



# THE OFFICE OF THE Data Protection Commissioner



# 2007 Annual Report

The Honorable Hubert A. Ingraham  
Prime Minister & Minister of Finance  
Cecil V. Wallace-Whitfield Centre  
Cable Beach,  
P.O. Box N-3017  
Nassau, N.P.,  
The Bahamas

Dear Prime Minister,

In compliance with Section 21 of the Data Protection (Privacy of Personal Information) Act, 2003, I hereby submit the first Annual Report on the activities of the Office of the Data Protection Commissioner for the reporting year 2006-2007.

Yours faithfully,

A handwritten signature in black ink, appearing to read "George E. Rodgers", with a horizontal line drawn through it.

George E. Rodgers  
Data Protection Commissioner

## **WHAT IS DATA PROTECTION?**

Data Protection is the process of identifying and safeguarding the privacy rights of individuals in relation to the processing of personal information. The Data Protection (Privacy of Personal Information) Act 2003 sets out the legal framework for the collection, use and disclosure of personal information consistent with internationally recognized principles established by the Council of Europe, The European Union (EU) and the Organization for Economic Co-operation and Development (OECD), and the United Nations (UN).

From our point of view, the key principle of data protection is that living individuals should be able to control how personal information about them is used, with or without their consent.

# ABBREVIATIONS

BAIC	- Bahamas Agricultural & Industrial Corporation
DPA	- Data Protection Act
DPC	- Data Protection Commissioner
DPU	- Data Processing Unit
EU	- European Union
FOI	- Freedom of Information
ODPC	- Office of the Data Protection Commissioner
OECD	- Organization for Economic Cooperation and Development
PAI	- Public Administration International
UK	- United Kingdom
UN	- United Nations

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## FOREWORD

This is the very first annual report of the Data Protection Commissioner of The Bahamas. It covers the period 26th October 2006, the day of my appointment, to 31st December 2007 and relates to matters concerning the establishment of the Office of the Data Protection Commissioner as well as the operation and status of the Data Protection (Privacy of Personal Information) Act, 2003 (DPA) and ancillary issues.

The DPA came into force on 2nd April 2007, subsequent to the establishment of the Office of the Data Protection Commissioner in October 2006. The Commissioner is a corporation sole and is independent in the performance of his duties. He is appointed in writing by the Governor General on the advice of the Prime Minister after consultation with the Leader of the Opposition. The Commissioner has responsibility for:-

- Administering and enforcing the provisions of the DPA.
- Promoting the observance of good practice methods by Data Controllers within the requirements of the DPA
- Influencing thinking on privacy and processing of personal information matters on a local and global basis.
- Discharging as the national supervisory authority, various functions relating to or arising from any international obligations The Bahamas may have or is seeking to be a party to, in connection with data protection.

As an essential part of the Government's E-Commerce enabling legislative package, the DPA is intended to ensure that personal information that is collected on individuals is managed in a manner which ensures that fundamental privacy rights are observed and that the data is used in a manner that is consistent with the intentions of the data subject. The rapid expansion of the Internet, the ease with which data can be aggregated, and the value attributed to personal data, have all meant that opportunities for abuse in the handling of such data can occur.

It is therefore, essential that the DPA becomes an effective tool to ensure that a sensible balance is evoked to allow for legitimate data collection without compromising our basic rights to have our personal information protected and our privacy respected.

## COMMISSIONER'S STATEMENT

I am honored to have the opportunity to be the first appointed Data Protection Commissioner and to present the first annual report under the DPA. Having assumed office on October , 2006, the first order of business was to familiarize myself with the provisions of the Act and to set about establishing the office of the Data Protection Commissioner to facilitate the actual coming into force of this important legislation.



