

# The Isle of Man Data Protection Tribunal

## Homepage

Welcome to the website for the Isle of Man Data Protection Tribunal.

This website is provided by the General Registry to give general guidance only in relation to the Isle of Man Data Protection Tribunal and is not, and should not be treated as, a complete and authoritative statement of the law. Advice from legal or other appropriate sources should be sought as necessary.

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## General

### 1 What is the Isle of Man Data Protection Tribunal and what does it do?

The Isle of Man Data Protection Tribunal ("the Tribunal") is an independent judicial body established under the provisions of the Data Protection Act 2002 ("the Act"). A copy of the Act can be accessed via the Isle of Man Legislation Website at [www.legislation.gov.im/cms/en](http://www.legislation.gov.im/cms/en)

Throughout this Website the Isle of Man Data Protection Information Commissioner will be referred to as "the Commissioner".

The functions of the Tribunal are to:

- consider a referral to the Tribunal by the Commissioner, in circumstances where it appears to the Commissioner that any processing of personal data by a data controller in accordance with a notification of registrable particulars, or those particulars as amended, would contravene any of the data protection principles;
- to hear appeals against a certificate issued by the Chief Minister certifying the exemption of certain personal data from certain provisions of the Act for the purpose of safeguarding national security; and
- to hear appeals where an Enforcement Notice, an Information Notice or a Special information Notice has been served by the Commissioner, or an appeal in relation to a determination by the Commissioner concerning the processing of personal data for "the special purposes" as defined in the Act.

A person bringing an appeal is referred to as "the Appellant".

The Tribunals Office is not responsible for the content of external internet sites.

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### 2 Who sits on the Tribunal and how are they appointed?

The Tribunal comprises of a Chairperson or Deputy Chairperson and between one and three lay members who are appointed by the Appointments Commission under Section 4 of the Act.

The Chairperson is required to be a barrister, advocate or solicitor of not less than seven years standing.

The Appointments Commission is established under the provisions of the Tribunals Act 2006.

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### 3 Who are the current persons appointed to the Tribunal?

The current appointments made by the Appointments Commission are:

Chairperson – Mr Paul Morris

Deputy Chairperson - Vacant

Members – Mr P Harper and Ms A M Main Thompson

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### 4 Are there rules governing the procedure of the Tribunal?

Yes - the proceedings of the Tribunal are regulated by the Isle of Man Data Protection Tribunal Rules 2003

("the Rules") a copy of which may be accessed at;-  
<https://www.tynwald.org.im/links/tls/SD/2003/2003-SD-0027.pdf>

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## References and Appeals to the Tribunal

### 5 Who can make a reference to the Tribunal?

Section 20 of the Act makes provision for the Commissioner to refer to the Tribunal a notification of registrable particulars, or those particulars as amended, where it appears to the Commissioner that any processing of personal data by a data controller in accordance with the notified particulars would contravene any of the data protection principles.

Matters referred under Section 20 of the Act are hereinafter referred to as "**References**".

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### 6 Who can bring an appeal to the Tribunal?

Section 24 of the Act provides that:

- any person directly affected by the issuing of a certificate by the Chief Minister, certifying the exemption of certain personal data from certain provisions of the Act for the purpose of safeguarding national security, may appeal against the certificate to the Tribunal.
- Section 24(7) of the Act provides for any other party to proceedings referred to in subsection (6) (a claim by a data controller that a certificate which identifies the personal data to which it applies by means of a general description, applies to any personal data) may appeal to the Tribunal on the ground that the certificate does not apply to the personal data in question, and the Tribunal may determine that the certificate does not so apply.

Appeals under Section 24 of the Act are hereinafter referred to as "**National Security Appeals**".

