

A BILL

entitled

PERSONAL INFORMATION PROTECTION AMENDMENT ACT 2023

TABLE OF CONTENTS

Preliminary

1 Citation

Amendments to PIPA

2 Amends section 2
3 Amends section 4
4 Amends section 9
5 Amends section 18
6 Amends section 19
7 Amends section 26
8 Amends section 29
9 Amends section 37
10 Amends section 52

Amendments to PATI & PATI Regulations

11 Amends section 3
12 Amends section 4
13 Inserts section 12A
14 Repeals section 19
15 Amends section 23
16 Amends section 24
17 Amends section 41
18 Amends section 58
19 Amends the Schedule
20 Amends PATI Regulations

Final provisions

21 Consequential amendments
22 Transitional
23 Commencement

PERSONAL INFORMATION PROTECTION AMENDMENT ACT 2023

WHEREAS it is expedient to amend the Personal Information Protection Act 2016 to make consequential amendments to the Public Access to Information Act 2010 and the Public Access to Information Regulations 2014; and to give the Minister the power to make further consequential and related amendments and transitional and saving provisions as considered necessary or expedient as a consequence of this Act;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Preliminary

Citation

- 1 (1) This Act may be cited as the Personal Information Protection Amendment Act 2023.
- (2) In this Act—
- (a) “PIPA” means the Personal Information Protection Act 2016;
 - (b) “PATI” means the Public Access to Information Act 2010;
 - (c) “PATI Regulations” means the Public Access to Information Regulations 2014.

Amendments to PIPA

Amends section 2

2 In section 2 of PIPA delete the definition of “Minister” and substitute the following—

“Minister” means the Minister to whom responsibilities under this Act are assigned;”.

Amends section 4

3 In section 4(4) of PIPA , delete “, in which case, the Human Rights Act 1981 prevails”.

Amends section 9

- 4 In section 9 of PIPA—
- (a) in subsection (1)(e), delete “name” and substitute “contact details”;
 - (b) in subsection (1)(f), delete “rectifying” and substitute “correcting”.

Amends section 18

5 In section 18(2) of PIPA, delete “in relation to the subject matter of the record,”.

PERSONAL INFORMATION PROTECTION AMENDMENT ACT 2023

Amends section 19

6 In the heading to section 19 of PIPA, delete “Rectification” and substitute “Correction”.

Amends section 26

7 At the end of section 26 of PIPA, insert—

“(6) The office of Commissioner shall become vacant—

- (a) at the expiry of the Commissioner’s period of appointment;
- (b) if the Commissioner resigns his office in writing to the Governor;
- (c) if the Commissioner becomes a Senator or a member of, or a confirmed candidate for election to, the House of Assembly or the holder of any office in any political party; or
- (d) if the Governor, acting in his discretion, directs that the Commissioner shall be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).”.

Amends section 29

8 In section 29(1) of PIPA, delete paragraph (n) and substitute—

“(n) charge such fee as he considers reasonable for any services provided under this Act;”.

Amends section 37

9 In section 37(1) of PIPA, delete “three months” and substitute “six months”.

Amends section 52

10 In section 52 of PIPA, delete subsection (2) and substitute—

“(2) The Minister may appoint different days—

- (a) for different purposes; or
- (b) in respect of different classes of organisation.”.

Amendments to PATI & PATI Regulations

Amends section 3

11 In section 3(1) of PATI in the definition of “requester”, delete “or a person who makes a request for amendment of a record under section 19, as the case may be”.

PERSONAL INFORMATION PROTECTION AMENDMENT ACT 2023

Amends section 4

12 In section 4(1)(b) of PATI, after subparagraph (iii) insert—

“(iiia) the Office of the Privacy Commissioner;”.

Inserts section 12A

13 After section 12 of PATI, insert—

“Application of Personal Information Protection Act 2016

12A Following the commencement of the Personal Information Protection Act 2016—

- (a) this Act shall no longer apply to records relating to the personal information of a requester;
- (b) any requester making a request under section 12, in whole or in part, to a public authority to access or amend his personal information shall be notified in writing that he should proceed under the Personal Information Protection Act 2016;
- (c) a written notification under paragraph (b) shall be provided within five working days after receipt of the request.”.

Repeals section 19

14 Section 19 of PATI is repealed.

Amends section 23

15 In section 23 of PATI—

- (a) in subsection (1) insert “and pursuant to section 12A” after “Subject to the provisions of this section”;
- (b) repeal subsections (2)(a), (3), (4) and (5);
- (c) delete subsection (6) and substitute—

“(6) A record that contains personal information shall be disclosed if disclosure of it is in the public interest.”.

Amends section 24

16 In section 24 of PATI (definition of personal information)—

- (a) delete subsection (1) and substitute—

“(1) Subject to subsection (2), “personal information” means any information about an identified or identifiable individual (see the Personal Information Protection Act 2016).”;

- (b) delete subsection (2)(a) and substitute—

PERSONAL INFORMATION PROTECTION AMENDMENT ACT 2023

“(a) information about an individual who is or was an officer or employee of a public authority that relates to the position or functions of the individual, except where the individual is a police officer of the Bermuda Police Service who is or was engaged in a surveillance function during the course of his employment;”.

