The State of Data Protection and Privacy Laws in the Caribbean

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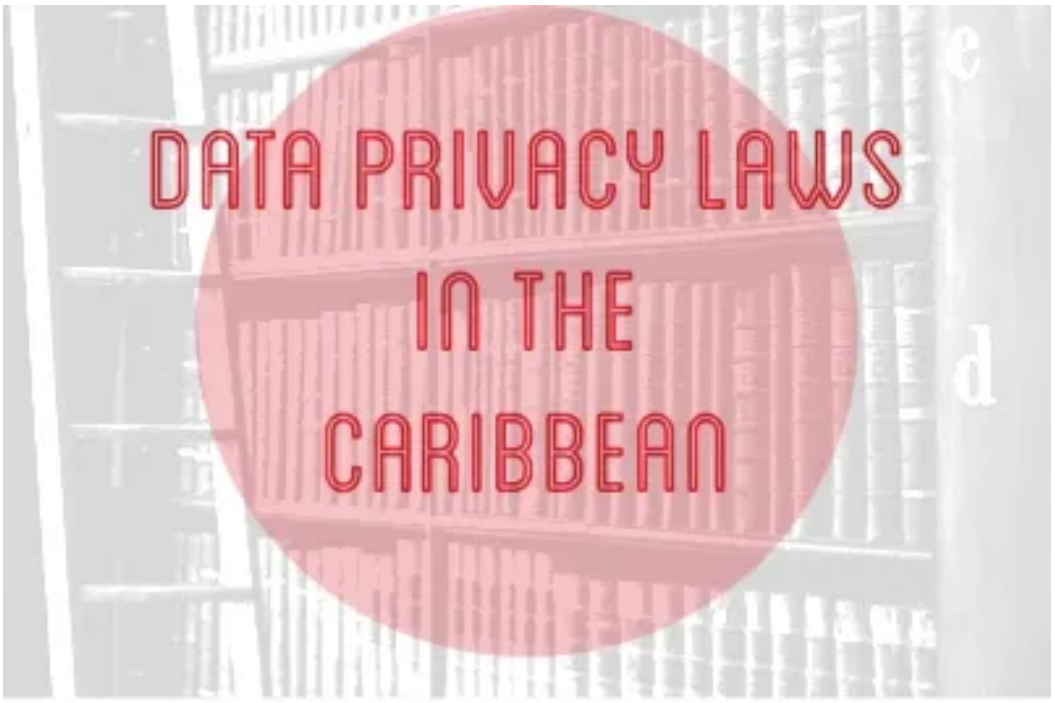

CURRENT STATE OF PROGRESS

2024

70% OF COUNTRIES HAVE DATA PRIVACY LAWS

6 COUNTRIES HAVE ENACTED NEW/ AMENDED LAWS SINCE 2021

2 COUNTRIES PASSED LAWS LAST YEAR (2023)

LAWS ARE SLATED TO BECOME FULLY OPERATIONAL WITHIN A YEAR

7 COUNTRIES HAVE LAWS THAT ARE AT LEAST PARTIALLY OPERATIONAL

3 COUNTRIES HAVE LAWS THAT CAME INTO EFFECT WITHIN THE LAST 3 YEARS

20 CARICOM MEMBER & ASSOCIATE STATES

The State of Data Protection and Privacy Laws in the Caribbean - DPO Caribbean

In today's dynamic digital landscape, data is seen as a coveted asset. Data protection and privacy ("privacy") laws are therefore viewed as important mechanisms for governing the collection, use, storage, disclosure and other forms of processing of personal data by private and public entities and safeguarding the rights of individuals, thereby reducing certain risks.

In 2018, a study showed that close to 70% of countries in the Caribbean were without any national privacy laws. Since then, the region has witnessed rapid developments in the privacy legislative landscape. One primary reason for this is the coming into effect of the EU General Data Protection Regulation (GDPR), and the growing recognition and impact of privacy laws and regulations on the rights and freedoms of individuals concerning personal identifiable information or personal data.

