

# INFORMATION REGULATOR

## POPIA

Date: 27 JULY 2021



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

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

# IMPLEMENTATION DATE

- From the 1<sup>st</sup> July 2021 all responsible parties are expected to ensure that all processing of personal information complies with the Protection of Personal Information Act, 2013 (POPIA). The enforcement powers of the Regulator came into effect on this date.
- From the 30<sup>th</sup> June 2021 the Regulator is responsible for the promotion and enforcement of the rights protected by the PAIA. This function was previously performed by the South African Human Rights Commission ( SAHRC).

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- On the 1<sup>st</sup> February 2022, section 58(2) of POPIA shall become applicable to the processing of personal information referred to in section 57 of POPIA (processing subject to prior authorisation).

# WHO ARE THE ROLE PLAYERS IN POPIA?

ROLE PLAYER	FUNCTION
<b>Data Subject</b>	Person to whom information relates
<b>Responsible Party</b>	A public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information
<b>Operator</b>	A person who processes personal information for a responsible party in terms of a contract or mandate without coming under the direct authority of that party
<b>Competent Person</b>	Any person who is legally competent to consent to any action or decision being taken in respect of a matter concerning a child

# EIGHT CONDITIONS OF LAWFUL PROCESSING

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1. Accountability

2. Processing limitation

3. Purpose specification

4. Further processing limitation

5. Information quality

6. Openness

7. Security safeguards

8. Data subject participation

# EIGHT CONDITIONS OF LAWFUL PROCESSING

## Accountability

- Responsible party must ensure compliance with the conditions for lawful processing.

## Processing Limitation

- PI must be processed lawfully, in a reasonable manner that does not infringe the privacy of the data subject.
- PI may be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive (Minimality).
- Consent (may be withdrawn or an objection be raised), collection from the data subject directly.

## Purpose Specification

- PI must be collected for a specific, explicitly defined and lawful purpose. Records must not be retained for a period longer than for the initial purpose.
- Exceptions: record required by law, historical, statistical, research. Destroy /De-Identify a record once purpose is attained.

# EIGHT CONDITIONS OF LAWFUL PROCESSING

## Further Processing Limitation

- Further processing must be compatible with the purpose of collection.
- further processing of PI is not incompatible with the purpose at collection if- consent is given, PI is derived from a public record or deliberately made public by a data subject, maintenance of law by a public body, comply with an obligation imposed by law such as SARS Act, PI is used for historical, statistical or research purposes.

## Information Quality

Personal information must be complete, accurate, not misleading and updated.

## Openness

- Responsible party must maintain the documentation of all processing operations.
- Data subjects must be made aware when PI is collected.
- It is not necessary to comply if consent has been given or non-compliance is necessary. i.e. comply with an obligation imposed by law.

# EIGHT CONDITIONS OF LAWFUL PROCESSING

## Security Safeguards

- A responsible party must secure the integrity and confidentiality of personal information;
- Information processed by an operator or person acting under authority must do with the knowledge/authority of the responsible party under a written contract.
- A responsible party must notify the Regulator and the subject where there are reasonable grounds to believe that PI has been accessed or acquired by an unauthorised person

## Data Subject Participation

- Data Subject must have access to PI
- Correction or deletion of PI if inaccurate, irrelevant outdated, excessive, incomplete, misleading or unlawfully obtained.
- Manner of access – in terms of section 18 and 53 of PAIA



# IMPLEMENTATION OF POPIA

**In order to assist responsible parties to comply with POPIA, the Regulator has developed the following guidelines / guidance notes:**

- The Guideline on the development of codes of conduct to assist bodies which intend to develop and apply for the issuance of codes of conduct by the Regulator as provided for in sections 60-68 of POPIA;
- The Guidance Note on Information Officers and Deputy Information Officers. Both POPIA and PAIA require each public and private body to appoint an information officer and to designate or delegate a deputy information officer;

# CONT.

- Guidance Note on Prior Authorisation: to guide responsible parties who must obtain prior authorisation before processing information provided for in sections 57- 58 of POPIA;
- Guidance Note on exemption from conditions for processing of personal information (ss 36-38);
- Guidance Note on processing of special personal information (ss 26-33 of POPIA); and
- Guidance Note on the processing of personal information of children (ss 34-35 of POPIA)

# CONT.

**The Regulator is also in the process of finalising the following Guidance Notes:**

- Guidance Note on Direct Marketing as provided for in 69 of POPIA;
- Guidance Note on the meaning of “appropriate, reasonable technical and organisational security measures, as provided for in section 19(1) of POPIA.