Section 44 of the Act provides that:

- a person on whom an enforcement notice, an information notice or a special information notice has been served may appeal to the Tribunal against the notice.
- a person on whom an enforcement notice has been served may appeal to the Tribunal against the refusal of an application under Section 37(2) for cancellation or variation of the notice.
- where an enforcement notice, an information notice or a special information notice contains a statement by the Commissioner requiring, by reason of special circumstances, that matters be dealt with as a matter of urgency, in accordance with Section 36(8), 39(5) or 40(6) then, whether or not the person appeals against the notice, he may appeal against (a) the Commissioner's decision to include the statement in the notice, or (b) the effect of the inclusion of the statement as respects any part of the notice.
- a data controller in respect of whom a determination (concerning the processing of personal data for "the special purposes" as defined in the Act) has been made by the Commissioner under Section 41 of the Act may appeal to the Tribunal against that determination.

Appeals under Section 44 of the Act are hereinafter referred to as "**Enforcement Appeals**".

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### 7 Is there a charge for making a reference or bringing an appeal to the Tribunal?

No – there is no charge for bringing either a reference or an appeal.

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## **8 How is a reference made or an appeal brought?**

### **References:**

In accordance with the provisions of the Rules, a reference must be made by a written notice of reference served on the Tribunal. The notice of reference shall:

- include a copy of the notification to which the reference relates, and specify:
- the registrable particulars to which the reference relates;
- the data protection principles which the Commissioner considers would be contravened by the processing of personal data in accordance with those particulars; and
- the grounds for that opinion, and state:
- the name and address of the Respondent;
- whether the Commissioner considers that he is likely to wish a hearing to be held or not; and
- an address in the Island for service of notices and other documents on the Commissioner.

A notice of reference may include a request for an early hearing of the reference and the reasons for that request.

### **National Security Appeals:**

In accordance with the provisions of the Rules, an appeal must be brought by a written notice of appeal served on the Tribunal. The notice of appeal shall:

- identify the disputed certification; and state
- the name and address of the Appellant;
- the grounds of the appeal; and
- an address in the Island or the United Kingdom for service of notices and other documents on the Appellant.

In the case of an appeal brought under Section 24(7) of the Act, the notice of appeal shall also state:

- the date on which the Respondent made the claim constituting the disputed certification;
- an address in the Island or the United Kingdom for service of notices and other documents on the Respondent; and
- where applicable, the special circumstances which the Appellant considers justify the Tribunal's accepting jurisdiction under Rule 30(3) – acceptance of a notice of appeal after the expiry of the permitted period (see Section 8 below).

### **Enforcement Appeals:**

In accordance with the provisions of the Rules, an appeal must be brought by a written notice of appeal served on the Tribunal. The notice of appeal shall:

- identify the disputed decision and the date on which the notice relating to such decision was served on or given to the Appellant; and state:
- the name and address of the Appellant;
- the grounds of the appeal;
- whether the Appellant considers that he is likely to wish a hearing to be held or not;
- where applicable, the special circumstances which the Appellant considers justify the Tribunal's accepting jurisdiction under Rule 52(2), and
- an address in the Island or the United Kingdom for service of notices and other documents on the Appellant.

In the case of an appeal brought under Section 44(1) in relation to an information notice, the notice of appeal shall also contain a statement of any representations the Appellant wishes to make as to why it might be necessary in the interests of justice for the appeal to be heard and determined otherwise than by the Chairperson sitting alone as provided by Rule 63(2).

A notice of appeal may include a request for an early hearing of the appeal and the reasons for that

request.

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## 9 How long do I have to make a reference or lodge an appeal?

### References:

There is no specified time limit within which a reference is to be made to the Tribunal

### National Security Appeals:

The Rules provide that:

In the case of an appeal under Section 24(4) of the Act, a notice of appeal may be served on the Tribunal at any time during the currency of the disputed certification to which it relates.

In the case of an appeal under Section 24(7) of the Act, a notice of appeal must be served on the Tribunal within 28 days of the date of which the claim constituting the disputed certification was made. The Tribunal may accept a notice of appeal served after the expiry of the 28 day period if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

### Enforcement Appeals:

The Rules provide that:

A notice of appeal must be served on the Tribunal within 28 days of the date on which the notice relating to the disputed decision was served on or given to the Appellant. The Tribunal may accept a notice of appeal served after the expiry of the 28 day period if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

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## 10 Who should a reference or an appeal be sent to?

