i>
<i>Correction of personal information.....</i>	<i>11</i>
<i>Manner of access.....</i>	<i>12</i>
PART 2 – RIGHTS OF DATA SUBJECTS AND OTHERS.....	12
THE OFFICE OF DATA PROTECTION	12
20. RIGHT OF ACCESS TO PERSONAL DATA.....	12
21. WHERE DATA CONTROLLER IS A CREDIT REFERENCE BUREAU.....	15
PROCESSING OF SPECIAL PERSONAL DATA	16
PROHIBITION ON PROCESSING OF SPECIAL PERSONAL DATA.....	16
EXEMPTION CONCERNING DATA SUBJECT’S RELIGIOUS OR PHILOSOPHICAL BELIEFS	16
24. RIGHT TO PREVENT PROCESSING LIKELY TO CAUSE DAMAGE OR DISTRESS.....	16
25. RIGHT TO PREVENT PROCESSING FOR PURPOSES OF DIRECT MARKETING	17
26. RIGHTS IN RELATION TO AUTOMATED DECISION-TAKING.	17
27. RIGHTS OF DATA SUBJECTS IN RELATION TO EXEMPT MANUAL DATA.....	18
28. COMPENSATION FOR FAILURE TO COMPLY WITH CERTAIN REQUIREMENTS	19
29. RECTIFICATION, BLOCKING, ERASURE AND DESTRUCTION	19
30. THE APPLICATION OF THE BILL.....	21
PART 3 – THE DATA PROTECTION REGISTER.....	22
31. REGISTER OF DATA CONTROLLERS.....	22
32. APPLICATION FOR REGISTRATION.....	22
33. PARTICULARS TO BE FURNISHED.....	22
34. PROHIBITION ON PROCESSING WITHOUT REGISTRATION	23
35. NOTIFICATION BY DATA CONTROLLERS.....	23
36. REGISTER OF NOTIFICATIONS.....	24
37. DUTY TO NOTIFY CHANGES	25
38. OFFENCES	25
39. PRELIMINARY ASSESSMENT BY COMMISSION	25

Data Protection Bill 2010

40.	POWER TO MAKE PROVISION FOR APPOINTMENT OF DATA PROTECTION SUPERVISORS.....	26
41.	FUNCTIONS OF COMMISSION IN RELATION TO MAKING OF NOTIFICATION REGULATIONS	27
42.	FEES REGULATIONS	27
PART 4 – EXEMPTIONS		28
43.	PRELIMINARY	28
44.	NATIONAL SECURITY	28
45.	CRIME AND TAXATION	29
46.	HEALTH, EDUCATION AND SOCIAL WORK	29
47.	REGULATORY ACTIVITY	30
48.	JOURNALISM, LITERATURE AND ART	31
49.	RESEARCH HISTORY AND STATISTICS	32
50.	INFORMATION AVAILABLE TO THE PUBLIC BY OR UNDER ENACTMENT	33
51.	DISCLOSURES REQUIRED BY LAW OR MADE IN CONNECTION WITH LEGAL PROCEEDINGS ETC. 33	
52.	DOMESTIC PURPOSES	33
	<i>Miscellaneous exemptions.....</i>	<i>33</i>
	<i>Armed forces.....</i>	<i>34</i>
	<i>Judicial appointments and honours.....</i>	<i>34</i>
	<i>Civil and Public Service or Ministerial appointments.....</i>	<i>34</i>
	<i>Management forecasts etc.....</i>	<i>34</i>
	<i>Corporate finance.....</i>	<i>34</i>
	<i>Negotiations.....</i>	<i>35</i>
	<i>Examination marks.....</i>	<i>35</i>
	<i>Examination scripts etc.....</i>	<i>35</i>
	<i>Legal professional privilege.....</i>	<i>35</i>
	<i>Self-incrimination.....</i>	<i>36</i>
64.	POWERS TO MAKE FURTHER EXEMPTIONS BY ORDER	36
PART 5 – ENFORCEMENT		37
65.	ENFORCEMENT NOTICES	37
66.	CANCELLATION OF ENFORCEMENT NOTICE	38
67.	REQUEST FOR ASSESSMENT	38
68.	INFORMATION NOTICES	39
69.	SPECIAL INFORMATION NOTICES	40
70.	DETERMINATION BY COMMISSION AS TO THE SPECIAL PURPOSES	41
71.	RESTRICTION ON ENFORCEMENT IN CASE OF PROCESSING FOR THE SPECIAL PURPOSES.....	41
72.	FAILURE TO COMPLY WITH NOTICE	42
73.	POWERS OF ENTRY AND INSPECTION	42
PART 6 – MISCELLANEOUS AND GENERAL		43
	<i>Functions of Commission.....</i>	<i>43</i>
74.	GENERAL DUTIES OF COMMISSION	43
75.	REPORTS TO BE LAID BEFORE PARLIAMENT	43
76.	INTERNATIONAL CO-OPERATION	44
77.	UNLAWFUL OBTAINING ETC. OF PERSONAL DATA.....	44
	<i>Records obtained under data subject's right of access.....</i>	<i>45</i>
78.	PROHIBITION OF REQUIREMENT AS TO PRODUCTION OF CERTAIN RECORDS.....	45
79.	ANNUAL AVOIDANCE OF CERTAIN CONTRACTUAL TERMS RELATING TO HEALTH RECORDS.....	46
	<i>Information provided to Commission.....</i>	<i>46</i>
80.	DISCLOSURE OF INFORMATION	46
81.	CONFIDENTIALITY OF INFORMATION.....	46
	<i>General provisions relating to offences.....</i>	<i>47</i>
82.	LIABILITY OF DIRECTORS	47
83.	CREDIT REPORTING ACT.....	47
84.	APPLICATION TO THE STATE	48
85.	TRANSMISSION OF NOTICES ETC. BY ELECTRONIC OR OTHER MEANS.....	48
86.	SERVICE OF NOTICES BY THE COMMISSION.....	48

Data Protection Bill 2010

87. ORDERS, REGULATIONS AND RULES	49
88. TRANSITIONAL RELIEFS.....	49
MODIFICATIONS OF ACT.	49
89. COMING INTO EFFECT.....	49
90. INTERPRETATIONS.....	50

A BILL

ENTITLED

DATA PROTECTION BILL 2010

A Bill to make provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information and related matters.

ENACTED by the President and Parliament

PART 1- Data Protection Principles

Principle 1: Accountability

Responsible party to give effect to principles

1. The responsible party must ensure that the principles set out in this Part and all the measures that give effect to the principles are complied with.

Principle 2: Processing limitation

Lawfulness of processing

2. Personal data must be processed—

(a) lawfully; and

(b) in a reasonable manner that does not infringe the privacy of the data subject.

Minimality

3. Personal data may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.

Consent, justification and objection

4. (1) Personal data may only be processed if—

(a) the data subject consents to the processing;

(b) processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;

(c) processing complies with an obligation imposed by law on the responsible party;

(d) processing protects a legitimate interest of the data subject;

(e) processing is necessary for the proper performance of a public law duty by a public body; or

(f) processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the data is supplied.

(2) A data subject may object, at any time, on reasonable grounds relating to his, her or its particular situation, in the prescribed manner, to the processing of personal data in terms of sub-clause (1)(d) to (f), unless otherwise provided for in national legislation.

(3) If a data subject has objected to the processing of personal data in terms of subsection (2), the responsible party may no longer process the personal data.

Collection directly from data subject

5. (1) Personal data must be collected directly from the data subject, except as otherwise provided for in sub-clause (2).

(2) It is not necessary to comply with sub-clause (1) if—

(a) the information is contained in a public record or has deliberately been made public by the data subject;

(b) the data subject has consented to the collection of the information from another source;

(c) collection of the information from another source would not prejudice a legitimate interest of the data subject;

(d) collection of the information from another source is necessary—

(i) to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;

(ii) to enforce a law imposing a pecuniary penalty;

(iii) to enforce legislation concerning the collection of revenue as defined in

the Internal Revenue Service Act, 2000

(iv) for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated;

(v) in the legitimate interests of national security; or

(vi) to maintain the legitimate interests of the responsible party or of a third party to whom the information is supplied;

(e) compliance would prejudice a lawful purpose of the collection; or

(f) compliance is not reasonably practicable in the circumstances of the particular case.

Principle 3: Purpose specification

Collection for specific purpose

6. Personal data must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party.

Data subject aware of purpose of collection of information

7. Steps must be taken in accordance with clause 17(2) to ensure that the data subject is aware of the purpose of the collection of the information as referred to in clause 12.

Retention of records

8. (1) Subject to sub-clause (2) and (3), records of personal data must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless—

(a) retention of the record is required or authorised by law;

(b) the responsible party reasonably requires the record for lawful purposes related to its functions or activities;

(c) retention of the record is required by a contract between the parties thereto; or

- (d) the data subject has consented to the retention of the record.
- (2) Records of personal data may be retained for periods in excess of those contemplated in sub-clause (1) for historical, statistical or research purposes if the responsible party has established appropriate safeguards against the records being used for any other purposes.
- (3) A responsible party that has used a record of personal information of a data subject to make a decision about the data subject, must—
- (a) retain the record for such period as may be required or prescribed by law or a code of conduct; or
 - (b) if there is no law or code of conduct prescribing a retention period, retain the record for a period which will afford the data subject a reasonable opportunity, taking all considerations relating to the use of the personal information into account, to request access to the record.
- (4) A responsible party must destroy or delete a record of personal information or de-identify it as soon as reasonably practicable after the responsible party is no longer authorised to retain the record in terms of sub-clause (1) or (2).
- (5) The destruction or deletion of a record of personal information in terms of sub-clause (4) must be done in a manner that prevents its reconstruction in an intelligible form.

Principle 4: Further processing limitation

Further processing to be compatible with purpose of collection

9. (1) Further processing of personal information must be compatible with the purpose for which it was collected in terms of principle 3.
- (2) To assess whether further processing is compatible with the purpose of collection, the responsible party must take account of—
- (a) the relationship between the purpose of the intended further processing and the purpose for which the information has been collected;
 - (b) the nature of the information concerned;
 - (c) the consequences of the intended further processing for the data subject;
 - (d) the manner in which the information has been collected; and
 - (e) any contractual rights and obligations between the parties.
- (3) The further processing of personal information is compatible with the purpose of collection if—
- (a) the data subject has consented to the further processing of the information;
 - (b) the information is available in a public record or has deliberately been made public by the data subject;
 - (c) further processing is necessary—
 - (i) to avoid prejudice to the maintenance of the law by any public body including the prevention, detection, investigation, prosecution and punishment of offences;
 - (ii) to enforce a law imposing a pecuniary penalty;
 - (iii) to enforce legislation concerning the collection of revenue as defined in the Internal Revenue Service Act, 2000 (Act 592)
 - (iv) for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated; or
 - (v) in the legitimate interests of national security;
 - (d) the further processing of the information is necessary to prevent or mitigate a serious and imminent threat to—

- (i) public health or public safety; or
- (ii) the life or health of the data subject or another individual;
- (e) the information is used for historical, statistical or research purposes and the responsible party ensures that the further processing is carried out solely for such purposes and will not be published in an identified form; or
- (f) the further processing of the information is in accordance with an authority granted under any provisions of this Bill.

