

## 개인정보보호위원회의 조직과 권한에 관한 연구

### A Study on the Organization and Authority of the Personal Information Protection Commission

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#### 요 약

개인정보보호위원회는 대통령 소속으로 그 권한에 속하는 업무를 독립적으로 수행하며, 장관급인 위원장과 차관급인 상임위원을 포함하여 총 15명의 위원(대통령 지명 5, 국회 선출 5, 대법원 지명 5)으로 구성된다. 개인정보 보호위원회의 주요 기능은 개인정보 보호 관련 주요 정책 심의 의결 및 법령·제도 개선, 개인정보 보호 관련 공공기관 간 의견 조정, 중앙행정기관, 지방자치단체 및 헌법기관의 침해행위 중지 등 개선권고, 개인정보 보호에 관한 연차보고서의 국회 제출 등이다. 현행 개인정보보호법체는 독립된 형태의 외부감독기관인 개인정보보호위원회와 소관 부처들이 동시에 개인정보보호에 관하여 규율하는 다중규율체계가 특징이다. 현행 법에 규정된 개인정보보호위원회의 기능과 역할은 국제적 기준이나 그동안 논의되었던 수준에 비하면 보호기구의 독립성과 권한 등에서 많이 부족하다. 이러한 위원회는 효율적인 개인정보보호를 위한 독립된 기구로서 충분한 역할을 하기 어렵다고 판단된다. 따라서 개인정보보호위원회의 설립취지를 살리는 법개정작업을 제안하고자 한다.

☞ 주제어 : 정보사회, 프라이버시, 개인정보, 개인정보보호법

#### ABSTRACT

The Personal Information Protection Commission shall be established under the direct jurisdiction of the President and shall independently perform affairs under its authority. It shall be comprised of total 15 members (5 members designated by the President, 5 members elected at the National Assembly and 5 members designated by the Chief Justice of the Supreme Court), including one minister-level Chairperson and one vice-minister-level standing member. Main functions of the Personal Information Protection Commission include deliberation and resolution of major policies and improvement of ordinances and systems related to personal information protection, coordination of opinions among public institutions in regards to the management of personal information, recommendation of improvement such as suspension of infringement by a central administrative agency, a local government and a constitutional institution, and submission of annual reports on personal information protection to the National Assembly. The function and role of the Personal Information Protection Commission regulated by the current law are insufficient in terms of independence and authorities of protection agencies compared to the international standard or level of discussion. The Commission thus cannot play a sufficient role as an independent agency for efficient protection of personal information. Therefore, there is a need for law revision that revives the purpose of the establishment of the Personal Information Protection Commission.

☞ keyword : Information Society, Privacy, Personal Information, Personal Information Protection Act, Personal Information Protection Commission

## 1. Introduction

80 million personal information out of 100 million personal information which was leaked out from KB

Kookmin Bank, NH Nonghyup and Lotte Card company has been turned out resold to the bank brokers in January 2014. The government and authority which has been confident there would be no personal information leakage will not be able to avoid its criticism and responsibility. The authority still sees this leakage would have been prevented if the basic protocol was followed and is composing task forces at a ministry level. However, academics and civil societies are asking governments to conduct fundamental check ups on the current systems and instruments on personal information

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[Received 11 June 2015, Reviewed 18 June 2015, Accepted 24 July 2015]

protection. Therefore, this article will analyze the current problems Personal Information Protection Commission and propose a solution to them.

## 2. Structure and Operation of the Personal Information Protection Commission in the Personal Information Protection Act

### 2.1 Structure of the Personal Information Protection Commission

The Personal Information Protection Commission shall be established under the direct jurisdiction of the President and shall independently perform affairs under its authority. It shall be comprised of total 15 members (5 members designated by the President, 5 members elected at the National Assembly and 5 members designated by the Chief Justice of the Supreme Court), including one minister-level Chairperson and one vice-minister-level standing member [1]. Main functions of the Personal Information Protection Commission include a) deliberation and resolution of major policies and improvement of ordinances and systems related to personal information protection, b) coordination of opinions among public institutions in regards to the management of personal information, c) recommendation of improvement such as suspension of infringement by a central administrative agency, a local government and a constitutional institution, and d) submission of annual reports on personal information protection to the National Assembly [2].