A reference or appeal should be sent to:

The Secretary to the Isle of Man Data Protection Tribunal  
Tribunals Office  
Isle of Man Courts of Justice  
Deemster's Walk, Bucks Road  
Douglas, Isle of Man  
IM1 3AR

**Tel: 682382 Fax: 685573 or Email: [tribunals@gov.im](mailto:tribunals@gov.im)**

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## 11 Can I be represented in proceedings before the Tribunal?

### References:

The Rules provide that at any hearing by the Tribunal a party may conduct his case himself or may be represented by any person whom he may appoint for the purpose.

### National Security Appeals:

The Rules provide that at any hearing by the Tribunal, other than a hearing under Rule 36, a party may, subject to Rules 41(2) and 45(3), conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose, and the Chief Minister may appear and be represented by

the Attorney General or any other person whom he may appoint for the purpose.  
At any hearing by the Tribunal under Rule 36(5), the Appellant may conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose.

### **Enforcement Appeals:**

The Rules provide that at any hearing by the Tribunal a party may conduct his case himself or may appear and be represented by any person whom he may appoint for the purpose.

References to a "party" do not include the Commissioner in the case of an appeal under Section 44(3) of the Act other than a case to which Rule 53(3) applies.

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## **12 So does that mean I can get an Advocate to represent me?**

Yes – where the Rules provide for a party to 'be represented by any person whom he may appoint for the purpose' then an Advocate may be appointed. You should be aware that if you use an Advocate you personally will be responsible for any professional fees charged by the Advocate to act on your behalf.

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## **13 Is Legal Aid available for proceedings before the Isle of Man Data Protection Tribunal?**

No – Legal Aid is not available for proceedings before the Tribunal, although very limited assistance may be available (should your means be such as to comply with the rules) under what is termed the Green Form Scheme. This enables persons to obtain legal advice from an advocate, but this does not include representation at a Tribunal hearing.

Advice on the Green Form Scheme should be sought from an Advocate, a list of which is available at the Isle of Man Law Society, 27 Hope Street, Douglas or from their website [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)

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## **Before the Hearing**

### **14 How will a reference or appeal be progressed?**

#### **References:**

Upon receipt of a notice of reference, the Secretary to the Tribunal ("the Secretary") shall send an acknowledgement of the service of a notice of reference to the Commissioner and a copy of the notice to the Respondent (the data controller by whom the notification referred to the Tribunal was made).

The Respondent shall, within 21 days of receipt of the copy notice of reference, send to the Tribunal and the Commissioner a written reply acknowledging service upon him of the notice of reference and state whether or not he intends to oppose the reference and, if so, the grounds upon which he relies in opposing the reference.

Where the notice of reference has stated that the Commissioner is not likely to wish a hearing to be held, the Respondent shall in his reply inform the Tribunal and the Commissioner whether he considers that a hearing is likely to be desirable.

The reply by the Respondent may include a request for an early hearing of the reference and the reasons for that request.

#### **National Security Appeals:**

The Secretary shall send an acknowledgement of the service of a notice of appeal to the Appellant, and send a copy of the notice of appeal to the Chief Minister, the Commissioner, and in the case of an appeal under Section 24(7) of the Act, the Respondent (the data controller making the claim which constitutes

the disputed certification).

No later than 42 days after receipt of a copy of a notice of appeal, the Chief Minister shall send to the Tribunal a copy of the certificate to which the appeal relates, and a written notice stating:

- a) with regard to an appeal under Section 24(4) of the Act, whether or not the Chief Minister intends to oppose the appeal and, if so:
  - a summary of the circumstances relating to the issue of the certificate, and the reasons for the issue of the certificate;
  - the grounds upon which he relies in opposing the appeal; and
  - a statement of the evidence upon which he relies in support of those grounds
- b) with regard to an appeal under Section 24(7) of the Act, whether or not the Chief Minister wishes to make representations in relation to the appeal and, if so:
  - the extent to which he intends to support or oppose the appeal;
  - the grounds upon which he relies in supporting or opposing the appeal; and
  - a statement of the evidence upon which he relies in support of those grounds.