Principle 5: Information quality

Quality of information

10. (1) The responsible party must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary.
- (2) In taking the steps referred to in sub-clause (1), the responsible party must have regard to the purpose for which personal information is collected or further processed.

Principle 6: Openness

Notification to Regulator and to data subject

11. (1) Personal data may only be processed by a responsible party that has notified the Regulator in terms of Part 2.
- (2) If personal data is collected, the responsible party must take reasonably practicable steps to ensure that the data subject is aware of—
- (a) the information being collected;
 - (b) the name and address of the responsible party;
 - (c) the purpose for which the information is being collected;
 - (d) whether or not the supply of the information by that data subject is voluntary or mandatory;
 - (e) the consequences of failure to provide the information;
 - (f) any particular law authorising or requiring the collection of the information;
- and
- (g) any further information, such as the—
 - (i) recipient or category of recipients of the information;
 - (ii) nature or category of the information; and
 - (iii) existence of the right of access to and the right to rectify the information collected, which is necessary, having regard to the specific circumstances in which the information is or is not to be processed, to enable processing in respect of the data subject to be reasonable.
- (3) The steps referred to in sub-clause (2) must be taken—
- (a) if the personal data is collected directly from the data subject, before the information is collected, unless the data subject is already aware of the information referred to in that subsection; or
 - (b) in any other case, before the information is collected or as soon as reasonably practicable after it has been collected.
- (4) A responsible party that compiles or has compiled a manual and made it available in terms of the Right to Information Bill, does not have to comply with subsection (1) if all the particulars referred to in section 51 of this Bill are contained in the manual.
- (5) A responsible party that has previously taken the steps referred to in sub-clause (2) complies with sub-clause (2) in relation to the subsequent collection from the data subject

of the same information or information of the same kind if the purpose of collection of the information is unchanged.

- (6) It is not necessary for a responsible party to comply with sub-clause (2) if—
- (a) the data subject has provided consent for the non-compliance;
 - (b) non-compliance would not prejudice the legitimate interests of the data subject as set out in terms of this Act;
 - (c) non-compliance is necessary—
 - (i) to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
 - (ii) to enforce a law imposing a pecuniary penalty;
 - (iii) to enforce legislation concerning the collection of revenue as defined in Internal Revenue Service Act, 2000 (Act 592)
 - (iv) for the conduct of proceedings in any court or tribunal that have been commenced or are reasonably contemplated; or
 - (v) in the interests of national security;
 - (d) compliance would prejudice a lawful purpose of the collection;
 - (e) compliance is not reasonably practicable in the circumstances of the particular case; or
 - (f) the information will—
 - (i) not be used in a form in which the data subject may be identified; or
 - (ii) be used for historical, statistical or research purposes.

Principle 7: Security Safeguards

Security measures on integrity of personal information

12. (1) A responsible party must secure the integrity of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent—

- (a) loss of, damage to or unauthorised destruction of personal information; and
- (b) unlawful access to or processing of personal information.

(2) In order to give effect to sub-clause(1), the responsible party must take reasonable measures to—

- (a) identify all reasonably foreseeable internal and external risks to personal data in its possession or under its control;
- (b) establish and maintain appropriate safeguards against the risks identified;
- (c) regularly verify that the safeguards are effectively implemented; and
- (d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

(3) The responsible party must have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.

Information processed by operator or person acting under authority

13. An operator or anyone processing personal information on behalf of a responsible party or an operator, must—

- (a) process such information only with the knowledge or authorisation of the responsible party; and

(b) treat personal information which comes to their knowledge as confidential and must not disclose it, unless required by law or in the course of the proper performance of their duties.

Security measures regarding information processed by operator

14. (1) A responsible party must ensure that an operator, which processes personal information for the responsible party, establishes and maintains the security measures referred to in clause 18.

(2) The processing of personal data for a responsible party by an operator on behalf of the responsible party must be governed by a written contract between the operator and the responsible party, which requires the operator to establish and maintain confidentiality and security measures to ensure the integrity of the personal information.

(3) If the operator is not domiciled in the Republic, the responsible party must take reasonably practicable steps to ensure that the operator complies with the laws, if any, relating to the protection of personal information of the territory in which the operator is domiciled.

Notification of security compromises

15. (1) Where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person, the responsible party, or any third party processing personal information under the authority of a responsible party, must notify the—

(a) Regulator; and

(b) data subject, unless the identity of such data subject cannot be established.

(2) The notification referred to in sub-clause (1) must be made as soon as reasonably possible after the discovery of the compromise, taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the integrity of the responsible party's information system.

(3) The responsible party may only delay notification of the data subject if the Ghana Police Service, the Bureau of National Investigations or the Regulator determines that notification will impede a criminal investigation.

(4) The notification to a data subject referred to in sub-clause (1) must be in writing and communicated to the data subject in at least one of the following ways:

(a) Mailed to the data subject's last known physical or postal address;

(b) sent by e-mail to the data subject's last known e-mail address;

(c) placed in a prominent position on the website of the responsible party;

(d) published in the news media; or

(e) as may be directed by the Regulator.

(5) A notification must provide sufficient information to allow the data subject to take protective measures against the potential consequences of the compromise, including, if known to the responsible party, the identity of the unauthorised person who may have accessed or acquired the personal information.

(6) The Regulator may direct a responsible party to publicise, in any manner specified, the fact of any compromise to the integrity or confidentiality of personal data, if the Regulator has reasonable grounds to believe that such publicity would protect a data subject who may be affected by the compromise.

Principle 8: Data subject participation

Access to personal information

16. (1) A data subject, having provided adequate proof of identity, has the right to—
- (a) request a responsible party to confirm, free of charge, whether or not the responsible party holds personal data about the data subject; and
 - (b) request from a responsible party a description of the personal data about the data subject held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have,
 - or have had, access to the information—
 - (i) within a reasonable time;
 - (ii) at a prescribed fee, if any, that is not excessive;
 - (iii) in a reasonable manner and format; and
 - (iv) in a form that is generally understandable.
- (2) If, in accordance with sub-clause (1)(b), personal data is communicated to a data subject, the data subject must be advised of the right in terms of section 23 to request the correction of information.
- (3) If a data subject is required by a responsible party to pay a fee for services provided to the data subject in terms of sub-clause (1)(b) to enable the responsible party to respond to a request, the responsible party—
- (a) must give the applicant a written estimate of the fee before providing the services; and
 - (b) may require the applicant to pay a deposit for all or part of the fee.
- (4) A responsible party may or must refuse, as the case may be, to disclose any information requested in terms of sub-clause (1) to which the grounds for refusal of access to records set out in the applicable provisions of the Right to Information Bill apply.
- (5) If a request for access to personal data is made to a responsible party and part of that information may or must be refused in terms of sub-clause (4), every other part must be disclosed.

Correction of personal information

17. (1) A data subject may request a responsible party to—
- (a) correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or
 - (b) destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain in terms of clause 14.
- (2) On receipt of a request in terms of sub-clause (1) a responsible party must—
- (a) correct the information;
 - (b) destroy or delete the information;
 - (c) provide the data subject, to his or her satisfaction, with credible evidence in support of the information; or
 - (d) where agreement cannot be reached between the responsible party and the data subject, and if the data subject so requests, take such steps as are reasonable in the circumstances, to attach to the information in such a manner that it will always be read with the information, an indication that a correction of the information has been requested but has not been made.

(3) If the responsible party has taken steps under sub-clause (2) that result in a change to the information and the changed information has an impact on decisions that have been or will be taken in respect of the data subject in question, the responsible party must, if reasonably practicable, inform each person or body or responsible party to whom the personal information has been disclosed of those steps.

(4) The responsible party must notify a data subject, who has made a request in terms of sub-clause (1), of the action taken as a result of the request.

Manner of access

18. The provisions of the Right to Information Bill apply to requests made in terms of clauses 22 and 23 of this Bill.

Part 2 – Rights of data subjects and others

The Office Of Data Protection

19. (1) There is hereby established an office of Data Protection which shall operate as a department under the Commission on Human Rights and Administrative Justice hereafter referred to as the “Commission”.

(2) The Commission shall be responsible for monitoring compliance with the provisions of this Bill

(3) For purposes of this Bill the Commission shall make such administrative arrangements as it deems fit for the discharge of its function as provided for under the CHRAJ Act, Act456.

(4) The Commission shall upon receiving any complaint under this section investigate the matter and determine it as the Commission considers just.

(5) The provisions of the Commission on Human Rights and Administrative Justice Act 1993 (Act 456) and the Commission on Human Rights and Administrative Justice Complaint Procedure Regulations, 1994 (C.I 7) shall apply to this section with the necessary modification and adaptation

20. Right of access to personal data

(1) Subject to the following provisions of this section and to clauses 15 and 16, an individual shall be entitled-

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) the data controller, shall give to the individual a description of-

- (i) the personal data of which that individual is the data subject,
- (ii) the purposes for which they are being or are to be processed, and
- (iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form-

- (i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, and

(d) to be informed by the data controller of the logic involved in making that decision, where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, his performance at work, his creditworthiness, his reliability or his conduct and such processing has constituted or is likely to constitute the sole basis for any decision significantly affecting him.

(2) A data controller is not obliged to supply any information under subsection (1) unless he has received-

- (a) a request in writing, and
- (b) except in prescribed cases, such fee (not exceeding the prescribed maximum) as he may require.

(3) A data controller is not obliged to comply with a request under this section unless he is supplied with such information as he may reasonably require in order to satisfy himself as to the identity of the person making the request and to locate the information which that person seeks.

(4) Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, shall not be obliged to comply with the request unless-

- (a) the other individual has consented to the disclosure of the information to the person making the request, or
- (b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.