The DPA actually came into operation on April , 2007. It was one of three parts of the Government's E-Commerce enabling package that was passed in 2003, but its "Appointed Day Notice" was delayed pending the selection and appointment of the Data Protection Commissioner. The focus of the DPA is to provide the public with a set of clearly defined and comprehensive protection of their fundamental human right to privacy, thereby enhancing the protection which is already guaranteed by the Constitution of The Bahamas. In addition, the DPA sets the legal framework for the collection, use and disclosure of personal information consistent with internationally recognized principles established by the Council of Europe, The European Union, the OECD and the United Nations.

During the week of February 12-16 2007, I had the good fortune to visit the Office of the Privacy Commissioner of Canada. There, Privacy Commissioner, Ms. Jennifer Stoddart and her most competent and accommodating team, provided me with a bird's eye view of their operation and gave valuable assistance in the establishment of my office. I am most grateful to them for their help and assistance in this initiative.

March 19-23 2007 presented another opportunity to travel to London to attend a Public Administration International (PAI) course on "Achieving open and Transparent Government" in preparation for the launch of the Office of the Data Protection Commissioner (ODPC). This course had a focus on "Freedom of Information" (FOI) and it provided a unique opportunity to explore both the theory and practice of FOI legislation in the United Kingdom. It was an excellent "fore-runner" of our data protection legislation as it brought balance to the need for privacy while remaining accountable and transparent.

For the time being the ODPC is comprised of the Commissioner and his Secretary who operate in the premises of the Ministry of Finance. Additional support is also provided by the legal unit of the Ministry of Finance. We will likely require an Investigations Officer in the next year depending upon the level of activity generated. Except for the Commissioner, all staff members will be Public Officers. The work of the ODPC has been divided into four main categories:-

1. Investigations and Enquiries
2. Audit Research and Policy
3. Public Education and
4. Human Resources—Legal and Other Services

More will be said about this elsewhere in this report.

I am proud to have been able to launch our premier Website [.bahamas.gov.bs/](http://.bahamas.gov.bs/) for the ODPC on December 10th 2007. It marks a significant milestone in our first year of operation, and we owe sincere thanks to the staff of the Data Processing Unit (DPU), particularly Mrs. Michelle Small. The site is intended to provide a resource center as well as become an effective medium for the Commissioner to keep the public informed as it relates to government policy and the development of international standards for the use and disclosure of personal information. Citizens are encouraged to dialogue with the Commissioner and/or lodge complaints about their concerns using the e-mail address [@bahamas.gov](mailto:@bahamas.gov).

As a new data protection regime, one of our objectives is to examine the special procedure for the European Commission to designate third countries as either satisfying or not satisfying the EU adequacy test for transborder data flows. Such an examination will be with a view to determining those initiatives that would enhance The Bahamas' attractiveness as a preferred jurisdiction for locating data services industries.

Education will be a key focus of our activities next year. Complaints and/or queries have been negligible with only one (1) complaint (which was aborted) and nine (9) specific queries being received to date. However, I was able to visit nineteen (19) agencies of Government interacting with two hundred and twenty nine (229) individuals in the process. In addition, I initiated two (2) investigative matters with regard to excessive requests for personal information by corporate citizens from their clients. One of these matters has been successfully resolved and the other remains outstanding.

All Data Controllers (especially all government agencies) must now prepare themselves to become compliant with Section 8 of the DPA which deals with access to personal information. This is so because after April 2nd 2008 it will be mandatory for Data Controllers to provide a positive response to a written request for personal information within the prescribed period of forty (40) days.

Finally, I take this opportunity to offer my sincere thanks to the Financial Secretary, Mrs. Ruth Millar and Legal Advisor, Mrs. Rowena Bethel, for their invaluable support and technical assistance respectively, for facilitating the appointment of a Data Protection Commissioner and the establishment of the ODPC that now has responsibility for administering the DPA and bringing its import into fruition. Special thanks also to my Secretary Mrs. Sabrina Woodside for her untiring efforts and sterling support.