Except where the Tribunal proposes to determine the appeal in accordance with Rule 36, and subject to Rule 37 (Chief Minister's objection to disclosure), the Secretary shall send a copy of the notice to the Appellant, the Commissioner and in appeals under Section 24(7) of the Act, the Respondent.

A Respondent shall, within 42 days of the date on which he receives a copy of a notice of appeal, send to the Tribunal a written reply acknowledging service upon him of the notice of appeal and stating:

- whether or not he intends to oppose the appeal and, if so,
- the grounds upon which he relies in opposing the appeal.

Except where the Tribunal proposes to determine the appeal in accordance with Rule 36, the Secretary shall send a copy of the reply to (a) the Chief Minister; and (b) subject to paragraph (4) and Rule 37, the Appellant and the Commissioner. Paragraph (4) provides that no copy may be sent before the period of 42 days has expired, being the period during which the Chief Minister may object to disclosure, unless the Chief Minister has indicated that he does not object.

In certain circumstances, as set out in Rule 40, it is a requirement for the Tribunal to notify the Chief Minister of the way it intends to proceed, and the Chief Minister may apply to the Tribunal requesting it to reconsider if he considers that the proceedings as proposed by the Tribunal would cause information to be disclosed contrary to the interests of national security.

### **Enforcement Appeals:**

The Secretary shall send an acknowledgement of the service of a notice of appeal to the Appellant.

A copy of the notice of appeal will be also sent to the Commissioner, unless the notice of appeal relates to an appeal under Section 48(3) of the Act (although this reference has been taken directly from the Rules, it would appear the reference is a typo error and in fact should refer to Section 44(3)), in which case the Secretary will only send a copy to the Commissioner if the Tribunal is of the opinion that the interests of justice require the Commissioner to assist it by giving evidence or being heard on any matter relating to the appeal.

Where the Commissioner receives a copy of a notice of appeal he shall, within 21 days of the date of receipt of same:

- (a) send to the Tribunal a copy of the notice relating to the disputed decision, and
- (b) send to the Tribunal and the Appellant a written reply acknowledging service upon him of the notice of appeal, and stating whether or not he intends to oppose the appeal and, if so, the grounds upon which he relies in opposing the appeal.

Where the Appellant's notice of appeal has stated that he is not likely to wish a hearing to be held, the



Commissioner shall in his reply inform the Tribunal and the Appellant whether he considers that a hearing is likely to be desirable.

Where an appeal is brought under Section 44(1) of the Act in relation to an information notice, the Commissioner may include in his reply a statement of representations as to why it might be necessary in the interests of justice for the appeal to be heard and determined otherwise than by the Chairman sitting alone as provided by Rule 63(2).

The reply by the Commissioner may include a request for an early hearing of the appeal and the reasons for that request.

**Please Note:** The Tribunal may at any time of its own motion or on the application of any party, give such directions as it thinks proper to enable the parties to prepare for the hearing of an appeal or reference or to assist the Tribunal to determine the issues. The power to give directions may be exercised in the absence of the parties.

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## 15 What if I wish to amend the reference or appeal?

### References:

With the leave of the Tribunal, the Commissioner may amend his notice of reference and, upon receipt of a copy of an amended notice of reference; the Respondent may amend his reply to the notice of reference and must send the amended reply to the Tribunal and the Commissioner within 21 days.

With the leave of the Tribunal, the Respondent may amend his reply to the notice of reference, and must send the amended reply to the Tribunal and the Commissioner.

### National Security Appeals:

With the leave of the Tribunal, the Appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

Upon receipt of a copy of an amended notice of appeal or amended grounds of appeal the Chief Minister may amend his notice in reply and, in the case of an appeal under Section 24(7) of the Act, the Respondent may amend his reply to the notice of the appeal.