(5) The reference to information relating to another individual in sub-clause (4) includes a reference to information identifying that individual as the source of the information sought by the request; and that subsection shall not be construed as excusing a data controller from communicating so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission or deletion of names or other identifying particulars or otherwise.

(6) In determining for the purposes of sub-clause (4)(b) whether it is reasonable in all the circumstances to comply with the 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.

(7) An individual making a request under this section may, specify that his request is limited to personal data of any description.

(8) Subject to sub-clause (4), a data controller shall comply with a request under this section promptly and in any event before the end of forty days from the date of the receipt of the request.

(9) If a court is satisfied on the application of any person who has made a request under the foregoing provisions of this section that the data controller in question has failed to comply with the request in contravention of those provisions, the Commission on Human Rights and Administrative Justice may order him to comply with the request.

(10) The obligation imposed on a data controller to provide the data subject with information under this Bill, shall be fulfilled by this section and must be complied with by supplying the data subject with a copy of the information in permanent form unless-

- (a) the supply of such a copy is not possible or would involve disproportionate effort, or
- (b) the data subject agrees otherwise;

and where any of the information referred to in the section is expressed in terms which are not intelligible without explanation the copy must be accompanied by an explanation of those terms or where the information is expressed in any language other than English the explanation shall be provided in English.

(11) Where a data controller has previously complied with a request by a data subject made under section 7 by an individual, the data controller is not obliged to comply with a subsequent identical or similar request under that section by that individual unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

(12) In determining for the purposes of sub-clause (3) whether requests by a data subject for information held by a data controller under this section are made at reasonable intervals, regard shall be had to the nature of the data, the purpose for which the data are processed and the frequency with which the data are altered.

(13) Section 14(1)(d) is not to be regarded as requiring the provision of information as to the logic involved in any decision-taking if, and to the extent that, the information constitutes a trade secret.

(14) The information to be supplied pursuant to a request under this section must be supplied by reference to the data in question 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, being an amendment or deletion that would have been made regardless of the receipt of the request.

(15) For the purposes of sub-clause (4) and (5) of this clause another individual can be identified from the information being disclosed if he can be identified from that information, or from that and any other information which, in the reasonable belief of the data controller, is likely to be in, or to come into, the possession of the data subject making the request.

21. Where data controller is a credit reference bureau.

(1) Where the data controller is a credit bureau within the meaning of the Credit Reporting Act, 2007, Act 726 request by a data subject for information shall in addition be subject to the provisions of this section.

(2) An data subject making a request for information from the data controller may limit his request to personal data relevant to his financial standing and history for the period preceding 12 months of the date of the request, and shall be taken to have so limited his request unless the request shows a contrary intention. Provided that the individual shall have no right to request for information held beyond the retention period set out in section 30 of the Credit Reporting Act unless the Credit Bureau has provided the information beyond the retention period to third parties.

(3) Where the data controller receives a request under clause 14 in a case where personal data of which the individual making the request is the data subject are being processed by or on behalf of the data controller, the obligation to supply information under that section includes an obligation to give the individual making the request a statement, in such form as may be prescribed by the Minister by regulations, of the individual's rights-

- (a) under the Credit Reporting Act, 2007, Act 726
- (b) The rights of the individual to seek legal redress against the Credit Bureau set out in section 41 of the Credit Reporting Act, 2007, Act 726.
- (c) Compliance by the Credit Bureau where acting as a data controller or data processor with the provisions of this Bill.

Processing of special personal data

Prohibition on processing of special personal data

22. Unless specifically permitted by this Part, a responsible party may not process personal data concerning a—

- (a) child who is subject to parental control in terms of the law; or
- (b) data subject's religious or philosophical beliefs, race or ethnic origin, trade union membership, political opinions, health, sexual life or criminal behaviour.

Exemption concerning data subject's religious or philosophical beliefs

23. (1) The prohibition on processing personal information concerning a data subject's religious or philosophical beliefs, as referred to in clause 22, does not apply if the processing is carried out by—

- (a) spiritual or religious organisations, or independent sections of those organisations: Provided that the information concerns data subjects belonging to those organisations;
- (b) institutions founded on religious or philosophical principles with respect to their members or employees or other persons belonging to the institution, if it is necessary to achieve their aims and principles; or

24. Right to prevent processing likely to cause damage or distress

(1) Subject to sub-clause (2), an individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which he is the data subject, on the ground that, for specified reasons-

- (a) the processing of those data or their processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to him or to another, and
- (b) that damage or distress is or would be unwarranted.

(2) Sub-clause (1) does not apply-

- (a) in a case where any of the following conditions in paragraphs is met,
 - i. The data subject has given his consent to the processing.
 - ii. The processing is necessary-
 - a. for the performance of a contract to which the data subject is a party, or
 - b. for the taking of steps at the request of the data subject with a view to entering into a contract.
 - iii. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
 - iv. The processing is necessary in order to protect the vital interests of the data subject.
- or

(b) in such other cases as may be prescribed by the Minister by order.

(3) The data controller shall give the individual within twenty-one days of receiving a notice give a written response stating-

- (a) that he has complied or intends to comply with the data subject notice, or
- (b) his reasons for regarding the data subject notice as to any extent unjustified and the extent (if any) to which he has complied or intends to comply with it.

(4) If a Commission is satisfied, on the application of any person who has given a notice under subsection (1) which appears to the Commission to be justified (or to be justified to any extent), that the data controller in question has failed to comply with the notice, the Commission may order him to take such steps for complying with the notice as the it thinks fit.

(5) The failure by a data subject to exercise the right conferred by sub-clause (1) or clause 10(1) does not affect any other right conferred on him by this Part.

25. Right to prevent processing for purposes of direct marketing

(1) An individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing for the purposes of direct marketing personal data in respect of which he is the data subject.

(2) If the Commission is satisfied, on the application of any person who has given a notice under sub-clause (1), that the data controller has failed to comply with the notice, the Commission may order him to take such steps for complying with the notice as the Commission thinks fit.

(3) In this clause "direct marketing" includes the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.

26. Rights in relation to automated decision-taking.

(1) An individual is entitled at any time, by notice in writing to any data controller, to require the data controller to ensure that no decision taken by or on behalf of the data controller which significantly affects that individual is based solely on the processing by automatic means of personal data in respect of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct.

(2) Where, in a case where no notice under sub-clause (1) has effect, a decision which significantly affects an individual is based solely on such processing as is mentioned in sub-clause (1)-

- (a) the data controller must as soon as reasonably practicable notify the individual that the decision was taken on that basis, and

(b) the individual is entitled, within twenty-one days of receiving that notification from the data controller, by notice in writing to require the data controller to reconsider the decision or to take a new decision otherwise than on that basis.

(3) The data controller must, within twenty-one days of receiving a notice under sub-clause (2)(b) ("the data subject notice") give the individual a written notice specifying the steps that he intends to take to comply with the data subject notice.

(4) A notice under sub-clause (1) does not have effect in relation to an exempt decision; and nothing in sub-clause (2) applies to an exempt decision.

(5) In sub-clause (4) "exempt decision" means any decision-

- (a) in respect of which the condition in sub-clause (6) and the condition in sub-clause (7) are met, or
- (b) which is made in such other circumstances as may be prescribed by the Minister by order.

(6) The condition in this subsection is that the decision-

- (a) is taken in the course of steps taken-
 - (i) for the purpose of considering whether to enter into a contract with the data subject,
 - (ii) with a view to entering into such a contract, or
 - (iii) in the course of performing such a contract, or
- (b) is authorised or required by or under any enactment.

(7) The condition in this subsection is that either-

- (a) the effect of the decision is to grant a request of the data subject, or
- (b) steps have been taken to safeguard the legitimate interests of the data subject (for example, by allowing him to make representations).

(8) If a court is satisfied on the application of a data subject that a person taking a decision in respect of him ("the responsible person") has failed to comply with sub-clause (1) or (2)(b), the court may order the responsible person to reconsider the decision, or to take a new decision which is not based solely on such processing as is mentioned in sub-clause (1).

(9) An order under sub-clause (8) shall not affect the rights of any person other than the data subject and the responsible person.

27. Rights of data subjects in relation to exempt manual data.

(1) A data subject is entitled at any time by notice in writing-

- (a) to require the data controller to rectify, block, erase or destroy exempt manual data which are inaccurate or incomplete, or
- (b) to require the data controller to cease holding exempt manual data in a way incompatible with the legitimate purposes pursued by the data controller.

(2) A notice under sub-clause (1)(a) or (b) must state the data subject's reasons for believing that the data are inaccurate or incomplete or, as the case may be, his reasons for believing that they are held in a way incompatible with the legitimate purposes pursued by the data controller.

(3) If the Commission is satisfied, on the application of any person who has given a notice under sub-clause (1) which appears to the Commission to be justified (or to be justified to any extent) that the data controller in question has failed to comply with the notice, the Commission may order him to take such steps for complying with the notice (or for complying with it to that extent) as it deems fit.

(4) For the purposes of this section personal data are incomplete if, and only if, the data, although not inaccurate, are such that their incompleteness would constitute a contravention of the third or fourth data protection principles, if those principles applied to the data."

28. Compensation for failure to comply with certain requirements

(1) An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Bill is entitled to compensation from the data controller for that damage.

(2) An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Bill is entitled to compensation from the data controller for that distress if the-

- (a) individual also suffers damage by reason of the contravention, or
- (b) contravention relates to the processing of personal data for the special purposes.

(3) In proceedings brought against a person by virtue of this section it is a defence to prove that he had taken such care as is reasonable in all the circumstances to comply with the request.

29. Rectification, blocking, erasure and destruction

(1) If a Commission is satisfied on the application of a data subject that personal data of which the applicant is the subject are inaccurate, the Commission may order the data controller to rectify, block, erase or destroy those data and any other personal data in respect of which he is the data controller and which contain an expression of opinion which appears to the court to be based on the inaccurate data.

(2) Sub-clause (1) applies whether or not the data accurately record information received or obtained by the data controller from the data subject or a third party but where the data accurately records such information, then-

(a) the Commission may, instead of making an order under sub-clause (1), make an order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data controller if –

- I. having regard to the purpose or purposes for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data, and
- II. if the data subject has notified the data controller of the data subject's view that the data are inaccurate, the data indicate that fact.

(b) if all or any of those requirements have not been complied with, the Commission may, instead of making an order under that subsection, make such order as it thinks fit for securing compliance with those requirements with or without a further order requiring the data to be supplemented by such a statement as is mentioned in paragraph (a).