### 2.2 Organization and Operation of the Personal Information Protection Commission

The Personal Information Protection Commission shall be comprised of not more than 15 members including one Chairperson and one standing member. The Chairperson shall be commissioned by the President from among non-public official members, and he or she shall represent the Protection Commission and supervise the tasks. A public official in political service shall be appointed as the standing

member, and he or she shall assist the Chairperson with regard to the management of meetings by the Protection Commission. Moreover, if the Chairperson cannot fulfill his or her duty owing to unavoidable circumstances, the standing member shall act on behalf of the Chairperson. Members shall be either appointed or commissioned by the President. Five members elected at the National Assembly and five members designated by the Chief Justice of the Supreme Court shall be respectively appointed or commissioned. The term of office of the Chairperson and the members shall be three years, and the consecutive appointment may be permitted only once. The qualified members are those recommended by a civil society organization or consumer organization to promote participation of stakeholders in various fields and use their professional experiences and knowledge; those recommended by an enterprisers' organization; and those who have knowledge and experience in personal information [3].

Moreover, a secretariat shall be established under the Protection Commission to support the business affairs of the Protection Commission. In addition to the matters provided for in this Act, necessary matters concerning the organization and operation of the Protection Commission shall be prescribed by Presidential Decree. Accordingly, the Presidential Decree regulates matters regarding the establishment and operation of an expert committee, dispatch of public officials, organization and fixed number, and attendance benefits. Other necessary matters are delegated to be prescribed by the rules of the Protection Commission [4].

### 2.3 Deliberation System of the Personal Information Protection Commission [5]

#### A. Deliberation System for Motions from Other Organizations

Dividing the functions of the Personal Information Protection Commission by subject of motion per deliberation, first there is deliberation of motions from other organizations. In this case, the Personal Information Protection Commission deliberates or resolves the requested content based on the request of deliberation by other organizations such as a central administrative agency. According to the Personal

Information Protection Act, these matters include: a) basic plans and implementation plans of personal information protection, b) matters concerning the interpretation and application of Acts and subordinate statutes and presentation of opinions about statutes and ordinances, c) matters concerning the use and provision of personal information for other purposes, d) matters concerning the findings of impact assessment of personal information, e) matters concerning recommendation of suspension of infringement of personal information, and f) matters concerning publication of outcome such as recommendations for improvement, corrective measures, and imposition of fines.

#### B. Deliberation System for Motions from the Commission

The Personal Information Protection Commission deliberates or resolves social issues concerning the protection of private information if the secretariat (or member) tables the bill. According to the Personal Information Protection Act, these matters include: a) improvement of Acts, policies and systems concerning the protection of private information, b) coordination of opinions among public institutions, and c) preparation and submission of annual reports.

#### C. Ex ante and Ex post Corrective Measures Concerning Deliberation and Resolution

##### 1) Ex ante Corrective Measures

If necessary to deliberate and resolve on the matters above, the Protection Commission may hear the opinion of a relevant public official, an expert, civil society organization, or relevant business person. And request a relevant agency to submit data. The Protection Commission may also request an expert committee or a review group consisting of experts to give a preview.

##### 2) Ex post Corrective Measures

The Personal Information Protection Commission may notify the relevant agencies of deliberation and resolution, and may recommend the head of such agencies such as a central administrative agency to take corrective measures such as suspension of infringement when necessary. In such cases, the agency in receipt of a recommendation shall obey

it unless extenuating circumstances exist [6]. These matters can be actually forced to be implemented through publication of outcome or inclusion in annual reports.