An amended notice or reply must be sent to the Tribunal within 28 days of the date on which the copy referred to is received.

With the leave of the Tribunal, the Chief Minister may amend a notice in reply, and the Respondent may amend a reply to the notice of appeal.

### Enforcement Appeals:

With the leave of the Tribunal the Appellant may amend his notice of appeal or deliver supplementary grounds of appeal.

Upon receipt of a copy of an amended notice of appeal or amended grounds of appeal the Commissioner may amend his reply to the notice of appeal, and must send the amended reply to the Tribunal and the Appellant within 21 days or, in certain circumstances, such time not exceeding 21 days as the Tribunal may allow.

The Commissioner may, with the leave of the Tribunal, amend his reply to the notice of appeal, and must send the amended reply to the Tribunal and the Appellant.

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## 16 Can the Tribunal give Directions?

Yes – Rule 3 provides that, subject to certain conditions, the Tribunal may at any time of its own motion or on the application of any party give such directions as it thinks proper to enable the parties to prepare for the hearing of an appeal or reference or to assist the Tribunal to determine the issues.

Such directions may in particular -

- (a) provide for a particular matter to be dealt with as a preliminary issue and for a pre-hearing review to be held;
- (b) provide for -
  - (i) the exchange between the parties of lists of documents held by them which are relevant to the appeal or reference,
  - (ii) the inspection by the parties of the documents so listed,
  - (iii) the exchange between the parties of statements of evidence, and
  - (iv) the provision by the parties to the Tribunal of statements or lists of agreed matters;
- (c) require any party to send to the Tribunal and to the other party -
  - (i) statements of facts and statements of the evidence which will be adduced, including such statements provided in a modified or edited form;
  - (ii) a skeleton argument which summarises the submissions which will be made and cites the authorities which will be relied upon, identifying any particular passages to be relied upon;
  - (iii) a chronology of events;
  - (iv) any other particulars or supplementary statements which may reasonably be required for the determination of the appeal or reference;
  - (v) any document or other material which the Tribunal may require and which it is in the power of that party to deliver;
  - (vi) an estimate of the time which will be needed for any hearing; and
  - (vii) a list of the witnesses the party intends to call to give evidence at any hearing;
- (d) limit the length of oral submissions and the time allowed for the examination and cross-examination of witnesses; and
- (e) limit the number of expert witnesses to be heard on either side.

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## 17 When will I be advised of the date for the hearing before the Tribunal?

### References:

As soon as practicable after notice of reference has been given and with due regard to the convenience of the parties and any requests made for the early hearing of the reference, the Tribunal will appoint a time and place for the hearing of the reference.

Parties will be given not less than 14 days notice of the hearing unless they agree otherwise.

### National Security Appeals:

As soon as practicable after notice of appeal has been given, and with due regard to the convenience of the parties, the Tribunal will appoint a time and place for a hearing of the appeal.

Parties will be given not less than 14 days notice of the hearing unless they agree otherwise.

### Enforcement Appeals:

As soon as practicable after notice of appeal has been given, and with due regard to the convenience of the parties and any requests made for the early hearing of the appeal, the Tribunal will appoint a time

and place for the hearing of the appeal.

Parties will be given not less than 14 days notice of the hearing unless they agree otherwise, or the Appellant agrees otherwise and the hearing relates to an appeal under section 44(3) of the Act.

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## **18 What if my address, or that of my representative, changes after my reference or appeal is submitted?**

In the event that there is a change of address or telephone number for you, or your representative, it is important that such is communicated immediately in writing to the Secretary.

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## **19 Can I ask for a postponement?**

Yes, although any request must be made in writing prior to the hearing and should clearly explain the reason(s) why you are asking for a postponement. The request should be forwarded to the Secretary, who in turn will bring it to the attention of the Chairperson for their consideration.

If, after considering your application, the Chairperson decides to grant a postponement, the Secretary will notify each party previously notified of the hearing, and any persons summoned to attend as a witness at that hearing, of the revised arrangements.