George E. Rodgers  
Data Protection Commissioner



## **Important Terminology in the Data Protection (Privacy of Personal Information) Act, 2003**

The following terminology is used where it relates to our data protection legislation:-

- “Data”** means information in a form in which it can be processed.
- “Data Controllers”** means a person who (either alone or with others) determines the purposes for which and the manner in which any personal data are, or are to be processed.
- “Data Processor”** means a person who processes personal data on behalf of a Data Controller but does not include an employee of a Data Controller who processes such data in the course of his employment.
- “Personal Data”** means data relating to a living individual who can be identified:-  
(i) from the data, or  
(ii) from the data and other information or data in possession of the data controller.
- “Processing”** in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data including:-  
(i) organization, adaptation or alteration of the information or data;  
(ii) retrieval, consultation or use of the information or data;  
(iii) transmission of data;  
(iv) dissemination or otherwise making available, or  
(v) alignment, combination, blocking, erasure or destruction of the information or data.
- “Data Subject”** means an individual who is the subject of personal data.
- “Back-up Data”** means data kept only for the purpose of replacing other data in the event of their being altered, lost, destroyed or damaged.

# **Data Protection in Brief**

The DPA seeks to strike a balance between the rights of individuals and the sometimes competing interests of those with legitimate reasons for using personal information. The DPA gives individuals certain rights regarding information held about them. It places obligations on Data Controllers (those who process information) while giving rights to Data Subjects (those who are the subject of that data). Personal information covers both facts and opinions about the individual.

## **1. Rights of Individuals under the DPA.**

**Individuals have a number of legal rights under The Bahamas' data protection law. You can...**

- expect fair treatment from organizations in the way they obtain, keep, use and share your information;
- demand to see a copy of all information about you kept by the organization;
- stop an organization from using your details for direct marketing;
- demand that inaccurate information about you be corrected;
- demand that any information about you be deleted, if the organization has no valid reason to hold it;
- complain to the Data Protection Commissioner if you feel your data protection rights are being infringed;
- sue an organization through the courts if you have suffered damage through the mishandling of information about you.

## **2. Obligations on Data Controllers under the DPA.**

**To comply with their data protection obligations Data Controllers must:**

- collect and process information fairly;
- keep it only for one or more specified, explicit and lawful purposes.
- use and disclose it only in ways compatible with these purposes;
- keep it safe and secure;
- keep it accurate, complete and up to date (except for back-up data).
- Insure that it is adequate, relevant, and not excessive;
- retain it no longer than is necessary, except for historical, statistical or research purposes.
- give a copy of his/her personal data to any individual, on request.

## **Data Protection Principles and their Elements**

There are several important personal data exclusions from the provisions of the DPA. These may be found at section 5 and include:

- items kept for the purpose of safeguarding the security of The Bahamas,
- information that the person keeping the data is required by law to make available to the public,
- data kept by an individual and concerned only with the management of his personal, family or household affairs or kept for recreational purposes,
- deliberations of Parliamentary committees,
- pending civil, criminal or international legal assistance procedures.

Otherwise, under the DPA, a Data Controller shall comply with the following provisions in relation to the data kept by him:-

<b>Principles</b>	<b>Elements</b>
1. Personal data must be collected by means which are lawful and fair.	<p>To be fair, Data Controllers must not collect personal data unless:-</p> <ul style="list-style-type: none"> <li>• the information is collected for a lawful purpose that is directly related to a function or activity of the organization, and</li> <li>• the collection of the information is reasonably necessary for that purpose.</li> </ul> <p>Data Controllers must NOT collect personal data by any unlawful means. In addition, the data subject should be aware of the identity of the controller and must have given his consent if the data is to be processed.</p>
2. The data must be accurate and, where necessary, kept up to date (except in the case of back-up data)	<ul style="list-style-type: none"> <li>• Recorded information must be accurate and must be revised as appropriate.</li> <li>• Care with images which could be altered over time</li> </ul>
3. The data shall be kept only for one or more specified and lawful purposes.	<ul style="list-style-type: none"> <li>• It must be clear about the purposes for which the data are processed.</li> <li>• Specified purposes may be those which have been notified to the Commissioner or to the individuals.</li> <li>• The data must .only be kept for lawful purposes.</li> </ul>
4. The data shall not be used or disclosed in any manner incompatible with that purpose or purposes.	<ul style="list-style-type: none"> <li>• Data must only be used in a way consistent with the purpose (s) for which they were obtained.</li> <li>• Data disclosure must also be in ways consistent therewith.</li> </ul>

