

## WRITTEN RESPONSE

### OFFICE OF THE PRIME MINISTER-COMMUNICATIONS

#### FIFTH REPORT OF THE JOINT SELECT COMMITTEE ON FINANCE AND LEGAL AFFAIRS ON AN INQUIRY INTO THE IMPLEMENTATION OF A REGULATORY FRAMEWORK FOR THE DEVELOPMENT OF FINANCIAL TECHNOLOGY (FINTECH) AND E-PAYMENTS THIRD SESSION (2022/2023), TWELFTH PARLIAMENT

1. This written response is made in conformity with the Standing Orders<sup>1</sup> of the Parliament of Trinidad and Tobago regarding the Joint Select Committee's ("the JSC Committee") Report on the Implementation of a Regulatory Framework for the Development of Financial Technology (Fintech) and E-Payments ("the Report").
2. The Committee, in its Recommendations<sup>2</sup>, requested that the Office of the Prime Minister "*provide an update on the operationalization of the Data Protection Act Chapter 22:05 (sic) and the Electronic Transaction Act*".

#### **Electronic Transaction Act Chap 22:05**

3. The administration of the **Electronic Transaction Act Chap 22:05** lies with the Ministry of Digital Transformation ("MDT"), in accordance with the designation of portfolios as outlined in Gazette 111 of 2021. Accordingly, the Office of the Prime Minister-Communications ("OPM-C") is not in a position to advise the JSC Committee on the operationalization on this piece of legislation.

#### **Data Protection Act Chap 22:04**

4. In OPM-C's previous written response to the Committee, on February 7, 2022, it was highlighted that the administration for data protection<sup>3</sup> was shared between the Office of the Prime Minister and the Ministry of Digital Transformation ("MDT").

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<sup>1</sup> Standing Order 100(6) of the Senate; Standing Order 110(6) of the House of Representatives

<sup>2</sup> Page 38 of the Report

<sup>3</sup> Paragraph 2 of the written response, dated February 7, 2022, provided by the Office of the Prime Minister to the Joint Select Committee on Finance and Legal Affairs on an inquiry into the Status of Unproclaimed Legislation (Part 1): the Planning and Facilitation of Development Act 2014 and the Data Protection Act Chap 22:04, First Session (2020/2021), Twelfth Parliament

5. In 2020, the OPM-C, secured a Consultant to examine the **Data Protection Act Chap 22:04** (“the Act”), identify any deficiencies which existed within the legislation, and make appropriate recommendations for amendments to update the Act, in line with the European Union’s General Data Protection Regulations. This Consultancy was a collaborative effort between the OPM-C and the Ministry of Trade and Industry from December 2020 to September 2021. The Consultant produced the following deliverables:
- Draft Legislative Amendments and Regulations
  - Final Report
  - Legislative Brief
  - Stakeholder Consultation Report
6. In 2022, the JSC Committee made several recommendations contained within the Second Report on an inquiry into the status of Unproclaimed Legislation Part I<sup>4</sup> regarding the strategy of the State to amend and ultimately proclaim the Act. Two key recommendations made by the JSC Committee were:
- i. *The Committee acknowledges the value of a system for the classification of personal data that is held by third parties and thus acknowledges the merit in the creation of a classification system, by the way of policy or legislation, to guide the treatment of data;*
  - ii. *The Committee is of the view that multiple stakeholder agencies working towards a common goal must implement processes that facilitate information exchange and dialogue. Therefore an appropriate Communication strategy should be developed and implemented to foster dialogue among the OPM, the MTI, MoAGLA and MPADT with a view to adopting a well-informed and definitive position on the way forward for Data Protection Legislation in Trinidad and Tobago.*
7. Since the provision of that Second Report, several key initiatives have transpired which the OPM-C wishes to draw to the attention of the JSC Committee.

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<sup>4</sup> The Planning and Facilitation of Development Act 2014 and the Data Protection Act 22:04

8. In 2022, the OPM-C, having regard to the merits of the recommendations provided in the aforementioned Report, secured a Consultant to develop a National Policy for Archives, Records and Information Management and Implementation Plan for Trinidad and Tobago. This was made possible through the Ministry of Trade and Industry's Strengthening of the Single Electronic Window and financed by the International Development Bank. The Consultancy was for a period of five months (April 27, 2022 to September 30, 2022). The draft National Records, Information and Archives Management Policy was presented by the Consultant on September 9, 2022.
9. In 2023, a Working Group was formed with officials of the OPM-C and MDT (members of the Office of the Attorney General will be included shortly). The Working Group will:
  - a) Review the draft legislative amendments proposed from the 2020 Consultancy, as well as, examine provisions within the Act which can be proclaimed without any need for amendment;
  - b) Review the organizational structure of the Office of the Information Commissioner *inter alia*:
    - i. ***The current composition as identified in the Act against a three-member panel*** - In the 2020 Consultancy, Private and Public stakeholders preferred a panel which they opine would promote a greater deal of transparency versus the concentration of power in the Commissioner;
    - ii. ***A revisit of qualifications***: The person holding the position of Information Commissioner under the legislation must possess a viable blend of expertise and intellectual rigour and all of the qualifications may not necessarily be found in an Attorney. If the structure of a panel is preferred, it affords the opportunity to employ a blend of persons with suitable skill sets to bring a more rounded and holistic view.
10. The Ministry of Digital Transformation has recently invited the Office of the Prime Minister-Communications to participate on an upcoming Consultancy to operationalize the Office of the Information Commissioner.

11. On March 28, 2023, the Government at the conclusion of the debate of a Private Motion in the Senate, informed all Senators of the intention that the **Data Protection Act Chap 22:04** will be proclaimed within a period of 18 months.
12. The OPM-C is cognizant of the need for this piece of legislation to be proclaimed given the changing technological landscape and the thrust of local digital and digitization initiatives embarked on by both private entities and Government and is working assiduously alongside MDT to bring this to fruition.

May 24, 2023