(3) Where the court-

- (a) makes an order under sub-clause (1), or
- (b) is satisfied on the application of a data subject that personal data of which he was the data subject and which have been rectified, blocked, erased or destroyed were inaccurate, it may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

(4) If a court is satisfied on the application of a data subject-

- (a) that he has suffered damage by reason of any contravention by a data controller of any of the requirements of this Bill in respect of any personal data, in circumstances entitling him to compensation under clause 28, and
- (b) that there is a substantial risk of further contravention in respect of those data in such circumstances,
- (c) is satisfied that a data subject has suffered damage by reason of any contravention by a data controller of any of the requirements of this Bill in respect of any personal data, or
- (d) orders the rectification, blocking, erasure or destruction of any data for any reason,

the court may order the rectification, blocking, erasure or destruction of any of those data.

(5) Where the Commission makes an order under sub-clause (4) it may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

(6) In determining whether it is reasonably practicable to require such notification as is mentioned in sub-clauses (3) or (5) the court shall have regard, in particular, to the number of persons who would have to be notified.

30. The application of the Bill

(1) Except as otherwise provided in this Bill, this Bill applies to a data controller in respect of any data only if-

- (a) the data controller is established in the Republic Of Ghana and the data are processed in the context of that establishment, or
- (b) the data controller is established not in the Republic of Ghana but uses equipment or data processor in the Republic of Ghana for processing the data otherwise than for the purposes of transit through the Republic of Ghana.

(2) A data controller falling within sub-clause (1)(b) shall register as an external company under the provisions of legislation regulating companies in Ghana. must nominate for the purposes of this Bill a representative established in the Republic of Ghana.

(3) For the purposes of sub-clauses (1) and (2), each of the following is to be treated as established in the Republic of Ghana-

- (a) an individual who is ordinarily resident in the Republic of Ghana,
- (b) a body incorporated under the law of, the Republic of Ghana,
- (c) a partnership or other unincorporated association formed under the law of of the Republic of Ghana, and
- (d) any person who does not fall within paragraph (a), (b) or (c) but maintains in the Republic of Ghana-
 - (i) an office, branch or agency through which he carries on any activity, or
 - (ii) a regular practice;

Part 3 – THE DATA PROTECTION REGISTER

31. Register of data controllers

- (1) There shall be a register of data controllers to be known as the Data Protection Register, which shall be kept and maintained by the Commission.
- (2) Subject to Part VII, a data controller shall register himself with the office.

32. Application for registration

- (1) An application for registration as a data controller shall be made in writing to the Commission and the person shall furnish such particulars as requested under section 33.
- (2) Where a data controller intends to keep personal data for 2 or more purposes, he shall make an application for separate registration in respect of any of those purposes and, entries shall be made in accordance with any such applications.
- (3) Subject to sub-clause (4), the Commission shall grant an application for registration, unless he reasonably believes that –
 - (a) the particulars proposed for inclusion in an entry in the register are insufficient or any other information required by the Commission 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.
- (4) Upon registration of an application, the applicant shall pay such fee as may be prescribed.
- (5) Where the Commission refuses an application for registration, he 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 he may appeal against the refusal under to clause 19.
- (6) The Commission may, at any time, at the request of the person to whom an entry in the register relates, remove his name from the register.

33. Particulars to be furnished

- (1) A data controller who wishes to be registered with the office shall provide the following particulars -
 - (a) his name and address;
 - (b) if he has nominated a representative for the purposes of this Bill, the name and address of the representative;
 - (c) a description of the personal data being, or to be processed by or on behalf of the data controller, and of the category of data subjects, to which the personal data relate;

- (d) a statement as to whether or not he holds, is likely to hold, sensitive personal data;
- (e) a description of the purpose for which the personal data are being or are to be processed;
- (f) a description of any recipient to whom the data controller intends or may wish to disclose the personal data;
- (g) the names, or a description of, any country to which the data controller directly or indirectly transfers, or intends or may wish, directly or indirectly to transfer the data; and
- (h) the class of data subjects, or where practicable the names of data subjects, in respect of which the data controller holds personal data.

(2) Any data controller who, knowingly supplies false information under sub-clause (1), shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) Where the data controller in respect of whom there is an entry in the register changes his address, he shall, within 15 days of the change in address, notify the Commission in writing

34. Prohibition on processing without registration

- (1) Subject to the following provisions of this clause, personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Commission under clause 36 (or is treated by notification regulations made by virtue of clause 36(3) as being so included).
- (2) Except where the processing is assessable processing for the purposes of clause 22, sub-clause (1) does not apply in relation to personal data consisting of information which falls neither within paragraph (a) of the definition of "data" in clause 90 nor within paragraph (b) of that definition.
- (3) If it appears to the Minister that processing of a particular description is unlikely to prejudice the rights and freedoms of data subjects, notification regulations may provide that, in such cases as may be prescribed, sub-clause (1) is not to apply in relation to processing of that description.
- (4) Sub-clause (1) does not apply in relation to any processing whose sole purpose is the maintenance of a public register.

35. Notification by data controllers

(1) Any data controller who wishes to be included in the register maintained under clause 36 shall give a notification to the Commission under this section.

(2) A notification under this section must specify in accordance with notification regulations-

- (a) the registrable particulars, and

(b) a general description of measures to be taken for the purpose of complying with the seventh data protection principle.

(3) Notification regulations made by virtue of sub-clause (2) may provide for the determination by the Commission, in accordance with any requirements of the regulations, of the form in which the registrable particulars and the description mentioned in sub-clause (2)(b) are to be specified, including in particular the detail required for the purposes of clause 16(1)(c), (d), (e) and (f) and sub-clause (2)(b).

(4) Notification regulations may make provision as to the giving of notification-

- (a) by partnerships, or
- (b) in other cases where two or more persons are the data controllers in respect of any personal data.

(5) The notification must be accompanied by such fee as may be prescribed by fees regulations.

(6) Notification regulations may provide for any fee paid under subsection (5) or section 36(4) to be refunded in prescribed circumstances.

36. Register of notifications

(1) The Commission shall-

- (a) maintain a register of persons who have given notification under clause 35, and
- (b) make an entry in the register in pursuance of each notification received by him under that clause from a person in respect of whom no entry as data controller was for the time being included in the register.

(2) Each entry in the register shall consist of-

- (a) the registrable particulars notified under clause 33 or, as the case requires, those particulars as amended in pursuance of clause 35(4), and
- (b) such other information as the Commission may be authorised or required by notification regulations to include in the register.

(3) Notification regulations may make provision as to the time as from which any entry in respect of a data controller is to be treated for the purposes of clause 32 as having been made in the register.

(4) No entry shall be retained in the register for more than the relevant time except on payment of such fee as may be prescribed by fees regulations.

(5) In sub-clause (4) "the relevant time" means twelve months or such other period as may be prescribed by notification regulations; and different periods may be prescribed in relation to different cases.

(6) The Commission-

- (a) shall provide facilities for making the information contained in the entries in the register available for inspection (inspection both hard copy and electronic form) by members of the public at all reasonable hours and free of charge, and

(b) may provide such other facilities for making the information contained in those entries available to the public free of charge as he considers appropriate.

(7) The Commission shall, on payment of such fee, if any, as may be prescribed by fees regulations, supply any member of the public with a duly certified manual or electronic copy of the particulars contained in any entry made in the register.

37. Duty to notify changes

(1) For the purpose specified in sub-clause (2), notification regulations shall include provision imposing on every person in respect of whom an entry as a data controller is for the time being included in the register maintained under clause 31 a duty to notify to the Commission, in such circumstances and at such time or times and in such form as may be prescribed, such matters relating to the registrable particulars and measures taken as mentioned in clause 32(2)(b) as may be prescribed.

(2) The purpose referred to in sub-clause (1) is that of ensuring, so far as practicable, that at any time-

- (a) the entries in the register maintained under clause 36 contain current names and addresses and describe the current practice or intentions of the data controller with respect to the processing of personal data, and
- (b) the Commission is provided with a general description of measures currently being taken as mentioned in clause 36(2)(b).

(3) Sub-clause (3) of clause 18 has effect in relation to notification regulations made by virtue of sub-clause (1) as it has effect in relation to notification regulations made by virtue of sub-clause (2) of that clause

(4) On receiving any notification under notification regulations made by virtue of subsection (1), the Commission shall make such amendments of the relevant entry in the register maintained under clause 31 as are necessary to take account of the notification.

38. Offences

(1) If clause 34(1) is contravened, the data controller is guilty of an offence.

(2) Any person who fails to comply with the duty imposed by notification regulations made by virtue of clause 37(1) is guilty of an offence.

(3) It shall be a defence for a person charged with an offence under sub-clause (2) to show that he exercised all due diligence to comply with the duty.

39. Preliminary assessment by Commission

(1) In this clause "assessable processing" means processing which is of a description specified in an order made by the Minister as appearing to him to be particularly likely-

- (a) to cause substantial damage or substantial distress to data subjects, or
- (b) otherwise significantly to prejudice the rights and freedoms of data subjects.

(2) On receiving notification from any data controller under notification regulations made by virtue of clause 37 the Commission shall consider-

(a) whether any of the processing to which the notification relates is assessable processing, and

(b) if so, whether the assessable processing is likely to comply with the provisions of this Bill.

(3) Subject to sub-clause (4), the Commission shall, within the period of twenty-eight days beginning with the day on which he receives a notification which relates to assessable processing, give a notice to the data controller stating the extent to which the Commission is of the opinion that the processing is likely or unlikely to comply with the provisions of this Bill.

(4) Before the end of the period referred to in sub-clause (3) the Commission may, by reason of special circumstances, extend that period on one occasion only by notice to the data controller by such further period not exceeding fourteen days as the Commission may specify in the notice.

(5) No assessable processing in respect of which a notification has been given to the Commission as mentioned in sub-clause (2) shall be carried on unless either-

(a) the period of twenty-eight days beginning with the day on which the notification is received by the Commission (or, in a case falling within sub-clause (4), that period as extended under that sub-clause) has elapsed, or

(b) before the end of that period (or that period as so extended) the data controller has received a notice from the Commission under sub-clause (3) in respect of the processing.

(6) Where sub-clause (5) is contravened, the data controller is guilty of an offence.

(7) The Minister may by order amend sub-clauses (3), (4) and (5) by substituting for the number of days for the time being specified there a different number specified in the order.