<p>5. The data shall be adequate, relevant and not excessive in relation to that purpose or those purposes.</p>	<p>Data kept must be:</p> <ul style="list-style-type: none"> <li>• adequate in relation to the purpose (s) for which it is kept,</li> <li>• relevant in relation to the purpose (s) for which it is kept.</li> </ul> <p>Data kept must not be excessive in relation to the purpose (s) for which it is kept.</p>
<p>6. The data shall not be kept for longer than is necessary, except in the case of personal data kept for historical, statistical, or research purposes.</p>	<ul style="list-style-type: none"> <li>• There should be a defined policy on retention periods for all items of personal data kept.</li> <li>• The retention policy and/or procedures should be revised regularly by management and staff to ensure that they remain consistent with the requirements of the DPA.</li> </ul>
<p>7. Appropriate security measures shall be taken against unauthorized access to, or alteration, disclosure or destruction of, the data and against their accidental loss or destruction.</p>	<ul style="list-style-type: none"> <li>• Access to data restricted to authorized persons only.</li> <li>• Computer systems should be protected.</li> <li>• Adequate back-up procedures should be in place.</li> <li>• Staff should be aware of security measures in place to protect stored data.</li> <li>• Premises and equipment should be secured when unoccupied.</li> <li>• Alteration or amendments to data must be properly authorized and confirmed.</li> </ul>
<p>8. The Commissioner may prohibit the transfer of personal data outside the country where there is failure to provide protection either by contract or otherwise equivalent to that provided under the DPA</p>	<p>Section 17 of the DPA provides full details of prohibition.</p>

## THE WORK OF THE COMMISSIONER

The focus of the Commissioner in this first year was three-fold. First: to establish the Office of the Data Protection Commissioner. Second: to begin the awesome task of educating the public sector about the existence of the legislation. Third: to sensitize government agencies on the steps they need to take in order to comply with the provisions of the DPA.

An office for the Commissioner and his Secretary was provided within the Ministry of Finance which also was the conduit for funding ([Appendix 1](#)).

For the Commissioner, training this year was mostly internal as he sought to put in place a set of guiding principles that will ensure good and effective administration and enhance the enforcement of the provisions of the DPA. As mentioned previously, a brief attachment to the Office of the Privacy Commissioner of Canada provided an insight into what is needed for our ODPC in both training and resources. In addition, the Commissioner participated in the following training and development programs:-

<b>PROGRAM</b>	<b>PLACE AND DATES</b>	<b>COMMENTS</b>
GTEC – Start 06 Professional Development Forum	<b>OTTAWA</b> October 23 to 25, 2006	This was a discussion that provided a unique opportunity for public and private participants to interact with international professionals and to be exposed to emerging trends, issues and technologies on E-Government, IT and privacy concerns.
Public Administration International – PAI Course “Freedom of Information: Achieving open and transparent government”	<b>LONDON</b> March 19 to 23, 2007	Data Protection is a natural forerunner to Freedom of Information (FOI). This course offered a unique opportunity to explore both the theory and practice of FOI legislation in action. In several jurisdictions (notably the UK) the regimes for data protection and FOI are combined under one regulatory supervisor known as the “Information Commissioner.”
International Data Protection and Privacy Commissioners’ Conference	<b>MONTREAL</b> September 25 to 28, 2007	Regular attendance at these conferences is a <b>MUST</b> . It is the foremost forum where privacy issues take center stage and worldwide policies are formulated. Here, challenges to the privacy rights of citizens are confronted with a view to ensuring that both privacy and safety are enhanced.

