



**INFORMATION
REGULATOR
(SOUTH AFRICA)**

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

GUIDANCE NOTE ON APPLICATION FOR PRIOR AUTHORISATION

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and effective access to information*

TABLE OF CONTENTS

1. INTRODUCTION	3
2. DEFINITION	3
3. PROCESSING SUBJECT TO PRIOR AUTHORISATION	5
4. HOW TO COMPLETE THE APPLICATION FORM FOR PRIOR AUTHORISATION	7
5. MANNER OF SUBMISSION OF AN APPLICATION FOR PRIOR AUTHORISATION	12
6. PRESCRIBED TIMELINES FOR PROCESSING THE APPLICATION FOR PRIOR AUTHORISATION	14
7. ACKNOWLEDGEMENT OF RECEIPT OF THE APPLICATION	15
8. PENALTIES FOR FAILURE TO NOTIFY PROCESSING SUBJECT TO PRIOR AUTHORISATION.....	15
9. REVIEW OF THE DECISION OF THE INFORMATION REGULATOR	16
10. CONTACT DETAILS.....	16
APPLICATION FORM FOR PRIOR AUTHORISATION	17



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1. INTRODUCTION

- 1.1 This Guidance Note is issued to guide responsible parties who are currently processing or intend to process personal information which is subject to prior authorisation to ensure compliance with the relevant provisions of the Protection of Personal Information Act 4 of 2013 (POPIA).
- 1.2 Some definitions provided herein are not specifically defined in any statute, are solely intended to simplify the understanding of the relevant provisions of POPIA and shall therefore not be construed as statutory definitions.
- 1.3 Responsible parties are required to answer all questions in the prior authorisation form as thoroughly as possible. This will ensure that the Information Regulator (Regulator) is provided with enough information to gain a full understanding of the nature of the personal information subject to prior authorisation processed by the applicant.
- 1.4 Responsible parties should not use internal acronyms or jargon to ensure that the content is clear to individuals who may not be familiar with the internal acronyms or jargon that may be used within their organisations.
- 1.5 Any examples provided in this guidance note are not exhaustive and should be regarded as mere guidance.

2 DEFINITION

- 2.1. **“Child”** refers to a person under the age of 18 years, as defined in the Children’s Act 38 of 2005;
- 2.2. **“Credit Bureau”** refers to a person required to apply for registration as such in terms of section 43(1) of the National Credit Act 34 of 2005;
- 2.3. **“Credit Reporting”** refers to the processing of personal payment history, lending, and credit worthiness of a data subject by creating a credit report based on that

information, and lenders or credit providers use credit reports along with other personal information to determine a data subject's creditworthiness;

- 2.4. **“Criminal Behaviour”** refers to, for example, a criminal record enquiry;
- 2.5. **“Unlawful or Objectionable Conduct”** may include, but is not limited to any reference check pertaining to past conduct or disciplinary action taken against a data subject;
- 2.6. **“Special Personal Information”**, as referred to in section 26 of POPIA, refers to the personal information concerning the following-

2.6.1. the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or

2.6.2. the criminal behaviour of a data subject to the extent that such information relates to-

- a) the alleged commission by a data subject of any offence; or
- b) any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.

- 2.7. **“Processing”**, as defined in POPIA, means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including-

2.7.1. the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

2.7.2. dissemination by means of transmission, distribution or making available in any other form; or

2.7.3. merging, linking, as well as restriction, degradation, erasure or destruction of information;

2.8. **“Unique Identifier”**, as defined in POPIA, means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party”.

3. PROCESSING SUBJECT TO PRIOR AUTHORISATION

3.1. In accordance with section 58(1) of POPIA and subject to section 57(3) of POPIA, the responsible party must notify the Regulator that he, she or it is processing or intends to process any of the following personal information, as referred to in section 57(1) of POPIA-

3.1.1. **Unique identifiers of data subjects for a purpose other than the one for which the identifier was specifically intended at collection; and with the aim of linking the information together with information processed by other responsible parties;**

- Examples of unique identifier are, amongst others- Bank Account Numbers or any account number; Policy Number; Identity Number; Employee Number; Student Number; Telephone or cell phone number; or Reference Number.