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## **20 What if I do not wish to attend the hearing?**

The Rules provide that if, without furnishing the Tribunal with sufficient reason for his absence, a party fails to appear at a hearing, having been duly notified of the hearing, the Tribunal may, if that party is the Appellant, dismiss the appeal, or in any case, hear and determine the appeal or reference, or any particular issue, in the party's absence and may make such order as to costs as it thinks fit.

The Rules also make provision to enable the Tribunal, in certain circumstances, to determine a reference or appeal, or any particular issue without a hearing.

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## **21 If a reference or appeal is made, can it be withdrawn?**

### **References:**

The Commissioner may at any time withdraw a reference by sending to the Tribunal a notice of withdrawal signed by him or on his behalf, and the Secretary shall send a copy of that notice to the Respondent.

Where a reference is withdrawn, a fresh reference may not be made by the Commissioner in relation to the same notification except with the leave of the Tribunal.

### **National Security Appeals:**

The Appellant may at any time withdraw his appeal by sending to the Tribunal a notice of withdrawal signed by him or on his behalf, and the Secretary shall send a copy of that notice to the Chief Minister, the Commissioner, and in the case of an appeal under Section 24(7) of the Act, the Respondent.

Where an appeal is withdrawn, a fresh appeal may not be brought by the same Appellant in relation to the same disputed certification except with the leave of the Tribunal.

## **Enforcement Appeals:**

The Appellant may at any time withdraw his appeal by sending to the Tribunal a notice of withdrawal signed by him or on his behalf, and the Secretary shall send a copy of that notice to the Commissioner.

Where an appeal is withdrawn, a fresh appeal may not be brought by the Appellant in relation to the same disputed decision except with the leave of the Tribunal.

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## **22 What about travel and parking arrangements for the hearing?**

Each party will have been notified of the date, time and place of the hearing and will normally be asked to arrive 15 minutes before the hearing is due to commence. It is important that consideration is given to travel arrangements, parking etc so as to ensure that a party arrives on time. If you are not sure as to the location of the hearing, or indeed any other matters, please contact the Secretary.

Arrangements for car parking should be made, by both parties and witnesses, for sufficient time to avoid parking penalties being incurred whilst the hearing proceeds. Please note parties and witnesses are responsible for their own parking fees, and indeed any parking penalties incurred.

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## **The Hearing**

### **23 Who will be present in the hearing room?**

As well as the Tribunal Chairperson and members, the Secretary will also be present as the Secretary is responsible for recording the hearing. Prior to the hearing, if you have any questions, please do not hesitate to contact the Secretary who will do their utmost to assist you. However, please bear in mind the Secretary will not be able to provide you with legal advice or comment on the merit of your appeal.

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### **24 What happens at the hearing?**

The Secretary to the Tribunal will come to collect you from the waiting area as soon as the Tribunal is ready to hear the reference/appeal. Please bring your case papers with you as you will need to refer to them from time to time.

The Chairperson will introduce everyone and explain the procedure. Each party will have an opportunity to address the Tribunal and amplify orally any written statements previously furnished, to give evidence and to call witnesses, and to put questions to any person giving evidence before the Tribunal. Please do not hesitate to ask if you are unsure about anything.

The length of the hearing will be entirely dependent on the complexity of the individual case.

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### **25 Is the hearing recorded?**

Yes - the Secretary will ensure that the hearing is recorded and parties will see microphones for this purpose located on each of the tables.

Although copies of the recording may be available to be purchased following the hearing (it usually takes a few days for copy discs to be made available), on payment of the prescribed fee, it is the responsibility of parties to take their own notes for their use during the proceedings.

Apart from the Secretary, it is **not permitted** for any other person in attendance at the hearing to use

any form of recording equipment.

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## **26 Are members of the public allowed to attend the hearing?**

### **References:**

All hearings by the Tribunal (including preliminary hearings) shall be in public unless, having regard to the desirability of safeguarding (a) the privacy of data subjects or (b) commercially sensitive information, the Tribunal directs that the hearing or any part of the hearing shall take place in private.

