

RULES OF PROCEDURE OF THE DATA PROTECTION INDEPENDENT CONTROL COMMISSION

The present Rules of Procedure of the Data Protection Independent Control Commission (hereafter the Commission) have been drawn up on the basis of Article 46 of the Internal Regulations of the International Committee of the Red Cross (ICRC).

Their purpose is to set out in detail how the Commission functions (Chapter I). They also stipulate the rules which govern how the Commission deals with cases under its jurisdiction pursuant to Article 46 of the Internal Regulations (Chapter II), namely:

- (a) ruling on individual cases referred to it
- (b) coming up with recommendations on its own initiative on the basis of the individual cases it handles or matters referred to it
- (c) coming up with recommendations on any matter on which its views are sought.

Chapter I: Functioning of the Commission

Section A – General Provisions

Article 1. Independence

1. The Commission shall exercise its mandate with complete independence.
2. In the performance of their duties, members of the Commission shall neither seek nor take instructions from anyone.
3. The chairperson of the Commission shall guarantee the implementation of the regulatory conditions for the independence of the Commission and its Secretariat.

Article 2. Confidentiality and professional secrecy

1. The work and files of the Commission shall be confidential.
2. The files and reports of the Commission shall be for the internal use of the Commission, except where the Commission expressly decides that their disclosure is necessary or provided for in these Rules of Procedure.
3. In the performance of their duties, the members of the Commission and its Secretariat shall be bound by professional secrecy with regard to facts of which they have become aware in the course of or in connection with the performance of their duties on the Commission.

Article 3. Conflicts of interest

1. A conflict of interest exists when a member of the Commission has a private, financial or professional interest that may influence or be perceived to influence the way they act or make a decision within the Commission. Such interests may arise in particular from personal relationships, financial involvement, public or private commitments of the member or a close relation of the member, or from duties performed as a member of the ICRC.
2. The members of the Commission must inform the chairperson of the Commission in writing of the existence of any actual or potential conflict of interest and specify the nature of such a conflict as soon as they become aware of its existence, consider its occurrence likely or consider that a situation could be perceived as such.
3. The Commission, without the member who declared the conflict of interest, will immediately appoint one of its other members and then decide whether a conflict of interest exists. If so, the Commission

will continue its work composed of the members thus appointed. In the case of a conflict of interest of the chairperson, one of the other members will act as chair.

Article 4. Access to documents and information

1. To undertake its work, the Commission shall have free and unrestricted access to all information and documents and to any system for processing such information, regardless of the place, form or medium of such processing. As far as possible, the Commission shall exercise this right of access in such a way as not to interfere unnecessarily with the daily work of the Administration.
2. The Commission may consult the Administration and may request to hear its representatives.
3. The Commission may also consult the Internal Audit Unit and the Assembly and hear their representatives.
4. The Administration shall ensure that the Commission can conduct its activities under the best possible conditions.

Article 5. Delegation

1. The Commission may delegate some of its functions to one or more of its members, who may act as rapporteur(s), or to its secretary.
2. The Commission shall specify the tasks required and the conditions attached to them, where necessary.

Article 6. Secretariat

1. The Commission has a Secretariat, which provides logistical support to the Commission, particularly to organize its meetings, and assists the Commission in drafting its decisions.
2. The secretary of the Commission shall receive instructions only from the Commission or its members.

Article 7. Relations with other ICRC bodies

Article 7.1. In general

In carrying out its regular work, the Commission interacts within the ICRC with the president, the director-general, the head of the Data Protection Office, the chair of the Audit Commission and the head of the Internal Audit Unit.

Article 7.2 Relations with the head of the Data Protection Office

1. The Commission or its chairperson shall meet regularly with the head of the Data Protection Office to obtain information on its activities as part of its overall strategy and on the coordination of functions between the Commission and the Data Protection Office.
2. The head of the Data Protection Office shall ensure that the Commission has access to its files concerning all decisions taken by the relevant ICRC staff in charge on the basis of advice from the head of the Data Protection Office

Section B – Meetings and decisions

Article 8. Frequency of meetings

1. The Commission shall determine the place and number of its annual meetings; in order to fulfil its purpose it shall meet at least three times a year.
2. The dates and places of meetings of the Commission shall be set by its chairperson, after consultation with the Commission's members.