40. Power to make provision for appointment of data protection supervisors

(1) The Minister may by order-

(a) make provision under which a data controller may appoint a person to act as a data protection supervisor responsible in particular for monitoring in an independent manner the data controller's compliance with the provisions of this Bill, and

(b) provide that, in relation to any data controller who has appointed a data protection supervisor in accordance with the provisions of the order and who complies with such conditions as may be specified in the order, the provisions of this Part are to have effect subject to such exemptions or other modifications as may be specified in the order.

(2) An order under this clause may-

- (a) impose duties on data protection supervisors in relation to the Commission, and
- (b) confer functions on the Commission in relation to data protection supervisors.

(3) Data controllers shall appoint a person to act as a data protection supervisor who would be responsible for the monitoring in an independent manner the data controller's compliance with the provisions of this Bill,

- (4) The data protection supervisor shall either be
- a. An employee of the data controller; or
 - b. an external consultant.

No person shall be appointed a data supervisor unless he has been, before the said appointment, duly certified as so qualified by way of educational qualifications and experience by the Commission and has a current practising certificate issued by the Commission.

41. Functions of Commission in relation to making of notification regulations

(1) The Commission shall submit to the Minister proposals as to the provisions to be included in the first notification regulations.

(2) The Commission shall keep under review the working of notification regulations and may from time to time submit to the Minister proposals as to amendments to be made to the regulations.

(3) The Minister may from time to time require the Commission to consider any matter relating to notification regulations and to submit to him proposals as to amendments to be made to the regulations in connection with that matter.

- (4) Before making any notification regulations, the Minister shall-
- (a) consider any proposals made to him by the Commission under sub-clauses (1), (2) or (3), and
 - (b) consult the Commission.

42. Fees regulations

(1) Regulations prescribing fees for the purposes of any provision of this Part may provide for different fees to be payable in different cases.

(2) In prescribing fees, the Minister shall have regard to the desirability of ensuring that the fees payable to the Commission are sufficient to carry out their responsibilities under the Bill.

Part 4 – EXEMPTIONS

43. Preliminary

(1) References in this Bill to personal data or to the processing of personal data do not include references to data or processing which by virtue of this Part are exempt.

(2) In this Part "the subject information provisions" means-

(a) the first data protection principle

and

(b) clause 20.

(3) In this Part "the non-disclosure provisions" means the provisions specified in sub-clause (4) to the extent to which they are inconsistent with the disclosure in question.

(4) The provisions referred to in sub-clause (3) are-

(a) the first data protection principle, except to the extent to which it requires compliance with the conditions Part 1 of this Bill.

44. National Security

(1) Personal data are exempt from any of the provisions of this Bill if;

- the exemption is for the purpose of public order, public safety,
- the exemption from that provision is required for the purpose of safeguarding national security.

(2) Subject to sub-clause (4), a certificate signed by a Minister.

(3) A certificate under sub-clause (2) may identify the personal data to which it applies by means of a general description.

(4) Any person directly affected by the issuing of a certificate under sub-clause (2) may apply for judicial review at the High Court against the certificate.

(5) A document purporting to be a certificate under sub-clause (2) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(6) A document which purports to be certified by or on behalf of a Minister of State as a true copy of a certificate issued by that Minister shall in any legal proceedings be prima facie evidence of that certificate.

(8) No power conferred by any provision of Part V may be exercised in relation to personal data which by virtue of this clause are exempt from that provision.

45. Crime and Taxation

(1) Personal data processed for any of the following purposes-

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

are exempt from the first data protection principle (except to the extent to which it requires compliance with the conditions in Part 1 and clause 20 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.

(2) Personal data which-

- (a) are processed for the purpose of discharging statutory functions, and
- (b) consist of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in sub-clause (1),

are exempt from the subject information provisions to the same extent as personal data processed for any of the purposes mentioned in that subsection.

(3) Personal data are exempt from the non-disclosure provisions in any case in which-

- (a) the disclosure is for any of the purposes mentioned in sub-clause (1), and
- (b) the application of those provisions in relation to the disclosure would be likely to prejudice any of the matters mentioned in that subsection.

(4) Personal data in respect of which the data controller is a relevant authority and which-

(a) consist of a classification applied to the data subject as part of a system of risk assessment which is operated by that authority for either of the following purposes-

- (i) the assessment or collection of any tax or duty or any imposition of a similar nature, or
- (ii) the prevention or detection of crime, or apprehension or prosecution of offenders, where the offence concerned involves any unlawful claim for any payment out of, or any unlawful application of, public funds, and

(b) are processed for either of those purposes,

are exempt from clause 20 to the extent to which the exemption is required in the interests of the operation of the system.

46. Health, Education and Social Work

(1) The Minister may by order exempt from the subject information provisions, or modify those provisions in relation to, personal data consisting of information as to the physical or mental health or condition of the data subject.

(2) The Minister may by order exempt from the subject information provisions, or modify those provisions in relation to personal data in respect of which the data controller is the proprietor of, or an official at, an educational institution school, and which consist of information relating to persons who are or have been pupils at the school, or

(3) The Minister may by order exempt from the subject information provisions, or modify those provisions in relation to, personal data of such other descriptions as may be specified in the order, being information-

- (a) processed by government departments or local government bodies or by voluntary organisations or other bodies designated by or under the order, and
- (b) appearing to him to be processed in the course of, or for the purposes of, carrying out social work in relation to the data subject or other individuals;

but the Minister shall not under this subsection confer any exemption or make any modification except so far as he considers that the application to the data of those provisions (or of those provisions without modification) would be likely to prejudice the carrying out of social work.

(4) An order under this section may make different provision in relation to data consisting of information of different descriptions.

47. Regulatory Activity

(1) Personal data processed for the purposes of discharging functions to which this sub-clause applies are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

(2) Sub-clause (1) applies to any relevant function which is designed-

- (a) for protecting members of the public against-
 - (i) financial loss due to dishonesty, malpractice or other seriously improper conduct by, or 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 authorised to carry on any profession or other activity,
- (b) for protecting charities and non profit making entities incorporated under the legislation relating to companies against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (c) for protecting the property of and non profit making entities from loss or misapplication,
- (d) for the recovery of the property of charities and non profit making entities,
- (e) for securing the health, safety and welfare of persons at work, or
- (f) 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.

(3) In sub-clause (2) "relevant function" means-

- (a) any function conferred on any person by or under any enactment,
- (b) any function of the Government, a Minister of State or a government department, or

(c) any other function which is of a public nature and is exercised in the public interest.

(4) Personal data processed for the purpose of discharging any function which-

(a) is conferred by or under any enactment on-

i) Parliament,

(ii) on the Districts under the Local Government Act, ,

(iii) the administration of public health, prevention and control of disease and monitoring and eradication of disease

(iv) the Commission on Human Rights and Administrative Justice
, and

(b) is designed for protecting members of the public against-

(i) maladministration by statutory and public bodies,

(ii) failures in services provided by public bodies, or

(iii) a failure of a public body to provide a service which it was a function of the body to provide,

are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

(5) Personal data processed for the purpose of discharging any function which-

(a) is conferred by or under any enactment on any public bodies mandated to monitor and ensure fair trade and competition and

(b) is designed-

(i) for protecting members of the public against conduct which may adversely affect their interests by persons carrying on a business,

(ii) for 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) for regulating conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market,

are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

48. Journalism, Literature and Art

(1) Personal data which are processed only for the special purposes are exempt from any provision to which this sub-clause relates if-

(a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material,

(b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and

(c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes.

(2) Sub-clause (1) relates to the provisions of-

(a) the data protection principles except the seventh data protection principle,

- (b) clause 7,
- (c) clause 10,
- (d) clause 12 and
- (e) clause 14(1) to (3).

(3) In considering for the purposes of sub-clause (1)(b) whether the belief of a data controller that publication would be in the public interest was or is a reasonable one, regard may be had to his compliance with any code of practice which-

- (a) is relevant to the publication in question, and
- (b) is designated by the Minister by order for the purposes of this subsection.

(4) Where at any time in any proceedings against a data controller under clause 7(9), 10(4), 12(8), or 14 or by virtue of clause 13 the data controller claims, or it appears to the court, that any personal data to which the proceedings relate are being processed-

- (a) only for the special purposes, and
 - (b) with a view to the publication by any person of any journalistic, literary or artistic material which, at the time twenty-four hours immediately before the relevant time, had not previously been published by the data controller,
- the court shall stay the proceedings until either of the conditions in sub-clause (5) is met.

(5) Those conditions are-

- (a) that a determination of the Commission under clause 19 with respect to the data in question takes effect, or
- (b) in a case where the proceedings were stayed on the making of a claim, that the claim is withdrawn.

(6) For the purposes of this Bill "publish", in relation to journalistic, literary or artistic material, means make available to the public or any section of the public.

49. Research History and Statistics

(1) For the purposes of the second data protection principle, the further processing of personal data only for research purposes in compliance with the relevant conditions is not to be regarded as incompatible with the purposes for which they were obtained.

(3) Personal data which are processed only for research purposes in compliance with the relevant conditions may, notwithstanding the fifth data protection principle, be kept indefinitely.

(4) Personal data which are processed only for research purposes are exempt from clause 20 if-

- (a) they are processed in compliance with the relevant conditions, and
- (b) the results of the research or any resulting statistics are not made available in a form which identifies data subjects or any of them.

(5) For the purposes of sub-clauses (2) to (4) personal data are not to be treated as processed otherwise than for research purposes merely because the data are disclosed-

- (a) to any person, for research purposes only,

- (b) to the data subject or a person acting on his behalf,
- (c) at the request, or with the consent, of the data subject or a person acting on his behalf, or
- (d) in circumstances in which the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a), (b) or (c).

50. Information available to the public by or under enactment

(1) Personal data are exempt from-

- (a) the subject information provisions,
- (b) the fourth data protection principle and clause 4(1) to (3), and
- (c) the non-disclosure provisions,

if the data consist of information which the data controller is obliged by or under any enactment to make available to the public, whether by publishing it, by making it available for inspection, or otherwise and whether gratuitously or on payment of a fee.

51. Disclosures required by law or made in connection with legal proceedings etc.

(1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.

(2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary-

- (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or
- (b) for the purpose of obtaining legal advice,

or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

52. Domestic purposes

Personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes) are exempt from the data protection principles.

Miscellaneous exemptions

53. Confidential references given by the data controller

Personal data are exempt from data protection principles if they consist of a reference given or to be given in confidence by the data controller for the purposes of-

- (a) the education, training or employment, or prospective education, training or employment, of the data subject,
- (b) the appointment, or prospective appointment, of the data subject to any office, or
- (c) the provision, or prospective provision, by the data subject of any service.