3.1.2. **Criminal behaviour or on unlawful or objectionable conduct of data subject on behalf of third parties;**

- This section may be applicable to any person contracted to conduct a criminal record enquiry, reference check pertaining to the past conduct or disciplinary action taken against a data subject.

3.1.3. **Credit reporting;**

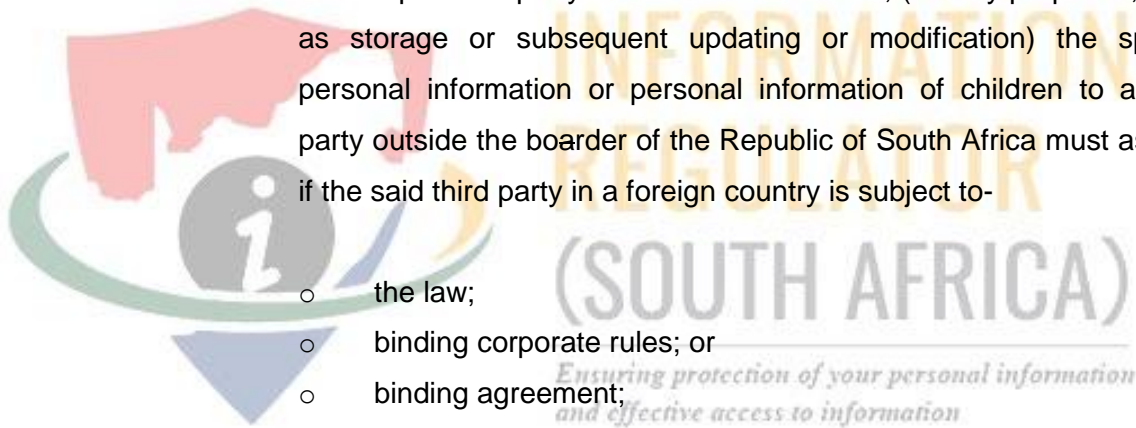
- Subject to section 57(3) of POPIA, any credit bureaus registered with the National Credit Regulator or any person processing personal information for credit reporting purposes may apply for prior authorisation from the Regulator.

3.1.4. **Transfer of the special personal information or personal information of children to a third party in a foreign country that does not provide an adequate level of protection for the processing of personal information.**

- The responsible party that intends to transfer, (for any purposes, such as storage or subsequent updating or modification) the special personal information or personal information of children to a third party outside the border of the Republic of South Africa must assess if the said third party in a foreign country is subject to-
 - the law;
 - binding corporate rules; or
 - binding agreement;

which provide an adequate level of protection that effectively upholds principles for reasonable processing of the information that are substantially similar to the eight (8) conditions for the lawful processing of personal information relating to a data subject.

- Special personal information and personal information of children transferred outside the Republic before the 01 July 2021 does not fall under the requirement of prior authorisation.



3.1.5. **Any other types of information processing by law or regulation which the Regulator may, from time to time, considers that it carries a particular risk for the legitimate interests of the data subject.**

- The Regulator will, if necessary, publish categories or types of information processing that it considers carrying a particular risk for the legitimate interests of the data subject.

3.2. Unless a Code of Conduct has been issued by the Regulator and has come into force in a specific sector/ industry or sectors of society in which the responsible party operates, the responsible party who is currently processing or intends to process the personal information of data subjects specified in paragraph 3.1 above must submit their applications in terms of section 57(1) of POPIA, prior to processing or any further processing.

4. **HOW TO COMPLETE THE APPLICATION FORM FOR PRIOR AUTHORISATION**

4.1 The prior authorisation application form includes the notification referred to in section 58(1) of POPIA.

PART A

4.2 Information about the responsible party

4.2.1 **Type of Body**

Please specify if the responsible party is a private or public body, as defined in POPIA.