Article 9. Attendance of meetings

1. The meetings of the Commission shall be held *in camera*. In principle, only duly appointed members or alternates and the secretary of the Commission shall attend meetings of the Commission.
2. The Commission may nevertheless invite the Administration to participate in the discussions of particular agenda items, if this is deemed necessary, in particular in cases brought before the Commission pursuant to Article 46 of the Internal Regulations.
3. The Commission may also invite any other person whose presence the Commission may consider necessary to deal with a specific item.

Article 10. Conduct of business

The chairperson of the Commission shall chair the meetings of the Commission and lead the discussions.

Article 11. Decisions

1. The Commission sits in a composition of three or five members. The chairperson determines the composition on a case-by-case basis according to the members' availability and the importance of the case in question. The Commission may only adopt decisions in the presence of all the members of the chosen composition, unless otherwise provided for in these Rules of Procedure.
2. Only Commission members have the right to vote. Each Commission member has one vote.
3. The Commission will make every reasonable effort to reach its decisions by consensus. If consensus cannot be reached, all decisions shall be taken by simple majority. Voting shall be by show of hands unless the Commission decides otherwise.

Article 12. Minutes of meetings and decisions

1. The minutes shall contain a list of the decisions, conclusions, recommendations and opinions relating to the cases considered by the Commission.
2. Each decision or other outcome shall be annexed to the minutes, contain a brief summary of the facts and the names of the parties involved, and clearly state the wording of the decision taken, the grounds for it and the follow-up requested.
3. The minutes shall be drafted by the secretary of the Commission.
4. The minutes shall be communicated to all members of the Commission during the week following the meeting and submitted to the Commission for approval, which shall take place in the ten days following the meeting.
5. Members who wish that one or more of their statements be attributed to them by name in the minutes, must make this known during the meeting.
6. The minutes shall be considered as confirmation of the decisions taken during a meeting.
7. Before making a decision or recommendation, the Commission shall, where appropriate, invite the Directorate to submit its comments within a time limit set by the Commission.

Article 13. Assessment and report

Once a year, the Commission shall carry out a self-assessment of its activities, analysing in particular:

- its organization and working methods
- the resources available for it to carry out its mandate
- the degree of cooperation between its members
- synergies with other bodies.

The Commission shall present a summary of its self-assessment in a chapter of its annual report.

The Commission shall produce an annual activity report. It shall submit the report to the Assembly, accompanied by any comments from the Directorate, and make it available to the Data Protection Office for information purposes.

Section C – Deadlines and records retention

Article 14. Deadlines

1. The Commission shall determine the deadlines by which the persons and entities it consults should provide the information requested.
2. At any time before these time limits expire, the Commission may request the entity consulted to report on progress with processing its request.
3. The Commission may grant a deadline extension upon the justified request of the entity consulted.
4. In the event of failure to comply with the deadline set by the Commission, the latter may choose to take a decision without the input of the entity consulted.

Article 15. Records retention

The Commission is required to retain the files it processes and the minutes of its meetings for a period of 30 years. The files are then destroyed, with the exception of the annual reports, which are archived.

CHAPTER II: Rules of procedure

Section A – Individual applications

Article 16. Referral to the Commission

1. The Commission shall be competent to review any decision made by ICRC staff in terms of its compliance with the applicable data protection rules.
2. Where the head of the Data Protection Office has tried unsuccessfully to reach a solution with the body or person concerned, they shall refer the application to the Commission without delay for examination of the decision's compliance with the applicable data protection rules.

Article 17. Admissibility

1. The application shall be admissible if the following cumulative conditions are fulfilled:
 - (a) It concerns the compliance of ICRC personal data processing with ICRC data protection rules.
 - (b) It is referred by the head of the Data Protection Office.
 - (c) It is submitted after an unsuccessful attempt by the head of the Data Protection Office to resolve the dispute or contentious matter.
 - (d) It is signed and justified, i.e. accompanied by a brief summary of the arguments of the parties concerned in support of the application, expressly referring to any document attached and to the data protection rules alleged to have been breached.
2. Where the person concerned is represented by a third party (proxy or legal representative), the Commission may require proof that the representative is fully empowered to represent them.
3. In order to respect the right to be heard, the Commission may take all appropriate measures to guarantee the confidentiality and secrecy referred to in Article 2.