Educating the public sector took the form of a series of presentations designed to personally introduce Data Controllers in various government agencies to the requirements of the DPA. Heads were asked to invite members of staff whose responsibilities included any or all of the functions dealing with personal information. Specifically, invited were:-

- Human Resources Management and related personnel
- Data Controllers and/or Data Processors (as defined in the DPA)
- Department Heads and their Deputies
- Computer Managers and/or Supervisors

Nineteen (19) government agencies were visited benefiting a total of two hundred and twenty nine (229) individuals in the process. A list of the agencies visited is provided at Appendix 2.

As can be expected, several concerns were expressed about the application of the DPA including:-

- access to personal information, as mandated by section eight (8) of the DPA,
- identity theft and the ramifications thereof,
- a proposed Credit Bureau for the Bahamas, and
- the possibility of conflicting laws on the books.

The Commissioner acknowledges that his is a work in progress. Consequently, his office has been structured to deal with various aspects of the mandate in the manner detailed at Appendix 3.

Paramount among the concerns of this office are (1) the potential for the misuse of the substantial amount of information stored on the Bahamian Driver's License, and (2) the indiscriminate use of the National Insurance Number as a means of identification. The Commissioner believes that the potential for the misuse of these items increases the risk of identity theft, which is now one of the fastest growing crimes in North America.

He will, therefore, pursue these issues with the relevant authorities to heighten their awareness and assist them in reducing the opportunity of risk going forward.

Finally, the Commissioner takes this opportunity to remind both private and public sector organizations of our community of two (2) important transitional dates for compliance with the act:-

1. Data Controllers have one year to have all necessary measures in place before an access request becomes mandatory under Section 8, i.e. until April 2008.
2. There is a five (5) year grace period which allows the continued use of information now held (i.e. until April 2012). Thereafter, information held must be in compliance with the DPA.

## **DUTIES OF THE COMMISSIONER**

1. To promote the observance of good practice by Data Controllers with the requirements of the DPA.
2. To provide information to the public about the legislation, how it works, and about other matters relevant to the work of the Office.
3. To issue codes of practice for guidance as to good practice about data protection where the Commissioner considers it appropriate subject to appropriate consultation. The Commissioner is also required, in appropriate cases to encourage the preparation and dissemination of data protection codes of practice by trade associations, consider those codes submitted to him, ensure appropriate consultation and then provide an opinion on the code as to good practice.
4. Annually, to prepare and cause a report in relation to his activities under the DPA to be laid before each House of Parliament in accordance with section 21 of the DPA.
5. To investigate any contravention of the DPA. The Commissioner is required to investigate whether any contravention has occurred in relation to an individual, either of his own volition or as a result of a complaint by an individual concerned.
6. To discharge, as the national supervisory authority, various functions relating to, or arising from any international obligations The Bahamas may have or is seeking to be a party to, in connection with data protection.
7. To keep proper accounts and other records in relation to the accounts, to prepare an annual Statement of Account in the form required by the Minister, with the consent of the Minister of Finance and to send copies of that Statement of Account to the Auditor General.
8. To designate from his staff at the relevant time, someone to perform his functions during any temporary absence.
9. To perform all other functions and exercise such powers as are reasonably and legally contemplated by or necessary for giving full effect to the provisions of the DPA and for its due administration.

## POWERS OF THE COMMISSIONER

1. ***Enforcement powers\****. These include service of information notices (S.18) and enforcement notices (S.16), to enable the Commissioner to investigate and rectify instances of non-compliance with;
  - any of the data protection principles,
  - any other requirements of the DPA.
2. ***Transborder data flows\****. The Commissioner has power to issue prohibition notices, prohibiting the transfer of personal data in circumstances where the data would lose its protections under the DPA. (S.17).
3. To prosecute any offence under the DPA together with associated powers of entry and inspection in connection with the investigation of any such offence (or contravention of any of the data protection principles).