### 3. Problems of the Organization and Authority of the Personal Information Protection Commission in the Personal Information Protection Act and Improvement Plans

#### 3.1 Meaning of Independence

The independence of a personal information protection agency is all about institutional control over personal information protection. Therefore, the independence of a personal information protection agency is a basic requirement for the control of personal information protection and is at the same time a yardstick for measuring the effectiveness of such control. To begin with, the basic proposition that in the relationship between the controller and the controlled (as components of the control conception) are not identical to each other serves as a judgment foundation for embodying the concept of independence. In addition, the concept of independence should come from the kind and scope of presented challenges and the goals established in the information protection control.<sup>1)</sup> If so, the independence of an agency means that it should be independent, on one hand, from the executive and other political agencies that are being controlled, and on the other hand, from the citizen.<sup>2)</sup> Thus, the independence of a control agency should be based on the premise that the control agency's decision procedures should be independently

1) Here, it must be noted that independence of the control agency does not form a certain value or an independent goal. Thus, independence must be specified to be function-related and function-oriented. That is, independence of an agency is not a value that can be determined by certain abstract, absolute and confirmed standards.

2) If a control agency is understood by the people as a part of a controlled agency, citizens might not trust the agency and this mistrust may damage the foundation for effect of the information protection agency. Therefore, clear separation of the controller and the controlled agency is the minimum foundation to build such a trusting relationship.

operated. In that sense, this independence consequentially indicates freedom from the control of the third party or external control, or in a more active expression, freedom of complete self-controlled decision. Accordingly, the control agency enjoys independence as a quasi-judicial agency. Thus, all information protection agencies should not be ordered in connection with their activities, and should not be under any duty supervision.<sup>3)</sup>

### 3.2 Problems and Improvement Plans

According to the international standard concerning personal information protection and supervision agencies, the current law established the Protection Commission under the direct jurisdiction of the President to guarantee independence of making decisions on personal information protection policies. Establishment of an independent and specialized personal information supervision agency is the most essential element of personal information protection. The reason why independent supervision agencies are emphasized for the personal information protection system is because most organizations processing massive personal information are traditionally government agencies or conglomerates, and thus there is a need for a tool to professionally evaluate and watch their personal information processing activities. Therefore, it is necessary to systematically and functionally separate the supervisor from the supervised. Accordingly, the Personal Information Protection Act establishes the Protection Commission under the direct jurisdiction of the President, while enabling it to independently perform affairs under its authority. [7].

Article 7, Clause 1 of the current Act only states that the Personal Information Protection Commission shall independently perform affairs under its authority, while not mentioning anything about the guarantee of independent

activities of the Personal Information Protection Commission and its members. On the contrary, Article 41 of the same Act states that “No member may be dismissed or de-commissioned against his/her will unless he/she is sentenced to the suspension of any qualifications, or heavier punishment, or unless he/she becomes unable to perform his/her duties due to a mental or physical disability,” guaranteeing the status of the members of the Personal Information Dispute Mediation Committee. This indicates that the status guarantee, which is approved for the Personal Information Dispute Mediation Committee members, is not approved for the more important Personal Information Protection Commission members. There is a definite need for amendment of the provision concerning this part [8].

Next, to guarantee the independence of the Personal Information Protection Commission, it is necessary to revise the relevant provisions concerning budget compilation and personnel affairs so that the Protection Commission can have independent rights to both.

### 3.3 Problems of the Organization of the Personal Information Protection Commission and Improvement Plans

The Personal Information Protection Commission shall be established under the direct jurisdiction of the President and shall independently perform affairs under its authority. It shall be comprised of total 15 members (5 members designated by the President, 5 members elected at the National Assembly and 5 members designated by the Chief Justice of the Supreme Court), including one minister-level Chairperson and one vice-minister-level standing member. But according to the current law, the Chairperson of the Personal Information Protection Commission is a non-standing member and has the legal rights to convene a meeting of the Protection Commission, appoint expert members, and decide on the disclosure of intention. Moreover, it is unclear in the interpretation of the current ordinance whether the personnel and organizational management affairs of the Protection Commission are under the authority of the secretariat or the Chairperson. However, for the Personal Information Protection Commission to exert authority as an independent supervision agency, it is