Armed forces

54. Personal data are exempt from the subject information provisions in any case to the extent to which the application of those provisions would be likely to prejudice the combat effectiveness of any of the armed forces of the Republic of Ghana.

Judicial appointments and honours

55. Personal data processed for the purposes of-

- (a) assessing any person's suitability for judicial office, or
- (b) the conferring by the State of any honour, are exempt from the subject information provisions.

Civil and Public Service or Ministerial appointments

56. The Minister may by legislative instrument exempt from the subject information provisions personal data processed for the purposes of assessing any person's suitability for-

- (a) employment by the Government, or
- (b) any office to which appointments are made by The President, by a Minister of State.

Management forecasts etc.

57. Personal data processed for the purposes of management forecasting or management planning to assist the data controller in the conduct of any business or other activity are exempt from the subject information provisions in any case to the extent to which the application of those provisions would be likely to prejudice the conduct of that business or other activity.

Corporate finance

58.(1) Where personal data are processed for the purposes of, or in connection with, a corporate finance service provided by a relevant person-

- (a) the data are exempt from the subject information provisions in any case to the extent to which either-
 - (i) the application of those provisions to the data could affect the price of any instrument which is already in existence or is to be or may be created, or
 - (ii) the data controller reasonably believes that the application of those provisions to the data could affect the price of any such instrument, and
- (b) to the extent that the data are not exempt from the subject information provisions by virtue of paragraph (a), they are exempt from those provisions if the exemption is required for the purpose of safeguarding an important economic or financial interest of the Republic of Ghana.

(2) For the purposes of sub-paragraph (1)(b) the Minister may by legislative instrument specify-

- (a) matters to be taken into account in determining whether exemption from the subject information provisions is required for the purpose of safeguarding an important economic or financial interest of the Republic of Ghana, or
- (b) circumstances in which exemption from those provisions is, or is not, to be taken to be required for that purpose.

Negotiations

59. Personal data which consist of records of the intentions of the data controller in relation to any negotiations with the data subject are exempt from the subject information provisions in any case to the extent to which the application of those provisions would be likely to prejudice those negotiations.

Examination marks

60. (1) The data protection principles shall have effect subject to the provisions of sub-paragraphs (2) to (4) in the case of personal data consisting of marks or other information processed by a data controller-

- (a) for the purpose of determining the results of an academic, professional or other examination or of enabling the results of any such examination to be determined, or
- (b) in consequence of the determination of any such results.

(2) Where the relevant day falls before the day on which the results of the examination are announced, the period mentioned in clause 20(8) shall be extended until-

- (a) the end of five months beginning with the relevant day, or
- (b) the end of forty days beginning with the date of the announcement, whichever is the earlier.

(3) Where by virtue of sub-paragraph (2) a period longer than the prescribed period elapses after the relevant day before the request is complied with, the information to be supplied pursuant to the request shall be supplied both by reference to the data in question at the time when the request is received and (if different) by reference to the data as from time to time held in the period beginning when the request is received and ending when it is complied with.

(4) For the purposes of this paragraph the results of an examination shall be treated as announced when they are first published or (if not published) when they are first made available or communicated to the candidate in question.

Examination scripts etc.

61 Personal data consisting of information recorded by candidates during an academic, professional or other examination are exempt from the data protection principles.

Legal professional privilege

62. Personal data are exempt from the subject information provisions if the data consist of information in respect of which a claim to legal professional privilege or, confidentiality as between client and professional legal adviser, could be maintained in legal proceedings.

Self-incrimination

63. (1) A person need not comply with any request or order under clause 20 to the extent that compliance would, by revealing evidence of the commission of any offence other than an offence under this Bill, expose him to proceedings for that offence.

(2) Information disclosed by any person in compliance with any request or order under clause 20 shall not be admissible against him in proceedings for an offence under this Bill.

64. Powers to make further exemptions by order

(1) The Minister may by order exempt from the subject information provisions personal data consisting of information the disclosure of which is prohibited or restricted by or under any enactment if and to the extent that he considers it necessary for the safeguarding of the interests of the data subject or the rights and freedoms of any other individual that the prohibition or restriction ought to prevail over those provisions.

(2) The Minister may by order exempt from the non-disclosure provisions any disclosures of personal data made in circumstances specified in the order, if he considers the exemption is necessary for the safeguarding of the interests of the data subject or the rights and freedoms of any other individual.

Part 5 – ENFORCEMENT

65. Enforcement notices

(1) If the Commission is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Commission shall serve him with a notice (in this Bill referred to as "an enforcement notice") requiring him, for complying with the principle or principles in question, to do either or both of the following-

- (a) to take within such time as may be specified in the notice, or to refrain from taking after such time as may be so specified, such steps as are so specified, or
- (b) to refrain from processing any personal data, or any personal data of a description specified in the notice, or to refrain from processing them for a purpose so specified or in a manner so specified, after such time as may be so specified.

(2) In deciding whether to serve an enforcement notice, the Commission shall consider whether the contravention has caused or is likely to cause any person damage or distress.

(3) An enforcement notice in respect of a contravention of the fourth data protection principle which requires the data controller to rectify, block, erase or destroy any inaccurate data may also require the data controller to rectify, block, erase or destroy any other data held by him and containing an expression of opinion which appears to the Commission to be based on the inaccurate data.

(4) An enforcement notice in respect of a contravention of the fourth data protection principle, in the case of data which accurately record information received or obtained by the data controller from the data subject or a third party, may require the data controller either-

- (a) to rectify, block, erase or destroy any inaccurate data and any other data held by him and containing an expression of opinion as mentioned in sub-clause (3), or
- (b) to take such steps as are specified in the notice for securing compliance with subsection (4c) and, if the Commission thinks fit, for supplementing the data with such statement of the true facts relating to the matters dealt with by the data as the Commission may approve.
- (c) The fourth principle is not to be regarded as being contravened by reason of any inaccuracy in personal data which accurately record information obtained by the data controller from the data subject or a third party in a case where-

(5) Where-

- (a) an enforcement notice requires the data controller to rectify, block, erase or destroy any personal data, or
 - (b) the Commission is satisfied that personal data which have been rectified, blocked, erased or destroyed had been processed in contravention of any of the data protection principles,
- an enforcement notice may, if reasonably practicable, require the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction; and in determining whether it is reasonably practicable to require such notification regard shall be had, in particular, to the

number of persons who would have to be notified.

(6) An enforcement notice must contain a statement of the data protection principle or principles which the Commission is satisfied have been or are being contravened and his reasons for reaching that conclusion, and

(7) Subject to sub-clause (8), an enforcement notice must not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(8) If by reason of special circumstances the Commission considers that an enforcement notice should be complied with as a matter of urgency it may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event sub-clause (7) shall not apply but the notice must not require the provisions of the notice to be complied with before the end of the period of seven days beginning with the day on which the notice is served.

(9) This section has effect subject to clause 72(1).

66. Cancellation of enforcement notice

(1) If the Commission considers that all or any of the provisions of an enforcement notice need not be complied with in order to ensure compliance with the data protection principle or principles to which it relates, it may cancel or vary the notice by written notice to the person on whom it was served.

(2) A person on whom an enforcement notice has been served may, at any time after the expiry of the period during which an appeal can be brought against that notice, apply in writing to the Commission for the cancellation or variation of that notice on the ground that, by reason of a change of circumstances, all or any of the provisions of that notice need not be complied with in order to ensure compliance with the data protection principle or principles to which that notice relates.

67. Request for Assessment

(1) A request may be made to the Commission by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the provisions of this Bill.

(2) On receiving a request under this section, the Commission shall make an assessment in such manner as appears appropriate, unless it has not been supplied with such information as it may reasonably require in order to-

- (a) satisfy itself as to the identity of the person making the request, and
- (b) enable it to identify the processing in question.

(3) The matters to which the Commission may have regard in determining in what manner it is appropriate to make an assessment include-

- (a) the extent to which the request appears to it to raise a matter of substance,
- (b) any undue delay in making the request, and
- (c) whether or not the person making the request is entitled to make an application under clause 20 in respect of the personal data in question.

(4) Where the Commission has received a request under this section it shall notify the person who made the request-

- (a) whether it has made an assessment as a result of the request, and
- (b) to the extent that it considers appropriate, having regard in particular to any exemption from clause 20 applying in relation to the personal data concerned, of any view formed or action taken as a result of the request.

(5) The Commission shall not publish the report of any finding in respect of any request made under this section unless the request has been accompanied by payment of the prescribed statutory fee or the Commission has waived payment based on proven pecuniary challenges of the applicant.

68. Information Notices

(1) If the Commission-

- (a) has received a request under clause 68 in respect of any processing of personal data, or
- (b) reasonably requires any information for the purpose of determining whether the data controller has complied or is complying with the data protection principles,

it may serve the data controller with a notice (in this Bill referred to as "an information notice") requiring the data controller, within such time as is specified in the notice, to furnish the Commission, in such form as may be so specified.

(2) An information notice shall contain-

- (a) in a case falling within sub-clause (1)(a), a statement that the Commission has received a request under clause 68 in relation to the specified processing, or
- (b) in a case falling within sub-clause (1)(b), a statement that the Commission regards the specified information as relevant for the purpose of determining whether the data controller has complied, or is complying, with the data protection principles.

(3) If by reason of special circumstances the Commission considers that the information is required as a matter of urgency, may include in the notice a statement to that effect. The notice shall not require the information to be furnished before the end of the period of seven days beginning with the day on which the notice is served.

(4) A person shall not be required by virtue of this section to furnish the Commission with any information in respect of-

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

(5) In sub-clause (4) references to the client of a legal practitioner include references to any person representing such a client.

(6) A person shall not be required by virtue of this section to furnish the Commission with any information if the furnishing of that information would, by revealing evidence of the commission of any offence other than an offence under this Bill, expose him to proceedings for that offence.

(7) The Commission may cancel an information notice by written notice to the person on whom it was served.

69. Special information notices

(1) If the Commission-

- (a) has received a request under clause 68 in respect of any processing of personal data, or
- (b) has reasonable grounds for suspecting that, in a case in which proceedings have been stayed under clause 48, the personal data to which the proceedings relate-

- (i) are not being processed only for the special purposes, or
- (ii) are not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller,

it may serve the data controller with a notice (in this Bill referred to as a "special information notice") requiring the data controller, within such time as is specified in the notice, to furnish the Commission, in such form as may be so specified, with such information as is so specified for the purpose specified in sub-clause (2).

(2) The purpose of the inquiry shall be to ascertain-

- (a) whether the personal data are being processed only for the special purposes, or
- (b) whether they are being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller.