In addition to the parties, the following persons may attend a hearing even though it is in private:

- (a) the Chairman or any Deputy Chairman or member of the Tribunal in his capacity as such, even though they do not constitute the Tribunal for the purpose of the hearing; and
- (b) any other person with the leave of the Tribunal and the consent of the parties present.

### **National Security Appeals:**

All hearings by the Tribunal, including preliminary hearings, shall be held in private unless the Tribunal, with the consent of the parties and the Chief Minister, directs that the hearing or any part of the hearing shall take place in public.

Where the Tribunal sits in private it may, with the consent of the parties and the Chief Minister, admit to a hearing such persons on such terms and conditions as it considers appropriate.

Where the Tribunal considers it necessary for any party other than the Chief Minister to be excluded from the proceedings or any part of them in order to secure that information is not disclosed contrary to the interests of national security, it must (a) direct accordingly, (b) inform the person excluded of its reasons, to the extent that it is possible to do so without disclosing information contrary to the interests of national security, and record those reasons in writing, and (c) inform the Chief Minister.

The Chief Minister, or a person authorised to act on his behalf, may attend any hearing, other than a hearing under Rule 36, even though it is in private.

### **Enforcement Appeals:**

All hearings by the Tribunal (including preliminary hearings) shall be in public unless, having regard to the desirability of safeguarding (a) the privacy of data subjects or (b) commercially sensitive information, the Tribunal directs that the hearing or any part of the hearing shall take place in private.

In addition to the parties, the following persons may attend a hearing even though it is in private:

- (a) the Chairman or any Deputy Chairman or member of the Tribunal in his capacity as such, even though they do not constitute the Tribunal for the purpose of the hearing; and
- (b) any other person with the leave of the Tribunal and the consent of the parties present.

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## **27 How do parties address the Chairperson and members of the Tribunal?**

It is customary to address the Tribunal via the Chairperson who should be called either 'Sir' or 'Madam', as applicable. If it is necessary to address either of the lay members directly they may be referred to as 'Sir' or 'Madam', as applicable, or alternatively by name.

Tribunal hearings are less formal than, for example, in the High Court so there are no wigs and gowns worn. It is not necessary to bow to the Tribunal upon entering and leaving the hearing room and it is not necessary to stand to address the Tribunal, unless of course a party prefers to do so.

## **28 Can a party be liable for costs in proceedings before the Tribunal?**

General provision with regard to costs is made at Rule 8:

- (1) The Tribunal shall not make an order awarding costs against a party without first giving that party an opportunity of making representations against the making of the order.
- (2) An order awarding costs against a party may be that the party or parties in question to pay to the other party or parties either a specified sum in respect of the costs incurred by that other party or parties in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed
- (3) Any costs required by an order to be taxed may be taxed in the High Court.

### **References:**

The Rules provide that:

Subject to Rule 8, in any reference, including one withdrawn under Rule 16, the Tribunal may make an order awarding costs -

- (a) against the Commissioner and in favour of the respondent where it considers that the reference was manifestly unreasonable;
- (b) against the respondent and in favour of the Commissioner where it considers that the respondent's contention that the processing in question would not contravene any of the data protection principles was manifestly unreasonable;
- (c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with diligence could have been avoided, against that party and in favour of the other.

### **National Security Appeals:**

The Rules provide that:

Subject to Rule 8, in any appeal, including one withdrawn under Rule 38, the Tribunal may make an order awarding costs –

- (a) in the case of an appeal under Section 24(4) of the Act -
  - (i) against the Appellant and in favour of the Chief Minister where it considers that the appeal was manifestly unreasonable;
  - (ii) against the Chief Minister and in favour of the Appellant where it allows the appeal and quashes the disputed certification, or does so to any extent;
- (b) in the case of an appeal under Section 24(7) of the Act -
  - (i) against the Appellant and in favour of any other party where it dismisses the appeal or dismisses it to any extent;
  - (ii) in favour of the Appellant and against any other party where it allows the appeal or allows it to any extent; and
- (c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with diligence could have been avoided, against that party and in favour of the other.