**\* NB. All notices are subject to appeal to the Supreme Court under Section 24.**



# Financial Statements

## Appendix 1

### Receipts and Payments for the period October 2006 to December 2007

(Expressed in Bahamian Dollars to the nearest dollar)

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#### Receipts

Contribution provided via the Ministry of Finance (Note 1) 154,907

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**Total Receipts** **154,907**  
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#### Payments

Salary & Allowances (Note 2) 121,070

Travel & Subsistence 8,257

Training & Related costs 10,688

Office & Computer Equipment 6,020

Furniture & Fittings (Note 3) 7,408

Miscellaneous Expenditure 1,464

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**Total Payments** **154,907**  
=====

#### Notes:-

1. **Contribution provided via the Ministry of Finance.** The Commissioner does not operate an independent accounting function. All expenses of the Office are met from within the resources of the Ministry of Finance. Consequently the expenses detailed in the above financial statement are of **notional value only**.
2. **Salaries & Allowances.**
  - (a) The Commissioner is appointed by the Government initially for a term of three (3) years effective October 2006 and his remuneration and allowances are at rates determined by and agreed with the Minister of Finance.
  - (b) Staff other than the Commissioner, are established public officers. Presently the complement consists of the Commissioner and his Secretary.
3. **Furniture & Fittings.** The Commissioner maintains an office at the Ministry of Finance.

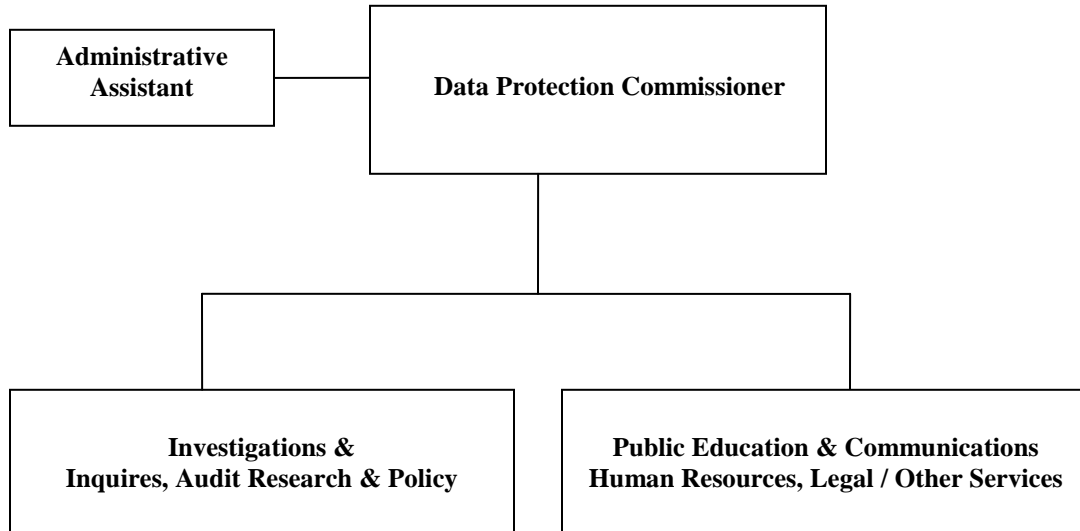
## Schedule of Agency Visits and/or Presentations