(3) A special information notice must contain-

- (a) in a case falling within paragraph (a) of sub-clause (1), a statement that the Commission has received a request under clause 68 in relation to the specified processing, or
- (b) in a case falling within paragraph (b) of that subsection, a statement of the Commission's grounds for suspecting that the personal data are not being processed as mentioned in that paragraph.

(4) If by reason of special circumstances the Commission considers that the information is required as a matter of urgency, it may include in the notice a statement to that effect and a statement of the reasons for reaching that conclusion; but the notice shall not require the information to be furnished before the end of the period of seven days beginning with the day on which the notice is served.

(5) A person shall not be required by virtue of this clause to furnish the Commission with any information in respect of-

(a) any communication between a legal practitioner and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Bill, or

(b) any communication between legal practitioner and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Bill.

(6) In sub-clause (5) references to the client of a legal practitioner include references to any person representing such a client.

(7) A person shall not be required by virtue of this section to furnish the Commission with any information if the furnishing of that information would, by revealing evidence of the commission of any offence other than an offence under this Bill, expose him to proceedings for that offence.

(8) The Commission may cancel a special information notice by written notice to the person on whom it was served.

70. Determination by Commission as to the special purposes

(1) Where at any time it appears to the Commission (whether as a result of the service of a special information notice or otherwise) that any personal data-

(a) are not being processed only for the special purposes, or

(b) are not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller, it may make a determination in writing to that effect.

(2) Notice of the determination shall be given to the data controller.

71. Restriction on enforcement in case of processing for the special purposes

(1) The Commission may not at any time serve an enforcement notice on a data controller with respect to the processing of personal data for the special purposes unless a determination under clause 70(1) with respect to those data has taken effect.

(2) The Commission shall not serve an information notice on a data controller with respect to the processing of personal data for the special purposes unless a determination under clause 70(1) with respect to those data has taken effect.

72. Failure to comply with notice

(1) A person who fails to comply with an enforcement notice, an information notice or a special information notice commits an offence and shall on conviction be liable to a term of imprisonment not exceeding a year or a fine not exceeding ...penalty points or both.

(2) A person who, in compliance with an information notice or a special information notice-

- (a) makes a statement which he knows to be false in a material respect, or
- (b) recklessly makes a statement which is false in a material respect, commits an offence and shall on conviction be liable to a term of imprisonment not exceeding a year or a fine not exceedingpenalty points or both..

(3) It is a defence for a person charged with an offence under sub-clause (1) to prove that he exercised all due diligence to comply with the notice in question.

73. Powers of entry and inspection

The Commission shall have the powers of entry and inspection as provided for law enforcement agencies under the laws of Ghana.

Part 6 – MISCELLANEOUS AND GENERAL

Functions of Commission

74. General duties of Commission

(1) It shall be the duty of the Commission to promote the following of good practice in the observance of the requirements of this Bill.

(2) The Commission shall arrange for the dissemination in such form and manner as it considers appropriate of such information as it may appear to it expedient to give to the public about the operation of this Bill, about good practice, and about other matters within the scope of its functions under this Bill, and may give advice to any person as to any of those matters.

(3) Where-

(a) the Minister by legislative Instrument, or

(b) the Commission considers it appropriate to do so,

the Commission shall, after such consultation with trade associations, data subjects or persons representing data subjects as appears to him to be appropriate, prepare and disseminate to such persons as it considers appropriate codes of practice for guidance as to good practice.

(4) The Commission shall also-

(a) where it considers it appropriate to do so, encourage trade associations to prepare, and to disseminate to their members, such codes of practice, and

(b) where any trade association submits a code of practice to it for its consideration, consider the code and, after such consultation with data subjects or persons representing data subjects as appears to it to be appropriate, notify the trade association whether in its opinion the code promotes the following of good practice.

(5) A legislative instrument under sub-clause (3) shall describe the personal data or processing to which the code of practice is to relate, and may also describe the persons or classes of persons to whom it is to relate.

(6) The Commission shall arrange for the dissemination in such form and manner as it considers appropriate of such other information as it may appear to it to be expedient

(7) The Commission may charge such sums as it may with the consent of the Minister determine for any services provided by the Commission by virtue of this Part.

75. Reports to be laid before Parliament

(1) The Commission shall lay annually before Parliament, a general report on the exercise of its functions under this Bill.

(2) The Commission may from time to time lay before Parliament, such other reports with respect to those functions as it thinks fit.

76. International co-operation

(1) The Commission shall also carry out any data protection functions necessary to give effect to any international obligations of the Republic of Ghana.

(2) In this clause-

"data protection functions" means functions relating to the protection of individuals with respect to the processing of personal information.

77. Unlawful obtaining etc. of personal data.

(1) A person shall not knowingly or recklessly-

(a) obtain or disclose personal data or the information contained in personal data, or

(b) procure the disclosure to another person of the information contained in personal data.

(2) Sub-clause (1) does not apply to a person who shows-

(a) that the obtaining, disclosing or procuring-

(i) was necessary for the purpose of preventing or detecting crime, or

(ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court,

(b) that he acted in the reasonable belief that he had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person,

(c) that he acted in the reasonable belief that he would have had the consent of the data controller if the data controller had known of the obtaining, disclosing or procuring and the circumstances of it, or

(d) that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.

(3) A person who contravenes sub-clause (1) commits an offence and shall on summary conviction be liable to a term of imprisonment not exceeding two years or a fine not exceedingpenalty points or both if he is guilty of an offence..

(4) A person who sells personal data is commits an offence and shall on conviction be liable to a term of imprisonment not exceeding five years or a fine not exceedingpenalty points or both if he has obtained the data in contravention of sub-clause (1).

(5) A person who offers to sell personal data commits an offence if-

(a) he has obtained the data in contravention of sub-clause (1), or

(b) he subsequently obtains the data in contravention of that subsection

and shall on conviction be liable to a term of imprisonment not exceeding two years or a fine not exceedingpenalty points or both..

(6) For the purposes of sub-clause (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

(7) clause 90 does not apply for the purposes of this clause; and for the purposes of subsections (4) to (6), "personal data" includes information extracted from personal data.

(8) References in this clause to personal data do not include references to personal data which by virtue of clause 44 are exempt from this clause.

Records obtained under data subject's right of access

78. Prohibition of requirement as to production of certain records.

(1) A person shall not, in connection with-

- (a) the recruitment of another person as an employee,
 - (b) the continued employment of another person, or
 - (c) any contract for the provision of services to him by another person,
- require that other person or a third party to supply him with a relevant record or to produce a relevant record to him.

(2) A person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public shall not, as a condition of providing or offering to provide any goods, facilities or services to another person, require that other person or a third party to supply him with a relevant record or to produce a relevant record to him.

(3) Sub-clauses (1) and (2) do not apply to a person who shows-

- (a) that the imposition of the requirement was required or authorised by or under any enactment, by any rule of law or by the order of a court, or
- (b) that in the particular circumstances the imposition of the requirement was justified as being in the public interest.

(4) The imposition of the requirement referred to in sub-clause (1) or (2) is not to be regarded as being justified as being in the public interest on the ground that it would assist in the prevention or detection of crime.

(5) A person who contravenes sub-clause (1) or (2) commits an offence and shall on summary conviction be liable to a term of imprisonment not exceeding two years or a fine not exceedingpenalty points or both.

(6) In this clause "a relevant record" means any record relating to convictions or cautions held by the law enforcement agencies or security agencies as defined by the Securities and Intelligence Agencies Act 526.

(7) In the Table in subclause (6)-

"caution" means a caution given to any person in the Republic of Ghana in respect of an offence which, at the time when the caution is given, is admitted;

"conviction" has the same meaning as in the Criminal Code or any offence creating statute in Ghana.

79. Annual Avoidance of certain contractual terms relating to health records

(1) Any term or condition of a contract is void in so far as it purports to require an individual-

- (a) to supply any other person with a record to which this section applies, or with a copy of such a record or a part of such a record, or
- (b) to produce to any other person such a record, copy or part.

(2) This clause applies to any record which-

- (a) has been or is to be obtained by a data subject in the exercise of the right conferred by clause 20, and
- (b) consists of the information contained in any health record namely-
 - i. consists of information relating to the physical or mental health or condition of an individual, and
 - ii. has been made by or on behalf of a health professional in connection with the care of that individual.

Information provided to Commission

80. Disclosure of Information

No enactment or rule of law prohibiting or restricting the disclosure of information shall preclude a person from furnishing the Commission with any information necessary for the discharge of their functions under this Bill.

81. Confidentiality of Information

(1) The Commission, an employee or agent of the Commission shall not disclose any information which-

- (a) has been obtained by, or furnished to, the Commission under or for the purposes of this Bill,
- (b) relates to an identified or identifiable individual or business, and
- (c) is not at the time of the disclosure, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(2) For the purposes of sub-clause (1) a disclosure of information is made with lawful authority only if, and to the extent that-

- (a) the disclosure is made with the consent of the individual or of the person for the time being carrying on the business,
- (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under any provision of this Bill,
- (c) the disclosure is made for the purposes of, and is necessary for, the discharge of any functions under this Bill.

- (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Bill or otherwise, or
- (e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

(3) Any person who knowingly or recklessly discloses information in contravention of sub-clause (1) commits an offence and shall on conviction be liable to a term of imprisonment not exceeding five years or a fine not exceedingpenalty points or both is guilty of an offence.

General provisions relating to offences

82. Liability of Directors

(1) Where an offence under this Bill has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members sub-clause (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under this Bill has been committed by a partnership and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

83. Credit Reporting Act

(1) Every Credit Bureau shall be deemed to be a data controller under this Bill and shall be subject to all orders, directions from the Commission, exercise all rights under this law and liable for any offences committed by the Credit Bureau and its officers under this Bill.

(2) Any person who suffers damage arising from the supply of inaccurate or incomplete information by a Credit Bureau about the person shall be entitled in addition to the remedies under this Bill to such further remedies as are provided under the Credit Reporting Act, 2007, Act 726.

84. Application to the State

(1) This Bill binds the State.

(2) For the purposes of this Bill each government department shall be treated as a data controller.

(3) Each department shall designate a data supervisor.

(4) Where the purposes for which and the manner in which any personal data are, or are to be, processed are determined by any person acting on behalf of the Executive, Parliament and the Judiciary, the data controller in respect of those data for the purposes of this Bill shall be-

(a) in relation to the Executive, the Chief Directors,

(b) in relation to Parliament, the Clerk of Parliament, and

(c) in relation to the Judiciary, such person as the Chief Justice appoints.