4.2.2 **Full name of the Responsible Party**

Please complete the name of the responsible party, as registered with the Companies and Intellectual Property Commission (CIPC) or if the

responsible party is the public body, the full names as referred to in the founding legislation, including trading name, if any. If a responsible party is not registered with the CIPC, please provide the full trading name of a responsible party.

4.2.3 **Responsible Party's Registration Number**

Please provide the registration number, if the responsible party is registered with the CIPC. This information is necessary to verify the responsible party's legal status.

4.2.4 **Registered Organisation Address**

Please provide the trading address.

4.2.5 **Name of the Information Officer**

Please provide the full name of the Information Officer, as reflected in his/her identity card.

4.2.6 **Information Officer's Registration Number**

If the Information Officer is already registered with the Regulator, in terms of section 55(2) of POPIA, please provide the Information Officers registration number.

4.2.7 **Postal Address and Physical Address**

Please provide your trading address/es.

4.2.8 **Contact Details**

4.2.8.1 Provide the landline number, cell number, fax number and email address of the Information Officer. You can also include the

contact details; especially the email address and contact number, of the Deputy Information Officer.

- 4.2.8.2 Correspondence to be issued by the Regulator relating to this application will be sent to the email address of the Information Officer. This may include requests for further necessary information. Ensure that the email address provided is monitored constantly to avoid missing any correspondence from the Regulator.

PART B

4.3 In the application / notification, please specify-

- 4.3.1 **Which of the processing of personal information is subject to a prior authorisation;**

Please select, from the pre-populated categories, the processing of personal information activity which is subject to a prior authorisation. You may select more than one category.

- 4.3.2 **Reasons why it is necessary to process the personal information;**

For example, to perform certain functions in terms of legislation or to provide a credit report to the credit providers.

- 4.3.3 **Is the processing of the personal information for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party?**

The responsible party is required to specify if the processing is for lawful purposes relating to its function and if so, the function or activity must be specified;

4.3.4 Is the function or activity of the responsible party regulated by another regulatory body? If so, specify the regulatory body?

If the function or activities of the responsible party is regulated by another regulatory body, the name of the regulatory body must be specified and proof of registration or authorisation to perform the function must be provided or attached to the application.

4.3.5 Please specify the categories of data subjects whose information will be or is being processed.

Please tick the applicable category (ies) of data subjects. If a category is not listed, please provide additional details in the section directly below "other".

4.3.6 Estimated number of data subjects whose processing of their personal information is subject to prior authorisation

The responsible party is not necessarily required to provide the actual number of data subjects, but an estimated number of data subjects.

4.3.7 Security measures to be implemented by a responsible party to ensure the confidentiality, integrity and availability of the information which is to be processed.

For example this could be clear policies and procedures, a checklist or potentially a system configuration or some description to help prevent security breaches.

4.3.8 Has the staff member involved in the intended processing of personal information received personal information protection training in the last 2 years?

This could include online e-learning or face to face classroom training or any internal or in-house training.

4.3.8 Has the organisation suffered any security breach in the past three (3) months?

4.3.8.1 If the responsible party has suffered any security breach in the past three months, you are required to specify the nature of the breach and the preventative measures put in place (i.e. this could be clear policies and procedures, a checklist or potentially a system configuration or some description to help prevent breaches of this nature).

4.3.8.2 You also need to specify if the data subjects and the Regulator have been notified about the breach referred to above and if not, reasons for failing to notify the Regulator and the data subjects. If the data subjects and the Regulator have been notified, the notification letter or proof of notification must be attached to the application.

4.3.9 Date on which business activities of the responsible party commenced

The responsible party needs to indicate how long it has been in business and this information will enable the Regulator to decide the manner of its investigation in terms of section 58(4) of POPIA.