<b>Date</b>	<b>Agency</b>	<b>Number of Participants</b>
Feb. 07	Heads of Departments and/or Corporations	28
Feb. 21	Members of Parliament	12
May 09	National Insurance Board	06
June 20	Tourism & Aviation	13
June 20	Dept. of Immigration	06
June 25	Dept. of Road Traffic	07
July 03	Royal Bah. Police Force	09
July 05	Royal Bah. Defense Force	14
July 09	Bah. Information Services	01
July 11	Bahamas Electricity Corp.	15
July 26	Bah. Telecom. Company	10
Aug 02	Lands & Local Government	01
Aug 31	Central Bank of The Bahamas	24
Sept 06	Dept. of Public Service	11
Sept 10	Bahamas Mortgage Corp.	12
Sept 14	Water & Sewerage Corp.	09
Sept 20	Works and Transport	30
Oct. 05	Bah. Development Bank.	16
Dec.03	BAIC	05

Dec. 2007

# Organization by Functions

## Appendix 3



As previously mentioned, the present staff in the ODPC is comprised of the Commissioner and his Secretary (described as an “Administrative Assistant” in the above chart). The chart, however, depicts the functions of the office which are now within the purview of the Commissioner, but which may revolve into job positions/units with the growth of the activities of the ODPC. A synopsis of the various activities and/or comments in each work category is given below:

## **Investigations and Inquiries**

- Investigating complaints received from individuals under Section 15 of the DPA.
- Establishing whether individuals have had their privacy rights violated.
- Determining whether individuals have been afforded their rights to access to their personal information.
- Where privacy rights have been violated, seek to provide redress and to ensure violations do not recur.
- Mediation and conciliation, with a view to corrective action, if necessary, are the preferred approaches to complaint solving.
- The Commissioner has the power to issue enforcement notices to compel violators to comply with the provisions of the DPA.
- There is provision under Section 24 of the Act for leave to appeal to the Court against the prohibition specified in the Notice within 21 days from the service of Notice.
- The Commissioner’s office will be receptive to all privacy complaints, Section 15 (2) (a). However frivolous or vexatious complaints will be discouraged.

## **Audit Research & Policy**

- Here we will assess how well organizations comply with the provisions and spirit of the DPA.
- Compliance reviews of the function and or work of a Data Controller or a Data Processor is also the concern of this area, and the application of the Act outlined in Section 4 of the DPA.
- The Commissioner will receive, analyze and provide comments and recommendations on Data Protection issues affecting The Bahamas.
- He will also seek to ensure that privacy risks associated with specific programs and services are properly identified and that appropriate measures are taken to mitigate these risks.
- Develop a center of expertise on emerging Privacy/Data protection issues at home and abroad.
- Research trends, monitor Legislative and regulatory initiatives and provide analysis on key issues, including policies and positions that advance the position of the Privacy rights of personal information.
- Identify Legislation, new programs and emerging technologies that raise privacy concerns, providing strategic advice and policy options.
- Draft discussion and/or position papers for public consumption on issues affecting Privacy; and personal briefing material for public speeches etc.

## **Public Education & Communication**

- Promote the observance of good practice by Data Controllers within the requirements of the Act.
- Provide information to the public about the Legislation and how it works, and about relevant matters.
- Issue codes of practice for guidance as to good practice about Data Protection.
- Encourage the preparation and dissemination of Data Protection codes of practice by trade associations; consider codes submitted for review and ensure appropriate consultation, providing an opinion on the codes as to good practice.
- Discharge various functions relating to or arising from international obligations of The Bahamas, as regards Data Protection (privacy) issues.
- Plans, and implements a number of public education and communications, activities, including speaking engagements and special events, media relations, advertising, the production and dissemination of promotional and educational material. Clearly all of the above will not fall into place immediately, but it is anticipated that the framework will evolve over time.

## **Human Resources – Legal & Other Services**

- The message must go out to Human Resource Management Personal that they are responsible for performing Data Protection functions either as a Data Controller or a Data Processor for the purposes of the Act.
- In particular, the Head of a Government Agency is deemed to be Data Controller or as the case may be, a Data Processor under Section 3 of the Act.
- Legal matters under the Act will be referred to the Legal Advisor in the Ministry of Finance.
- Other services, notably advice on finance, information technology and general administration will be sought from development partners within the Ministry of Finance.