3) Despite the guarantee of legally independent structures and authorities, the fact that these agencies dependent in terms of finance limits the independence of the information protection agencies. Anyhow, it must always be recognized that the government or the government party may use the budget as means to control and pressurize the control agencies. Moreover, employees of a personal information protection agency are generally comprised of people from the executive branch, which is a trend found in other countries.

necessary to change the position of the non-standing chairperson to standing, grant him/her the rights to actually supervise the secretariat and express all decisions made in the Commission, and give the authority to manage the organization and personnel affairs. In addition, establishing a subcommittee or having 2 to 3 standing members to be in charge of affairs shall be considered based on the premise that the role and authority of the Personal Information Protection Commission will be strengthened.

### 3.4 Problems of the Role and Function of the Personal Information Protection Commission and Improvement Plans

#### A. Personal Information Protection under the Current Law and Authority of Supervision Agencies

The current Personal Information Protection Act is characterized by a multilayer control system in which the Personal Information Protection Commission, which is an independent external supervising agency, along with the ministries and offices concerned (Ministry of Government Administration and Home Affairs, Korea Communications Commission, Korea Fair Trade Commission, Financial Services Commission, Ministry of Health and Welfare, etc.) simultaneously regulates matters concerning personal information protection.

In the comparative view of personal information protection agencies, the Personal Information Protection Commission was established as an independent agency under the direct jurisdiction of the President to protect informational self-determination, privacy and human dignity of the people. According to the current law, the Personal Information Protection Commission deliberates and resolves on matters concerning the improvement of policies, systems, Acts and subordinate statutes concerning the protection of private information; coordinates opinions among public institutions in regards to the management of personal information; and recommends correction and improvement of infringement by a government department, local government and constitutional institution. Therefore, the status and authority of the Personal Information Protection Commission

by law is equivalent to the type of personal information protection committees of Germany and Canada, which has an advisory authority.

Main functions of the Personal Information Protection Commission under the current law include a) deliberation and resolution of major policies and improvement of ordinances and systems related to personal information protection, b) coordination of opinions among public institutions in regards to the management of personal information, c) recommendation of improvement such as suspension of infringement by a central administrative agency, a local government and a constitutional institution, and d) submission of annual reports on personal information protection to the National Assembly.

Dividing the functions of the Personal Information Protection Commission by subject of motion per deliberation, first there is deliberation of motions from other organizations. In this case, the Personal Information Protection Commission deliberates or resolves the requested content based on the request of deliberation by other organizations such as a central administrative agency. According to the Personal Information Protection Act, these matters include basic plans and implementation plans of personal information protection; matters concerning the interpretation and application of Acts and subordinate statutes and presentation of opinions about statutes and ordinances; matters concerning the use and provision of personal information for other purposes; matters concerning the findings of impact assessment of personal information; matters concerning recommendation of suspension of infringement of personal information; and matters concerning publication of outcome such as recommendations for improvement, corrective measures, and imposition of fines. The Personal Information Protection Commission also deliberates or resolves social issues concerning the protection of private information if the secretariat (or member) tables the bill. According to the Personal Information Protection Act, these matters include improvement of Acts, policies and systems concerning the protection of private information; coordination of opinions among public institutions; and preparation and submission of annual reports.

Therefore, by law, the Personal Information Protection Commission primarily monitors and watches activities

concerning personal information protection by administrative agencies or public institutions. Next, it may exert its influence concerning personal information protection to private companies or organizations through the head of the Ministry of Government Administration and Home Affairs or relevant central administrative agencies.

### 3.5 Problems Concerning the Functions of the Personal Information Protection Commission by the Current Law and Improvement Plans

#### A. Ambiguity in Affairs and Authorities of the Personal Information Protection Commission

As explained above, a comparative review shows that the Personal Information Protection Commission shall have the authorities such as prevention, investigation, consultation, mediation, recommendation, objection, ombudsman, submission of reports, and international exchange with foreign countries.