4.3.10 Number of employees who are employed by the responsible party

Specify the number of employees who are employed by the responsible party. This will enable the Regulator to establish the scope and extent of processing of personal information.

4.3.11 Number of branches in South African and outside South Africa.

If the responsible party has more than one branch, specify the number of branches in South Africa. If there are other branches outside the Republic, please specify the number of offices outside the country and identify the country within which the office is located or based.

4.3.12 Number of Deputy Information Officers designated or delegated

Specify how many Deputy Information Officer(s) have been designated or delegated by the Information Officer. Also indicate if the Deputy Information Officers are appointed in each of the branches or situated at the head office only.

PART C

4.4 Declaration

The form must be signed by the Information Officer, as registered with the Regulator.

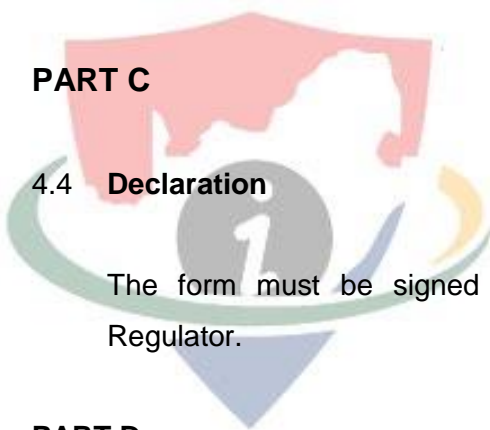
PART D

4.5 Business Sector

Please select from the pre-populated sectors or specify the industry or sector that your organisation falls under, if your industry or sector does not fall under any of the pre-populated industry or sector.

5 MANNER OF SUBMISSION OF AN APPLICATION FOR PRIOR AUTHORISATION

5.1 Application for prior authorisation is not applicable to the processing of personal information which is subject to prior authorisation that took place prior to 1 July 2021.



5.2 Any further processing of personal information which is subject to prior authorisation (although that personal information was initially processed prior to 1 July 2021) shall be done in accordance with section 57(1) and 58 of POPIA.

5.3 Prior authorisation application and/or notification for processing or intention to process personal information, as referred to in section 57(1) and 58(1) of POPIA must be submitted to the Regulator through the following channels-

5.3.1 Email: priorauthorisationIR@justice.gov.za

5.3.2 Postal: P.O Box 31533
Braamfontein
Johannesburg
2017

5.3.3 The Regulator will be moving offices from 31 March 2021. Therefore, applications for prior authorisation may also be delivered as follows-

On or before 31 March 2021

33 Hoofd Street
Forum III, 3rd Floor Braampark
Braamfontein
Johannesburg
2017

From 01 April 2021

JD House
27 Stiemens Street
Braamfontein
Johannesburg
2001

5.4 Due to the current pandemic (Covid-19), the Regulator prefers that applications for prior authorisation be submitted by emails to limit the transmission of the virus.

However, the Regulator will accept applications in accordance with paragraph 5.3.3 above.

6 PRESCRIBED TIMELINES FOR PROCESSING THE APPLICATION FOR PRIOR AUTHORISATIONS

6.1 Four (4) Weeks

6.1.1 Responsible parties may not carry out information processing that has been notified to the Regulator in terms of section 58(1) of POPIA until the Regulator has completed its investigation or until they have received notice that a more detailed investigation will not be conducted.

6.1.2 In the case of the notification of information processing which is subject to prior authorisation, the Regulator will inform the responsible party which applied for a prior authorisation in writing within **four (4) weeks** of the notification as to whether or not it will conduct a more detailed investigation.

6.1.3 Therefore, the Regulator may approve or reject an application for prior authorisation within four (4) weeks of receipt of prior authorisation application, unless the Regulator decides to conduct a detailed investigation.