(5) Different persons may be appointed under sub-clause (4) for different purposes.

85. Transmission of notices etc. by electronic or other means.

(1) The requirement that any notice, request, particulars or application to which this section applies should be in writing is satisfied where the text of the notice, request, particulars or application-

(a) is transmitted by electronic means,

(b) is received in legible form, and

(c) is capable of being used for subsequent reference.

(2) The Minister may by regulations provide that any requirement that any notice, request, particulars or application to which this section applies should be in writing is not to apply in such circumstances as may be prescribed by the regulations.

86. Service of Notices by the Commission

(1) Any notice authorised or required by this Bill to be served on or given to any person by the Commission may-

(a) if that person is an individual, be served on him-

(i) by delivering it to him, or

(ii) by sending it to him by post addressed to him at his usual or last-known place of residence or business, or

(iii) by leaving it for him at that place

(iv) by sending it to an electronic mail address specified by individual for service of notices.;

(b) if that person is a body corporate or unincorporated, be served on that body-

(i) by sending it by post to the proper officer of the body at its principal office, or

- (ii) by addressing it to the proper officer of the body and leaving it at that office,
- (iii) by sending it to an electronic mail address specified by the body for service of notices under this Bill;
- (c) if that person is a partnership, be served on that partnership-
 - (i) by sending it by post to the principal office of the partnership, or
 - (ii) by addressing it to that partnership and leaving it at that office
 - (iii) by sending it to an electronic mail address specified by individual for service of notices under this Bill.

(2) This clause is without prejudice to any other lawful method of serving or giving a notice.

87. Orders, regulations and rules

(1) The Minister may by legislative instrument make regulations for the effective implementation of this Bill.

(2) Any order, regulations or rules made by the Minister under this Bill may-

- (a) make different provision for different cases, and
- (b) make such supplemental, incidental, consequential or provisions as the Minister considers appropriate;

(3) Before making-

- (a) an order under any provision of this Bill other than section 75(3),
- (b) any regulations or orders under this Bill the Minister shall consult the Commission.

88. Transitional reliefs

- (1) The requirement to register as a data controller under this Bill shall apply to;
 - (a) data controllers incorporated or established after the commencement of this Bill
 - (b) data controllers in existence at the commencement of this Bill three months after the commencement of this Bill

Modifications of Act.

89. Coming into effect

The Minister shall by regulation determine on which day this Bill comes into effect.

90. Interpretations

(1). In this Act, unless the context otherwise requires-

"business" includes any trade or profession;

"the Commission" means the Commission for Human Rights and Administrative Justice;

"corporate finance service" means a service consisting in-

(a) underwriting in respect of issues of, or the placing of issues of, any instrument,

(b) advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings, or

(c) services relating to such underwriting as is mentioned in paragraph

"credit bureau" has the same meaning as in the **Credit Reporting Act**

.....

"data" means information which-

(a) is processed by means of equipment operating automatically in response to instructions given for that purpose,

(b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section **68**;

"data controller" means, a person who (either alone or jointly or in common with other persons or as a statutory duty) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

"data processor", in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

"data subject" means an individual who is the subject of personal data;

"fees regulations" means regulations made by the Minister under section 35(5) or 36(4) or (7); this Bill;

"enactment" includes an enactment passed after this Bill;

"examination" includes any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his performance in any test, work or other activity; of the intentions of the data

"exempt manual data" means-

(a) in relation to the first transitional period, as defined by paragraph 1(2) of Schedule 8, data to which paragraph 3 or 4 of that Schedule applies, and

(b) in relation to the second transitional period, as so defined, data to which paragraph 14 of that Schedule applies.

"fees regulations" means regulations made by the Minister under section 42(5) or 43(4) or (7); of this Bill;

"government department" includes departments and Agencies and any body or authority exercising statutory functions on behalf of the State;

"good practice" means such practice in the processing of personal data processed in such a way that substantial damage or substantial distress is, or is likely to be, caused

"health professional" means a "registered medical practitioner" includes any person who is registered to provider health sector under any law for the time being in force.

"instrument" means any instrument publicly traded security,

"Minister of State" has the same meaning as in the Ministers of State according to the 1992 Constitution of Ghana

"notification regulations" means notification regulations made by the Minister pursuant to under the other provisions of this Part;

"obtaining" or "recording", in relation to personal data, includes obtaining or recording the information to be contained in the data

"prescribed", except where used in relation to fees regulations, means prescribed by notification regulations

"personal data" means data which relate to a identifiable individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data

"principal office", in relation to a registered company, means its registered office and

"proper officer", in relation to any body, means the secretary or other executive officer charged with the conduct of its general affairs

"price" includes value;

"processing", means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information or data, including-

(a) organisation, 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 register" means any register which pursuant to a requirement imposed-

(a) by or under any enactment, or

(b) in pursuance of any international agreement,

is open to public inspection or open to inspection by any person having a legitimate interest;

"pupil"-

in relation to a school in the Republic of Ghana, means a registered pupil within the meaning of the Education Act, 2008, of any registered school

"registered company" means a company registered under the enactments relating to companies for the time being in force in the Republic of Ghana;

"relevant day" has the same meaning as in section 7.

"research purposes" includes statistical or historical purposes;

"relevant filing system" means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible

"relevant person" means-

(a) any person who is authorised under to deal with any securities under the Securities Industries Law Chapter III of Part I of the Financial Services Act 1986 or is an exempted person under Chapter IV of Part I of that Act,

- (b) any person who, but for Part III or IV of Schedule 1 to that Act, would require authorisation under that Act,
- (c) any person who, in the course of his employment, provides to his employer a service falling within paragraph (b) of the definition of "corporate finance service", or
- (d) any partner who provides to other partners in the partnership a service falling within either of those paragraphs

"relevant time" means-

- (a) the time when the data controller first processes the data, or
- (b) in a case where at that time disclosure to a third party within a reasonable period is envisaged-
 - (i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed,
 - (ii) if within that period the data controller becomes, or ought to become, aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware, or
 - (iii) in any other case, the end of that period.

"school"-

has the same meaning as in the Education Act, 2008,

"sensitive personal data" means personal data consisting of information as to-

- (a) the racial, colour, ethnic or tribal origin of the data subject,
- (b) political opinions,
- (c) religious beliefs or other beliefs of a similar nature,
- (d) physical , medical or mental health or condition, DNA
- (e) sexual orientation,
- (f) the commission or alleged commission by him of any offence, or
- (h) any proceedings for an offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceeding

"the special purposes" means any one or more of the following -
the purpose of journalism,

- a) where purpose is in the public interest
- b) artistic purposes, and
- c) Literary purposes

"service" means a service consisting in-

- (a) underwriting in respect of issues of, or the placing of issues of, any instrument,
- (b) advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings, or
- (c) services relating to such underwriting as is mentioned in paragraph (a);

"teacher" includes-

- (a) head teacher, and
- (b) the principal of a school;

to whom disclosure is or may be made as a result of, or with a view to, a particular inquiry by or on behalf of that person made in the exercise of any power conferred by law;

"the prescribed period" means forty days or such other period as is for the time being prescribed under section 7 in relation to the personal data in question;

"the relevant conditions", in relation to any processing of personal data, means the conditions-

- (a) that the data are not processed to support measures or decisions with respect to particular individuals, and
- (b) that the data are not used to any data subject

"third party", in relation to personal data, means any person other than-

- (a) the data subject,
- (b) the data controller, or
- (c) any data processor or other person authorised to process data for the data controller or processor;

"trade association" includes any body representing data controllers ;

"the registrable particulars", in relation to a data controller, means-

- (a) his name and address,
- (b) if he has nominated a representative for the purposes of this Bill, the name and address of the representative,
- (c) a description of the personal data being or to be processed by or on behalf of the data controller and of the category or categories of data subject to which they relate,
- (d) a description of the purpose or purposes for which the data are being or are to be processed,
- (e) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the data,
- (f) the names, or a description of, any countries or territories outside the jurisdiction to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the data, and
- (g) the names, or a description of any countries or territories outside the jurisdiction in respect of which individual data may be held and a statement to the effect the data controller has been notification of compliance requirements by providers to the data controller which has undertaken to comply such compliance requirements and
- (h) a statement that data controller shall comply with all relevant existing law in Ghana.

(g) in any case where-

- (i) personal data are being, or are intended to be, processed in circumstances in which the prohibition in sub-clause (1) of clause 34 is excluded by sub-clause (2) or (3) of that section, and
- (ii) the notification does not extend to those data, a statement of that fact.

"the registrable particulars", in relation to a data controller, means-

- (a) his name and address,

- (b) if he has nominated a representative for the purposes of this Bill, the name and address of the representative,
- (c) a description of the personal data being or to be processed by or on behalf of the data controller and of the category or categories of data subject to which they relate,
- (d) a description of the purpose or purposes for which the data are being or are to be processed,
- (e) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the data,
- (f) the names, or a description of, any countries or territories outside the jurisdiction to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the data, and
- (g) the names, or a description of any countries or territories outside the jurisdiction in respect of which individual data may be held and a statement to the effect the data controller has been notified of compliance requirements by providers to the data controller which has undertaken to comply such compliance requirements and
- (h) a statement that data controller shall comply with all relevant existing law in Ghana.

(g) in any case where-

- (i) personal data are being, or are intended to be, processed in circumstances in which the prohibition in sub-clause (1) of section 17 is excluded by subsection (2) or (3) of that section, and
- (ii) the notification does not extend to those data, a statement of that fact.

"notification regulations" means notification regulations made by the Minister pursuant to under the other provisions of this Part; Bill;

"prescribed", except where used in relation to fees regulations, means prescribed by notification regulations.

For the purposes of this Act, so far as it relates to the addresses of data controllers-

- (a) the address of a registered company is that of its registered office, and
- (b) the address of a person (other than a registered company) carrying on a business is that of his principal place of business in the Republic of Ghana.

"public funds" includes funds provided by the consolidated fund;

"relevant authority" means-

- (a) a government department,
- (b) a local authority, or

(c) any other statutory authority

"using" or "disclosing", in relation to personal data, includes using or disclosing the information contained in the data.

In this Bill unless the context otherwise requires;

(2)"recipient", in relation to any personal data, means any person to whom the data are disclosed, including any person (such as an employee or agent of the data controller, a

data processor or an employee or agent of a data processor) to whom they are disclosed in the course of processing the data for the data controller, but does not include any person