



**INFORMATION
REGULATOR
(SOUTH AFRICA)**

*Ensuring protection of your personal information
and effective access to information*

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**PRESS BRIEFING BY THE INFORMATION REGULATOR
20 SEPTEMBER 2017 AT 11:00am in PRETORIA**

The purpose of this briefing is to provide an update on the progress made on the establishment of the Information Regulator (Regulator), the work carried out by the Regulator thus far and the publication of the draft Regulations as prescribed by Section 112(2) of the Protection of Information Act 4 of 2013 (POPIA).

As you are aware, the Members of the Regulator took office on the 1st of December 2016. The Regulator held its first public meeting on the 14th of February 2017 in Cape Town where its logo was unveiled. Since taking office the Members have embarked on a number of activities which include the following:

1. Finalization of the Organizational Structure

The organizational structure has been finalized and has been submitted to the department of Public Services and Administration for processing.

2. Adoption of the 2017- 2020 Strategic Plan and 2017-2018 Annual Performance Plan

The strategic plan and the annual performance have been adopted and are available on the website of the Regulator at <http://www.justice.gov.za/infoereg/index.html>.

3. Litigation

The Regulator was cited as the Seventh (7th) Respondent in the Constitutional Court Case of the *Black Sash Trust vs Minister of Social Development and Others*. In this case, the Black Sash Trust had sought relief with reference to the contract between the South African Social Security Agency (SASSA) and Cash Paymaster Services (Pty) Ltd

(CPS) including that the personal information of grant beneficiaries be declared the property of SASSA.

The Regulator filed an explanatory affidavit to the effect that the personal information of grant beneficiaries belongs to them and could never vest in a third party. The Regulator sought a declaratory order to this effect.

The court held amongst others that the South African Social Security Agency (SASSA) is under a duty to ensure that the payment method it determines “*contains adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any purpose other than payment of the grants*” and “*precludes a contracting party from inviting beneficiaries to ‘opt in’ to the sharing of confidential information for the marketing of goods and services*”.

The Regulator is continuously monitoring the implementation of the aspect of the judgment relating to the processing of personal information of grant beneficiaries by CPS. In this regard, the Members have held separate meetings with CPS and Black Sash.

4. Complaints

Although the Regulator is not yet fully operational, it has to date received 107 complaints relating to the unlawful processing of personal information and access to information. An analysis of these complaints reveal that a majority of the complaints relate to the following industries: banking, insurance and telecommunications.

It should be noted that most of these complaints relate to direct marketing through unsolicited electronic communications.

5. Interaction with National Stakeholders

The Members of the Regulator have met with the following public and private bodies to discuss areas of mutual interest:

- South African Human Rights Commission (SAHRC);
- National Consumer Commission (NCC);
- Banking Association of South Africa (BASA);
- Electoral Commission (IEC);
- South African Editors Forum (SANEF);
- Civil Society Organizations convened by the Open Democracy Advice Centre (ODAC);
- South African Law Reform Commission (SALRC);
- D6 School Communicator which develops mobile application for Schools;
- Wireless Application Service Providers Association ((WASPA);
- Centre for Applied Legal Studies (CALS);
- Black Sash Trust;
- Cash Paymaster Services (Pty) Ltd (CPS);
- The Cybersecurity Hub [Department of Postal Services and Telecommunications] (DTPS);
and
- First Rand Bank (FNB);

The Members also provided training on POPIA to the following bodies:

- Legal Practitioners Forum representing Higher Education Institutions(LPF);
- University of Mpumalanga (UMP);
- African Centre of Excellence for Information Ethics (ACEIE) for the University of Pretoria
- South African Social Services Agency (SASSA); and
- Registrar's Forum of the Council for Built Environment (CBE);

The Regulator made submissions on the Cybercrimes and Cybersecurity Bill (2017) to the Portfolio Committee on Justice and Correctional Services on matters that impact on the processing of personal information and related matters.

6. Interaction with International Stakeholders

In its short time of existence, the Regulator has hosted and interacted with the following international stakeholders:

- The Vice President of Google responsible for Global Public Policy;
- The Right to Information Commission of Sri Lanka;
- Delegation of Judges from Brazil;
- The Personal Data Protection Commission of Singapore; and
- The Office of the Privacy Commissioner of New Zealand;

The Regulator is a Member of Common Threat Network which is the Network for Data Protection Authorities in Commonwealth Countries. The Regulator is in the process of applying for membership with the Network of African Data Protection Authorities. The Regulator is an accredited member of the International Conference of Data Protection and Privacy Commissioners.

The Regulator attended the 2017 Data Protection Conference which was hosted by the Ghanaian Data Protection Commission on the 20-21 April 2017 in Accra, Ghana. The Regulator will be participating at the 39th International Conference of Data Protection and Privacy Commissioners which will be held in Hong Kong from 25 – 29 September 2017.

7. Regulations

Section 112(2) of POPIA empowers the Regulator to make Regulations. The draft Regulations were published for public comments on the 8th of September 2017. The closing date for public comments is the 7th of November 2017. The Regulations covers the following aspects amongst others:

- Manner of lodging an objection to processing of personal information;
- Request for correction or deletion of personal information or destroying or deletion of record of personal information;
- Duties and responsibilities of Information Officers;
- Application to issue a Code of Conduct;
- Request for data subject's consent for processing of personal information for the purpose of direct marketing by means of unsolicited electronic communications
- Submission of complaint or grievance;
- Regulator acting as conciliator during an investigation;

The Regulator have not made provision for Regulations relating to section 112(2)(c) of POPIA which provides for the processing of health information by certain responsible parties such as insurance companies, medical schemes and pension funds as provided for in section 32(6) of POPIA. The Regulator is of the view that interested parties should make submissions in this regard.

It is envisaged that the draft Regulations will be submitted to Parliament for tabling in February 2018. The anticipated date of publication of the final Regulations is April 2018. The Regulations can be accessed at the following email address <http://www.justice.gov.za/inforeg/index.html>.

Finally, the remaining sections of POPIA will commence once the Regulator is fully operationalised. The Members endeavour to fully operationalise the Regulator in 2018. In terms of POPIA, all public and private bodies will be expected to be compliant with its provisions within 1 (one) year of its commencement.

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