6.2 Thirteen (13) weeks

6.2.1 In the event that the Regulator decides to conduct a more detailed investigation, as referred to in paragraph 6.1.1 above, the Regulator will inform the Responsible party in writing of the reasonable period within which it plans to conduct a detailed investigation, which period will not exceed **thirteen (13) weeks**.

6.2.2 The prescribed period of thirteen (13) weeks is the maximum period within which the detailed investigation referred to in paragraph 6.1.1 above and the decisions on the application must be finalised.

6.2.3 The decision of the Regulator following a detailed investigation will be issued in a form of a statement concerning the lawfulness of the information processing.

6.2.4 Should the Regulator find that the information processing is unlawful, such statement by the Regulator shall be deemed to be an enforcement notice served in terms of section 95 of POPIA.

7 ACKNOWLEDGEMENT OF RECEIPT OF THE APPLICATION

7.1 Once the application is received and recorded on the system of the Regulator, the responsible party will receive an acknowledgement email or letter with a reference number for the application.

7.2 If you are providing additional information to your application, please include the application reference number to enable the Regulator to link the additional information to the existing application.

8 PENALTIES FOR FAILURE TO NOTIFY PROCESSING SUBJECT TO PRIOR AUTHORISATION

8.1 The responsible party who fails to notify the Regulator of any processing that is subject to prior authorisation in terms of section 58(1) of POPIA is guilty of offence.

8.2 A responsible party who has notified the Regulator in terms of section 58(1) of POPIA and carries out personal information processing before the investigation by the Regulator is completed or before receiving a notice that a more detailed investigation will not be conducted, is guilty of an offence.

8.3 Any person convicted of an offence specified in paragraph 8.1 or 8.2 above is liable to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

8.4 Failure to comply with the Regulator' statement, issued in terms of section 58(5) of POPIA, concerning the lawfulness of the information processing which is subject to prior authorisation, constitutes an offence and the responsible party may upon conviction, be liable to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

8.5 The Regulator may impose an administrative fine not exceeding R10 million payable by the responsible party who is alleged to have committed any of the offences specified in paragraph 8.1, 8.2 and 8.4 above.

9 REVIEW OF THE DECISION OF THE INFORMATION REGULATOR

The decision of the Regulator (i.e. approval or rejection of an application for prior authorisation) is final and any person aggrieved by such a decision may review it in the High Court having jurisdiction.

10 CONTACT DETAILS

A responsible party who after reading this Guidance Note still requires further assistance in completing the prior authorisation form, please contact the Regulator at-

Tel: (010) 023 5200; or

Email: priorauthorisationIR@justice.gov.za.

Please note that the Regulator operates from 08h30 am to 5 pm Monday to Friday only.

Issued by

INFORMATION REGULATOR

11 MARCH 2021



INFORMATION REGULATOR (SOUTH AFRICA)

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

APPLICATION FORM FOR PRIOR AUTHORISATION

NOTE: *The personal information submitted herein shall be solely used for purposes of prior authorisation application submitted to the Information Regulator (“Regulator”) in terms of section 58(1) of the Protection of Personal Information Act, 2013 (POPIA).*

All the information submitted herein shall be used for the purpose stated above, as mandated by law. This Information may be disclosed to the public. The Regulator undertakes to ensure that appropriate security control measures are implemented to protect all the personal information to be submitted in this document.

PART A			
RESPONSIBLE PARTY			
Type of Body	Public Body		Private Body
Full Name of the Body (Registered Name)			
Trading Name (if any)			
Registration No, if any			
Full Name of Information Officer			
Information Officer’s Registration Number			
Postal Address			

Physical Address	
Landline Number	
Cell Number	
Fax Number	
Email Address	
Website, if any	

PART B
NOTIFICATION OF PROCESSING WHICH IS SUBJECT TO PRIOR
AUTHORISATION

Please select a category of personal information you intend to process which is subject to a prior authorisation