However, according to the regulations of the current Personal Information Protection Act, the Commission does not have sufficient authorities with regard to personal information protection, and it is also not easy to distinguish the affairs and authorities between the Personal Information Protection Commission and the Ministry of Government Administration and Home Affairs. For example, the regulations above show that the Personal Information Protection Commission does not have the right to investigate; and the Dispute Mediation Committee is in charge of mediating disputes, and according to Article 11, the right to request submission of data is given to the Minister of Security and Public Administration.

At the time this Act was enacted, a deliberation committee under the Prime Minister's Office was in charge of deliberating key matters and each government department in charge of execution, while the Ministry of Government Administration and Home Affairs was responsible for the general management. Then, in the process of discussion with the opposition party, the Personal Information Protection Commission was elevated to an agency directly under the President, also adding the function of resolution to the Commission and thereby expanding the authorities of the

Personal Information Protection Commission.

This inevitably led the Personal Information Protection Commission to become slightly deformed without the functions and roles demanded according to consistent and systematic standard and framework concerning personal information protection. In the end, this will make it difficult for personal information processors, to whom the aforementioned Act will be applied, to predict how much control and from what agency they would face in the process of abiding by the Personal Information Protection Act. This may particularly be a problem in the perspective of transparency of regulation. In addition, this also has a problem in the global perspective on personal information protection. Systemization, clarification and reorganization are required with regard to the above.

#### B. Review of the Separation of Personal Information Protection and Personal Information Dispute Mediation

Next, the Personal Information Protection Act stipulated that the Personal Information Protection Commission and Personal Information Dispute Mediation Committee shall be established separately. Moreover, according to the provision, the relationship between the two is unclear. For some reason, this Act directly adopted the previous regulations on the Personal Information Dispute Mediation Committee in the old Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. It is questionable whether it is necessary to establish the Personal Information Dispute Mediation Committee separately from the Personal Information Protection Commission. It is appropriate to incorporate the Dispute Mediation Committee into the Protection Commission or reorganize it as a subcommittee.

## 4. Conclusions

First, there may be a controversy over whether a personal information protection agency must be in charge of both public and private sectors. Next, even if there is a personal information protection agency that supervises both sectors, there is a controversy over whether to limit the authorities to

advice (recommendation) and mediation, or to give strong authorities with executive function. Finally, it is necessary for such supervision agency to secure independence as well as expertise. Therefore, there is a need for detailed review of the integration of supervision agencies in the public and private sector as well as their authorities and legal status. Ultimately, no matter what position is taken, the function and role of the Personal Information Protection Commission regulated by the current law are insufficient in terms of independence and authorities of protection agencies compared to the international standard or level of discussion. The Commission thus cannot play a sufficient role as an independent agency for efficient protection of personal information. Therefore, there is a need for law revision that revives the purpose of the establishment of the Personal Information Protection Commission.

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- [8] “The National Human Rights Commission of Korea(Chairperson Hyun Byung-chul) stated on the 19th that the personal information protection bill submitted by the government to the Public Administration and Security Committee of the National Assembly lacks independent elements required for a personal information protection agency to perform its role, and thus the legislation thereof is undesirable. Furthermore, the personal information protection bill submitted by the Grand National Party’s Lee Hye-hoon and the bill submitted by the Democratic Party Byeon Jae-il require supplementation of ways to promote intervention of the National Assembly in the regulations concerning immunity and appointment of members, and to enhance independence in terms of organization and budget. The National Human Rights Commission of Korea pointed out that ‘the bill submitted by the government out of the three bills does not have the investigative function, which is the essential function of a personal information protection agency, thereby seriously lacking the requirements for independence,’ and that ‘there is a concern over lack of expertise since all the members are non-standing members.’”(2010. 1. 19.)  
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