Article 18. Checks performed by the Commission

1. The Commission shall acknowledge receipt of any application within three days, determine its admissibility and rule within seven days whether the application has a suspensive effect on a decision.

2. When the Commission receives an application that is admissible, it checks whether the contentious processing of personal data complies with ICRC rules and conditions. The Commission may examine any questions of fact or of interpretation of the applicable rules which it considers relevant in ruling on the application.

Article 19. Joint reviews

1. The Commission may, at the request of the head of the Data Protection Office or *ex officio*, decide to combine several applications that relate to the same case or raise common problems. Joint reviews shall be carried out without prejudice to respect for the confidentiality specific to each individual application, in particular when the Commission communicates its decisions and/or conclusions.
2. Where an application challenges the processing of several persons' personal data, the Commission may simultaneously check the compliance of such processing with the applicable rules.

Article 20. Consultations

1. The Commission shall consult any entity or person it considers necessary to decide on the application, in particular the staff involved in the contested decision and the Data Protection Office. The persons and entities consulted by the Commission shall be obliged to cooperate with the Commission's handling of the application.
2. The Commission shall set the deadline to receive a reply.

Article 21. Additional information

Where the Commission considers that it cannot draw a conclusion or make a recommendation solely on the basis of the positions of the persons or entities consulted and without obtaining additional information, it may request any person, including the applicant, to provide additional information in writing within a specified time frame.

Article 22. Hearings

The Commission may make a decision after examining the file in its possession. It may also, if it considers it necessary, call a hearing to listen to the opposing parties or the head of the Data Protection Office or any other person concerned.

Article 23. Provisional measures

1. The Commission or, in case of emergency, its chairperson or, in the absence of the chairperson, any member delegated by the chairperson, may order any provisional measure it considers necessary before its final decision is rendered, in particular for the purpose of preserving a state of affairs, preserving evidence, preserving confidentiality or protecting the applicant or the ICRC from irreparable damage.
2. Provisional measures shall be notified to the parties concerned and to the head of the Data Protection Office and shall enter into force upon notification, unless the Commission decides otherwise.

Article 24. Decisions and recommendations

1. Where the Commission considers that it has gathered sufficient information to decide whether the processing of the information concerned complies with ICRC rules, it shall issue a decision which may also contain recommendations.
2. The Commission shall communicate its decision and the grounds for that decision to the parties concerned and to the head of the Data Protection Office, who shall be responsible for ensuring its effective implementation, under the supervision of the Commission.
3. The Commission shall inform the Directorate and the head of the Internal Audit Unit of the outcome of its work and communicate to them any recommendations it has made if it considers that action is necessary.

4. The Commission may recommend an internal audit if it considers this appropriate.
5. The Commission's decisions shall be binding on the ICRC.

Article 25. Reconsideration

1. The reconsideration of a decision by the Commission may only be requested by the head of the Data Protection Office and only where the request is based on an important and relevant new finding which would probably have led to a different decision had it been known at the time the application was considered.
2. Such a reconsideration may, however, be requested only within 30 days of the discovery of the said new finding, unless the reasons for not doing so within that period are duly justified and demonstrated.

Article 26. Closing applications

Once the Commission has communicated its decision in accordance with Article 24, paragraph 2, it shall close the application.

Section B – Advisory function

Article 27. Advisory function

1. The Assembly, the Directorate or the Data Protection Office may refer any matter concerning ICRC processing of personal data to the Commission.
2. If the Commission's opinion is requested in the context of new projects or databases, the files shall be supplied to the Commission before any decision or implementation and sufficiently early for the Commission to deliver an opinion in good time, unless there is an urgent need to launch a project before consulting the Commission.
3. When the Commission considers that it has received sufficient information to reach a decision, it shall deliver an opinion to the requesting body. Follow-up shall be provided by the head of the Data Protection Office.

CHAPTER III: Final provisions

Article 28. Revision of the Rules of Procedure

1. The Commission may revise these Rules of Procedure at any time. The revision must be the subject of a discussion scheduled on the agenda of a Commission meeting. The Assembly shall be consulted on the proposed revision.
2. Amendments to these Rules require a simple majority of the members of the Commission.

Article 29. Entry into force

These Rules of Procedure, of which the Assembly is apprised, shall enter into force on 1 December 2017.