	Unique identifiers of data subjects for a purpose other than the one for which the identifier was specifically intended at collection; and with the aim of linking the information together with information processed by other responsible parties;	
	Specify nature or categories of Identifiers:	
	Criminal behaviour or on unlawful or objectionable conduct of data subject on behalf of third parties	

	Specify nature or categories of unlawful or objectionable conduct	
	Credit reporting	
	Transfer of the special personal information or personal information of children, to a third party in a foreign country that does not provide an adequate level of protection for the processing of personal information	
	Specify the country(ies):	
	Any other types of information processing by law or regulation which the Regulator has considered that it carries a particular risk for the legitimate interests of the data subject	
	Specify the type(s) of information processing, if any:	
Reasons why it is necessary to process the personal information.		
	<i>Ensuring protection of your personal information and effective access to information</i>	
Is the processing of the personal information for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party? If so, specify the function or activity.	Yes	
	No	

<p>Is the function or activity of the responsible party regulated by another regulatory body? If so, specify the regulatory body and proof of registration or authorisation to perform the function must also be provided or attached.</p>	Yes					
	No					
<p>Please specify the categories of data subjects whose information will be or is being processed.</p>	Employees / Prospective employees		Customers / Prospective Customers or Clients / Prospective Clients		Children	
	Users		Students		Vulnerable adults	
	Subscribers		Patients		Other (specify)	
<p>Estimated number of data subjects whose processing of their personal information is subject to prior authorisation.</p>						
<p>Security measures to be implemented to ensure the confidentiality, integrity and availability of the information which is to be processed.</p>	<p><i>Ensuring protection of your personal information and effective access to information</i></p>					
<p>Has the staff member involved in the intended processing of personal information received Personal Information Protection training in the last 2 years? If so, please specify nature of the training.</p>						
<p>Has the organisation suffered any security breach in the past three (3) months? If so, please specify-</p>						

a) the nature of the breach;	
b) the preventative measures put in place; and	
c) if the data subjects and the Regulator has been notified about the breach.	
Date on which business activities of the responsible party commenced.	
Number of employees employed by the responsible party	
Number of branches in South African and outside South Africa.	
Number of Deputy Information Officers designated or delegated.	

**PART C
DECLARATION**

I declare that the information contained herein is true, correct and accurate.


SIGNED and **DATED** at _____ on this the _____ day of _____ **2021**

INFORMATION OFFICER

PART D

The following information is required for statistical purposes. Please choose a sector(s) that apply to your body.

GOVERNMENT			PUBLIC ENTITIES			PRIVATE BODY			PROFESSION		
Item	Name of Entity	X	Item	Name of Public Entity	X	Item	Name of Public Entity	X	Item	Type of profession	X
	National Government		1.	Constitutional Entities		1	Education		1	Legal	
	Provincial Government		2.	Schedule 2 Public Entity		2	Insurance		2	Built Environment	
	Local Government		3.	Schedule 3A Public Entity		3	Health Facilities		3	Financial	
LEGISLATURE			4.	Schedule 3B Public Entity		4	Telecommunications		4	Medical and Allied Health Services	
National Assembly			5.	Schedule 3C Public Entity		5	Pharmaceutical		OTHERS, Specify		
National Council of Provinces			OTHERS, specify			6	Media And Social Media				
Gauteng Provincial Legislature			6.			7	Retail/Direct Marketing				
Western Cape Provincial Legislature						8	Tourism		5.		
Northern Cape Provincial Legislature						9	Transportation, Storage and Logistics				

GOVERNMENT		PUBLIC ENTITIES	PRIVATE BODY		PROFESSION
Limpopo Provincial Legislature			10	Manufacturing/Production	
Northwest Provincial Legislature			11	Banks	
Free State Provincial Legislature			12	International Organizations	
Mpumalanga Provincial Legislature			13	Real Estate	
Eastern Cape Provincial Legislature			14	Credit Bureaus	
Kwazulu-Natal Provincial Legislature			OTHERS, specify		
				<i>and effective access to information</i>	