For these reasons, we examine the current state of legislative development in the region with particular emphasis on the Caribbean Community (CARICOM) members and associate member states. This group of 20 countries has varying levels of privacy legislative development and maturity to include no privacy laws, recently passed laws, limited operationalisation of existing laws and relatively active regimes. Our analysis provides the following insights:

- **6/20** countries have no known laws.
  - *Anguilla, Dominica, Haiti, Montserrat, Suriname, and Turks and Caicos Islands*.
- **70%** of countries have enacted laws.
  - *Antigua and Barbuda, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago*
- **6** countries have passed (new and amended) laws since 2021.
  - *Belize, Bermuda, British Virgin Islands, Cayman Islands, Grenada, Guyana*
- **2** countries have passed laws within the last year.
  - *Grenada and Guyana*
- **8** countries have laws that are at least partially in force.
  - *The Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Jamaica, Saint Kitts and Nevis, Saint Lucia, and Trinidad and Tobago*
- **3** laws came into effect in the last 3 years.
  - *Barbados, British Virgin Islands, Jamaica*
- **1** law came into further effect in the last year.
  - *Jamaica*
- **At least 2** laws will be fully operational within a year.
  - *Bermuda and Jamaica*

A current state of privacy laws in the Caribbean is available on our website.
The national privacy laws of several countries are briefly discussed.

1. Antigua and Barbuda

Antigua and Barbuda's Data Protection Act, 2013, No 1o of 2013, was published in the official Gazette on 7 November 2013.
The Act seeks to safeguard personal data processed by public and private bodies and to promote transparency and accountability in the processing of personal data. Some of the provisions include privacy and data protection principles, data subject rights, exemptions, the Information Commissioner, and other administrative considerations. The Act confers on the Information Commissioner, pursuant to the Freedom of Information Act, 2014, the role of enforcing the provisions of the DPA.
Breaches of the Act may result in fines or imprisonment. For example, a person commits an offence when that person processes any sensitive personal data of a data subject in contravention of the Act. The person becomes liable to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding three years or to both.
The Act has no commencement provision and is therefore deemed to be in force upon Assent.

2. The Bahamas

The Bahamas Data Protection (Privacy of Personal Information) Act, 2003 came into force on 2 April 2007.
The Act seeks to protect the privacy of individuals concerning personal data and to regulate the processing of certain information relating to individuals.
The Act applies to data controllers established in the Bahamas and those who use equipment for processing data for non-transit purposes. The Act includes provisions on the protection of the privacy of individuals with regard to personal data which addresses certain data subject rights, the data protection commissioners, and miscellaneous provisions that include the obligations of data controllers.
The Act establishes the Office of the Data Protection Commissioner, which is responsible for investigating any contraventions by data controllers or data processors, in relation to the provisions of this Act.
A person who is found guilty of an offence under the Act is liable to a fine of up to US$100,000.00 Subject to certain conditions, the court may also order any data material connected with the commission of an offence to be forfeited or destroyed and any relevant data to be erased.

3. Barbados

The Barbados Data Protection Act, 2019 came into force on 26 March 2021, with the exception of sections 50, 51, 52, 55, 56 and 57 (registration of data controllers and data processors).
The Act seeks to regulate the processing of personal data and the protection of the individual privacy of individuals in relation to their personal data. The Act includes provisions on data protection

principles, the rights of data subjects, transfers of personal data outside of Barbados, obligations of data controllers and data processors, and certain exemptions.
The Act establishes the position of Data Protection Commissioner whose responsibilities include monitoring and enforcing the application of this Act and promoting awareness. The Act also establishes a Data Protection Tribunal that hears appeals regarding certain decisions of the Commissioner.
Under the Act, a person who is found guilty of an offence may face a fine of up to Bds$500 000 or up to 3 years or both, depending on the offence.

4. Belize

The Belize Data Protection Act, 2021 seeks to regulate the processing of personal data and the protection of the privacy of individuals in relation to their personal data. The Act or provisions will come into force by the Minister by Order in the Gazette.
The Act has strong similarities to Barbados' Act. It includes provisions on data protection principles, the rights of data subjects, transfers of personal data outside of Belize, obligations of data controllers and data processors, and certain exemptions.
The Act establishes the position of Data Protection Commissioner whose responsibilities include monitoring and enforcing the application of this Act and promoting awareness. The Act also establishes a Data Protection Tribunal that hears appeals regarding certain decisions of the Commissioner.
Breaches of the Act may result in fines, imprisonment or both. A person found guilty of an offence may face a fine of up to BZ$500,000.oo, up to 3 years, or both.