Amends section 41

17 In section 41 of PATI, repeal paragraph (f).

Amends section 58

18 In section 58(2) of PATI, repeal paragraph (b).

Amends the Schedule

19 In the Schedule to PATI, after paragraph 11 insert—

“ 11A. The Office of the Privacy Commissioner

Amends PATI Regulations

20 The following provisions of the PATI Regulations are revoked—

- (a) regulations 12, 14, 15, 16 and 21;
- (b) in regulation 17, paragraph (a);
- (c) in Schedule 1, the words from “If you are making a request for personal information” to the end;
- (d) Schedule 3.

Final provisions

Consequential amendments

21 The Minister may, by regulations subject to the negative resolution procedure, make further consequential and related amendments to any provision of any other enactment if it appears to the Minister that the provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act.

Transitional

22 (1) The Minister may, by regulations subject to the negative resolution procedure, make such transitional and saving provisions as he considers necessary or expedient as a consequence of this Act.

(2) Regulations under this section may in particular make provision relating to requests made under PATI before the commencement of sections 11 to 20 of this Act relating in whole or in part to personal information (as defined in PIPA) which have not

PERSONAL INFORMATION PROTECTION AMENDMENT ACT 2023

been finally disposed of, and any pending internal reviews or proceedings relating to such requests.

Commencement

23 This Act comes into operation on such day as the Minister responsible for information and communication technologies policy and innovation appoints by notice published in the Gazette.

PERSONAL INFORMATION PROTECTION AMENDMENT BILL 2023

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Personal Information Protection Act 2016 to make consequential amendments to the Public Access to Information Act 2010 and the Public Access to Information Regulations 2014, and to give the Minister the power to make further consequential and related amendments and transitional and saving provisions as considered necessary or expedient as a consequence of this Act.

Clause 1 provides the title of the Bill and provides the abbreviated titles for the Personal Information Protection Act 2016 (“PIPA”), the Public Access to Information Act 2010 (“PATI”) and the Public Access to Information Regulations 2014 (“PATI Regulations”) as used in the Bill.

Clause 2 amends the definition of “Minister” in section 2 of PIPA to that of the Minister assigned with responsibility under that Act.

Clause 3 amends section 4(4) of the PIPA by removing superfluous words.

Clause 4 amends section 9 of the PIPA by changing references to “name” and “rectifying” to “contact details” (of the privacy officer) and “correcting” (to adequately reflect correcting rather than rectifying personal information).

Clause 5 amends section 18 of PIPA so that a health professional, when requested by an individual who has not been granted access to his medical records by an organization, is not required to have expertise in the subject matter of a medical record to access that record.

Clause 6 amends the heading of section 19 of PIPA to refer to “correction” rather than “rectification”.

Clause 7 amends section 26 of PIPA to provide the circumstances in which the office of Privacy Commissioner becomes vacant.

Clause 8 amends section 29 of PIPA to provide that the Privacy Commissioner can charge such fee as considered reasonable for any services provided under PIPA.

Clause 9 amends section 37 of PIPA to increase the time period the Privacy Commissioner has to prepare reports after the end of each calendar year from three months to six months.

Clause 10 amends section 52 of PIPA, the commencement provision, to give the Minister the power to appoint different days for different purposes or in respect of different classes of organization.

Clause 11 amends section 3 of PATI to amend the meaning of “requester” by removing a cross reference that will no longer be applicable on the repeal of section 19.

Clause 12 amends section 4 of PATI to provide that PATI does not apply to records obtained or created by the Office of the Privacy Commissioner.

PERSONAL INFORMATION PROTECTION AMENDMENT BILL 2023

Clause 13 inserts section 12A into PATI to provide that, following the commencement of PIPA, PATI will no longer apply to records relating to personal information. It also provides that any person requesting his personal information under section 12 of PATI (access to records) shall be notified, within 5 working days of the request being received, that the request should proceed under PIPA.

Clause 14 repeals section 19 of PATI (request to amend record of personal information).

Clause 15 amends section 23 of PATI (personal information) to include a cross reference to the new section 12A and to repeal provisions that relate to personal information that are addressed in PIPA.

Clause 16 amends section 24 of PATI (definition of personal information) to provide a new definition of “personal information” in relation to PIPA.

Clause 17 repeals section 41(f) of PATI ([internal review of] a decision to refuse a request to amend a record in respect of personal information) as a result of the repeal of section 19 of PATI.

Clause 18 amends section 58 of PATI to remove reference to the number of requests made under section 19, which is to be repealed.

Clause 19 amends the Schedule to PATI to include the Office of the Privacy Commissioner and the Privacy Commissioner.

Clause 20 revokes provisions in the PATI Regulations that relate to personal information.

Clause 21 enables the Minister to make regulations subject to the negative resolution procedure to make further consequential and related amendments to any provision of any other enactment.

Clause 22 enables the Minister to make regulations subject to the negative resolution procedure to make transitional and saving provisions as considered necessary or expedient as a consequence of the Bill.

Clause 23 provides that the Act comes into operation on such day as the Minister appoints by notice in the Gazette.