### **Enforcement Appeals:**

The Rules provide that:

Subject to Rule 8, in any appeal before the Tribunal, including one withdrawn under Rule 57, the Tribunal may make an order awarding costs –

- (a) against the Appellant and in favour of the Commissioner where it considers that the appeal was manifestly unreasonable;
- (b) against the Commissioner and in favour of the Appellant where it considers that the disputed decision was manifestly unreasonable;
- (c) where it considers that a party has been responsible for frivolous, vexatious, improper or unreasonable action, or for any failure to comply with a direction or any delay which with diligence could have been avoided, against that party and in favour of the other.

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## The Decision

### 29 When will I be given a decision?

#### References:

As soon as practicable after the Tribunal has determined a reference, the Chairperson shall certify in writing that determination and sign and date the certificate. The certificate shall include any material finding of fact and the reasons for the decision and the Secretary shall send a copy to the parties.

The Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and for that purpose may make any necessary amendments to the text of the certificate.

#### National Security Appeals:

As soon as practicable after the Tribunal has determined an appeal, the Chairperson shall certify in writing that determination and sign and date the certificate.

If and to the extent that it is possible to do so without disclosing information contrary to the interests of national security, and subject to Rule 40, the certificate shall include any material finding of fact, and the reasons for the decision.

The Secretary shall send a copy of the certificate to the parties, the Chief Minister, and the Commissioner.

Subject to Rule 40, the Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and the need to secure that information is not disclosed contrary to the interests of national security, and for those purposes may make any necessary amendments to the text of the certificate.

For the purposes of this rule (but without prejudice to its generality), the disclosure of information is to be regarded as contrary to the interests of national security if it would indicate the existence or otherwise of any material.

#### Enforcement Appeals:

As soon as practicable after the Tribunal has determined an appeal, the Chairperson shall certify in writing that determination and sign and date the certificate. The certificate shall include any material finding of fact and the reasons for the decision and the Secretary shall send a copy to the parties.

The Tribunal shall make arrangements for the publication of its determination but in doing so shall have regard to the desirability of safeguarding the privacy of data subjects and commercially sensitive information, and for that purpose may make any necessary amendments to the text of the certificate.

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### 30 Does the decision have to be unanimous?

No – a decision of the Tribunal may be taken by a majority, however, in regard to any appeal brought under Section 44(1) of the Act in respect of an information notice, this may be determined by a Chairperson sitting alone.

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## Appeals against the Tribunal's decision

### 31 Can an appeal be brought from the Tribunal's decision?

Yes – the Act provides at Section 20(5) and Section 45(6) respectively, that any party to a reference under Section 20, and any party to an appeal under Section 44 may appeal from the decision of the Tribunal on a point of law to the High Court.

Persons who are considering an appeal against the Tribunal's decision should seek legal advice.

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## Contacting the Tribunal

### 32 What is the address for the Isle of Man Data Protection Tribunal?

The address to which correspondence should be sent is:

**Secretary to the Isle of Man Data Protection Tribunal  
Tribunals Office  
Isle of Man Courts of Justice  
Deemsters Walk, Bucks Road  
Douglas  
Isle of Man, IM1 3AR**

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### 33 How do I contact the Secretary to the Isle of Man Data Protection Tribunal?

If a person wishes to contact the Secretary they can do so during normal office hours (Monday - Friday 9am to 5pm) on:

**Tel: 682382 Fax: 685573 or Email: [tribunals@gov.im](mailto:tribunals@gov.im)**

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## Useful Links

Isle of Man Law Society website: [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)

Isle of Man Data Protection website: [www.inforights.im](http://www.inforights.im)

The Isle of Man Data Protection Tribunal Rules 2003:  
<https://www.tynwald.org.im/links/tls/SD/2003/2003-SD-0027.pdf>

The Tribunals Office is not responsible for the content of external internet sites.