5. Bermuda

Bermuda's Personal Information Protection Act, 2016 is partially effective as a result of the coming into operation of sections 1, 2, 26, 27, 28, 29, 35, 36, 51 and 52, enabling the appointment of the Privacy Commissioner. The Personal Information Protection Amendment Act, 2023 seeks to update and harmonise the Personal Information Protection Act, the Public Access to Information Act, 2010 and its regulations. The Act is slated to become fully operational on 1 January 2025.
The Act regulates the processing of personal information by organisations that use personal information in Bermuda. The provisions of the Act take into account certain obligations of organisations, general principles and rules regarding data protection, transfers of personal information to an overseas third party, rights of individuals, and certain exclusions of the Act relating to matters such as national security and communication providers.
An individual who commits an offence under the Act is liable, on summary conviction, to a fine of up to BM$25,000.00 or imprisonment of up to 2 years, or both, and in the case of a legal person, a fine not exceeding BM$250,000.oo on indictment.

6. The British Virgin Islands

The BVI Data Protection Act, 2021 came into force on July 9, 2021.
The Act seeks to safeguard personal data processed by public bodies and private bodies and promote transparency and accountability in the processing of personal data. The Act provides for certain privacy and data protection principles, rights of data subjects, obligations of data users and data processors, whistleblower protection, and certain exemptions including processing for the purposes of personal, family or household affairs, including recreational purposes.
The Act establishes the Office of the Information Commissioner with responsibilities like monitoring compliance of the Act and providing advice to public bodies and private bodies on their obligations under the Act.
Offences include breaches of confidentiality, wilful disclosure of information, and wilful obstruction of the Commissioner in the performance of his or her duties. Any person who commits an offence and is liable on conviction to a fine, imprisonment or both.

7. The Cayman Islands

The Cayman Islands Data Protection 2021 Revision is the culmination of a legislative history that includes the Data Protection Law, 2017 coming into force on 30 September 2019.
The Act includes provisions on the rights and responsibilities of data subjects, data protection principles, obligations of data controllers and data processors, and enforcement guidelines. The Act applies to data controllers that are established in the Islands and the personal data are processed in the context of that establishment or not established in the Islands but the personal data are processed other than for transit through the Islands.
The Act is one of several that falls under the Ombudsman's responsibility. Under the Act, the functions of the Ombudsman include hearing, investigating and ruling on complaints, monitoring compliance by data controllers and promoting the requirements of this Act and the rights of data subjects.
Breaches of the Act may result in fines, imprisonment or both. Monetary penalties may also be imposed by the Ombudsman pursuant to section 55.

8. Grenada

The Grenada Data Protection Act, 2023 seeks to safeguard personal data processed by public and private bodies and to promote transparency and accountability in relation to the processing of personal data. The Act will come into force by the Minister by Order in the Gazette.
The Act establishes the Information Commission with responsibilities that include monitoring compliance by public bodies and private bodies, advising these bodies of their obligations and promoting understanding of the Act.
The Act includes provisions on privacy and data protection principles, rights of data subjects, and certain obligations of data users and data processors.
Offences include intentional disclosure, collection, storage or disposal of personal information in contravention of the Act (s.39), and breach of whistleblower’s protection (s.40). A person who commits

an offence under the Act is liable on summary conviction or conviction on indictment to a fine or imprisonment or both.

Notably, the Saint Kitts and Nevis Data Protection Act, 2018 appears to have a similar regime to Grenada due to both countries adopting the OECS Data Protection Model Bill.

9. Guyana

The Guyana Data Protection Act, 2023 seeks to regulate the processing of personal data and the protection of the privacy of individuals in relation to their personal data. The Act will come into force by the Minister by Order in the Gazette.
The Act establishes the Data Protection Office as the regulatory body whose responsibilities include monitoring, enforcing and conducting investigations on the applicability of the Act and promoting awareness.
The Act includes provisions on the rights of data subjects, data protection principles, obligations of data controllers and data processors and enforcement provisions.
Offences under the Act include contraventions relating to adopting data protection principles (s.4), the application of appropriate safeguards, adopting adequate levels of protection, and general principles of transfers outside of Guyana (s.29).
A person who commits an offence under the Act is liable on summary conviction or conviction on indictment to a fine or imprisonment.

