Data commissioner needs independence

As we move towards building our digital economy, it is imperative that the fundamental building blocks be put in place. Comprehensive data protection legislation is one of those blocks and accordingly, the Government must be lauded for acknowledging this and moving to enact this critical piece of legislation, the Data Protection Bill, 2019.

The Data Protection Commissioner is the independent supervisory authority under the Bill. As drafted, there is no true independence of the Data Protection Commissioner built into the Bill. The Commissioner does not have any independence in respect of staffing and budgeting and there is no security of tenure. Importantly too, there are no provisions that expressly speak to the essential requirement for independence. If there is no independence, the Commissioner will not be sufficiently insulated from undue pressure. This raises the possibility that the Commissioner may face additional difficulty in effectively carrying out the myriad of functions under the legislation in the face of pressure exerted by external actors.

Amend the Bill to include provisions that allow for some element of:

- Staffing independence – In doing so, the Data Protection Commissioner would hold some element of control over or input into which and how many persons are hired to support the work of the Data Protection Commissioner.

- Budgetary independence – The purpose of such a provision is that, in keeping with accepted best practices, a budget would be prepared and sent directly to Parliament for approval, not to a minister. Also, the Government would be statutorily obligated to adequately fund the office of the Data Protection Commissioner.

- Security of tenure – Similar to a judge of the Supreme Court, unless mental incapacity or some other intervening circumstance occurs, the Data Protection Commissioner ought not to be removed from office for a defined period of years.

- Appropriate salary – I would humbly suggest that given the importance and scope of the role of the Data Protection Commissioner, the salary ought to be set as the equivalent of a Supreme Court judge.

Further, it is the prevailing practice to include provisions in data protection legislation expressly dealing with this process. Suggestion: Include in the Bill, an express provision for a grace period for the entry into force of those provisions of the Bill that impose obligations on data controllers and data processors. The prevailing standard appears to be two years, but it is respectfully up to Parliament to determine what period of time is reasonable and appropriate in the Barbadian context.