## INFORMATION OFFICERS & DEPUTY INFORMATION OFFICERS (SECTIONS 55 AND 56 OF POPIA)

- Both PAIA and POPIA require each public and private body to appoint an Information Officer and to designate or delegate a Deputy Information Officer.
- In terms of section 55 (2) of POPIA, Officers must take up their duties only after the responsible party has registered them with the Regulator.
- Due to technical glitches with regard to the portal for registration of information officers. Portal will is being upgraded to address demand and allow for functions such as editing, updating and registering IO for multiple entities. Update will be provided on our various communication platforms

## DUTIES AND RESPONSIBILITIES OF INFORMATION OFFICERS

- Encouragement of compliance with the conditions for the lawful processing of personal information;
- Dealing with requests made to the body pursuant to POPIA;
- Working with the Regulator in relation to investigations conducted pursuant to Chapter 6 in relation to the body. (chapter 6 deals with processing subject to prior authorisation)

# CONT.

Otherwise ensuring compliance by the body with the provisions of POPIA; and

## **In terms of Regulation 4 of POPIA Regulations:**

- Ensure that a compliance framework is developed, implemented, monitored and maintained;
- A personal information impact assessment is done;
- A PAIA manual is developed etc;

## ENFORCEMENT POWERS OF THE REGULATOR (CHAPTER 10)

**In terms of section 73, the following constitute interference with the protection of personal information of a data subject-**

- Breach of the conditions for the lawful processing of personal information referred to in chapter 3 of POPIA
- Non-compliance with certain sections of POPIA;
- Breach of the provisions of a code of conduct issued in terms of section 60.

# COMPLAINTS

- Any person may submit a complaint to the Regulator in the prescribed manner (Form 5 of POPIA Regulations) alleging interference with personal information of a data subject.
- A responsible party or a data subject may submit a complaint to the Regulator in the prescribed manner and form if he or she is aggrieved by the determination of an adjudicator after investigating a complaint relating to a breach of an approved code of conduct.
- The Regulator may, on its own initiative, commence an investigation into the interference with personal information of a data subject.



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- In terms of section 76 of POPIA, on receiving a complaint, the Regulator may-
  - (a) conduct a pre-investigation;
  - (b) where appropriate, act as a conciliator;
  - (c) decide to take no action;
  - (d) conduct a full investigation of the complaint;
  - (e) refer the complaint to the enforcement committee.
- The Regulator is currently developing Rules of Procedure for handling complaints.

# INVESTIGATION POWERS OF THE REGULATOR

- For the purpose of investigating a complaint, the Regulator may in terms of section 81 of POPIA-
  - summon and enforce the appearance of persons before the Regulator;
  - administer oaths;
  - enter and search any premises occupied by a responsible party after obtaining a warrant; and
  - search and seize, with a warrant, any equipment and any record used for the processing of personal information.

# ENFORCEMENT COMMITTEE

- After an investigation of a complaint, the Regulator may refer the complaint to the Enforcement Committee (which will be chaired by either a judge, magistrate, advocate or attorney with at least 10 years appropriate experience) for a consideration, a finding in respect of the complaint or other matter and a recommendation in respect of the proposed action to be taken by the Regulator.

# ENFORCEMENT NOTICE

- If the Regulator, after considering the recommendation of the Enforcement Committee, is satisfied that a responsible party has or is interfering with the protection of personal information of a data subject, it may serve a responsible party with an enforcement notice requiring a responsible party to do either or both of the following:
  - take steps specified within a period specified in the notice, or refrain from taking such steps; or

## ENFORCEMENT NOTICE (2)CONT.

- stop processing personal information specified in the notice, or stop processing personal information for a purpose or in a manner specified in the notice within a period specified in the notice.

# CIVIL REMEDIES

- A data subject or the Regulator, at the request of a data subject, may institute a civil action for damages in a court having jurisdiction against a responsible party for the interference with the protection of personal information of a data subject referred to in section 73 of POPIA, whether or not there is intent or negligence on the part of the responsible party.

# OFFENCES, PENALTIES AND ADMINISTRATIVE FINES ( sections 100-109)

- Any person who contravenes sections 100-106 of POPIA commits an offence: I.e. obstruction of Regulator, breach of confidentiality, failure to comply with enforcement notice etc
- The contravention of certain sections attracts a heavier sentence. For example, failure to comply with an enforcement notice attracts a fine or imprisonment for a period not exceeding ten (10) years, or to both a fine and such imprisonment.

# CONCLUSION

- POPIA is here to stay and the Regulator has been encouraging public and private bodies to proactively comply with its provisions even before it became fully operational.
- In addition to the offences and administrative fines stated above, non compliance will result in reputational risk for an organisation.