10. Jamaica

The Jamaica Data Protection Act, 2020 providing for a 2-year transitional came into partial operation on 1 December 2021. On 1 December 2023, the Act became further operational with additional sections coming into operation, and the granting of a 6-month grace period to allow data controllers to comply with the Act.
The Act includes provisions on key definitions, rights of data subjects, data protection standards, obligations of data controllers and enforcement provisions. The Act also establishes the Office of the Information Commissioner with responsibility for monitoring compliance with the Act and its regulations, advising the responsible Minister, and promoting compliance with the requirements of the Act and the adherence to good practice by data controllers. A Data Protection Oversight Committee is also established with the responsibility of holding the Information Commissioner accountable in respect of its functions under the Act.
Offences include failure to provide registration particulars (s.16), failure to comply with a notice issued by the Commissioner (s.52), and to breach pseudonymisation or encryption wilfully and without lawful authority (s.30).

11. Saint Lucia

The Saint Lucia Privacy and Data Protection Act (Cap 8.18) seeks to provide for the protection of individuals in relation to personal data and regulates the processing of personal information. The Act came into force by the Data Protection Act (Commencement) Order (Statutory Instrument No. 4 of 2023).

The Act provides for the protection of individuals in relation to personal data and regulates the processing of personal information. The Act includes provisions on the appointment of a Data Protection Commissioner, data protection principles, rights of data subjects, registration and obligations of data controllers, and privacy impact assessment requirements.

A person who commits an offence under the Act becomes liable to a fine of up to $10,000.00 in the case of an individual, and up to EC$100,000.00 in the case of a body corporate.

12. Saint Vincent and the Grenadines

Saint Vincent and the Grenadines Privacy Act, 2003 seeks to protect the privacy of individuals by regulating the processing of personal information by public authorities and providing certain rights to individuals relating to personal information. The Act or provisions will come into force by the Minister by Order in the Gazette. No known commencement date has been fixed since the enactment.

The Act establishes the Office of the Privacy Commissioner whose responsibilities include monitoring compliance by public authorities, providing advice to public authorities regarding their obligations, and receiving and investigating complaints.

The Act includes provisions on conditions of processing personal information, obligations regarding disclosure of personal information, obligations of public authorities in processing personal information and conditions of processing personal information.

A person who is found guilty of an offence under the Act becomes liable on summary conviction to a fine.

13. Trinidad and Tobago

Trinidad and Tobago is currently revising its data protection regime with plans to have full proclamation of the Data Protection Act later this year. Under the existing regime, the Trinidad and Tobago Data Protection Act, 2011 seeks to provide for the protection of personal privacy and impose certain obligations on public and private entities.

The Act is partially operationalised. On 6 January 2012, Part 1 and sections 7-18, 22, 23, 25(1), 26, 28), came into operation, followed by section 42(a) and (b) on August 20, 2021. These sections are primarily relating to matters such as the Office of the Information Commissioner and circumstances where personal information may be disclosed.

The Office of the Information Commissioner is responsible for monitoring the administration of the Act through activities such as conducting audits and investigations and building awareness. According to media reports, the full operationalisation of the OIC is slated to be completed in 2024.

The Act includes provisions relating to key definitions, obligations of public bodies and private sector entities, and general privacy principles that take into account legal bases for processing personal data.

Offences under the Act include violating the provisions regarding processing sensitive personal data (s.40), failure to comply with an order by the Commissioner (s. 89), violating the provisions concerning whistleblower protection (s. 90). An individual or a body corporate becomes liable to specific fines and imprisonment for a specified period, upon summary conviction or indictment.

Summary

The transformative nature of privacy legislative developments is becoming even more apparent in the region. The current state has regulatory compliance and policy implications for policymakers, organisations and the users of personal data.

It is therefore essential that public and private sector entities identify and effectively manage their regulatory obligations and requirements. It is also important for policymakers to develop sound policies and legislation that promote accountability and transparency in safeguarding the rights of individuals and the protection of data and adopt appropriate mechanisms and good practices to facilitate the effective implementation and enforcement of these laws. Proactive mechanisms must also be in place to educate individuals on their rights and remedies under the laws.

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DPO Caribbean provides expert advisory, legal and technical support to public and private entities to meet their policy and legislative agendas and regulatory compliance obligations and requirements.