

PROTECTION OF PERSONAL INFORMATION ACT PRESENTATION

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REPUBLIC OF SOUTH AFRICA



Presentation Outline

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INTRODUCTION TO THE POPI ACT

- ❖ The Protection of Personal Information Act (Act No. 4 of 2013), known as the POPI Act, is a South Africa's data privacy law.
- ❖ Section 14 of the Constitution provides that everyone has the right to privacy.
- ❖ The right to privacy include the right to protection against the unlawful collection, retention, dissemination and use of personal information
- ❖ The State must respect, protect, promote and fulfil the rights in the bill of right.

PURPOSE OF POPI ACT

The purpose of this Act is to—

- ❖ give effect to the constitutional right to privacy, by safeguarding personal information(PI) when processed by a responsible party;
- ❖ balancing the right to privacy against other rights – the right of access to information (PAIA)
- ❖ establish conditions for the lawful processing of Personal Information;
- ❖ provide persons with rights and remedies to protect their personal information from processing that is not in accordance with the Act; and
- ❖ establish voluntary and compulsory measures, including the establishment of an Information Regulator, to ensure respect for and promote, enforce and fulfil the rights protected by the Act.



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IMPORTANT DEFINITIONS

Personal Information (PI):

means information relating to an identifiable, living, natural person and juristic person where applicable, including and not limited to:-

- ❖ race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, wellbeing, disability, religion, conscience, belief, culture, language and birth of the person;
- ❖ education, medical, financial, criminal or employment history;
- ❖ identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier;
- ❖ blood type or biometric information, personal opinions, views or preferences of the person;
- ❖ Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature;
- ❖ the views or opinions of another individual about the person; and
- ❖ name of the person if it appears with other personal information relating to the person.



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IMPORTANT DEFINITIONS CONT.....

Data subject

- ❖ A natural or juristic person to whom personal information relates.

Responsible party

- ❖ A public, individual or private body that determines the purpose of and means for processing personal information.



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APPLICATION OF POPI ACT

POPIA is not a stand alone legislation. It must be considered and applied together with other legislations such as Promotion of access to information Act (2 of 2000), the Constitution etc.

Who does South Africa's Protection of Personal Information Act apply to?

❖ POPIA applies to “any natural or juristic person who processes personal information” by “automated or non-automated means”.

E.g. Companies, organizations, individuals and Government.



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WHAT INFORMATION IS PROTECTED BY POPI ACT

- ❖ The personal information, views or opinions of an individual about another person.
- ❖ Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;



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STEPS TO TAKE TO BECOME POPI COMPLIANT

Step 1: Create Awareness

- ❖ Ensure your employees are aware of the POPI Act and the regulations set out which they need to adhere to.

Step 2: Data Collection Assessment

- ❖ Assess the manner in which your clients, and employees' data is collected, stored, processed, and ultimately disposed of.

Step 3: Department Policies Review

- ❖ Create and setup the correct policies and procedures to ensure the correct processing of personal information.

Step 4: Department compliance verification

- ❖ Policies and procedures should be assessed by a POPI specialist to ensure it aligns with the requirements of the POPI act.

Step 5: Implementation and Training

- ❖ Adequate communication and training should be provided to all Employees within the government with regards to the policies and procedures.



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Conditions for lawful processing of personal information

Section 4 outlines the lawful conditions of data processing:

- ❖ Accountability (Section 8) – ensure compliance with the conditions and all required measure of the act
- ❖ Processing limitation (Sections 9-12) - Data processing must be for a legitimate purpose. Consent by data subject.
- ❖ Purpose specification (sections 13 and 14) - The purpose for processing personal information must be clear
- ❖ Further processing limitation (Section 15) - Further processing must be compatible with original purpose



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Condition for lawful processing of personal information cont....

- ❖ Information quality (Section 16) - Maintain the accuracy of collected personal information
- ❖ Openness (Sections 17 and 18) - The data subject must be aware of the collection of the data.
- ❖ Security safeguards (Sections 19 to 22) - Maintain appropriate information resource protection.
- ❖ Data subject participation (Sections 23 to 25) - Provide data subjects with access to personal information.



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INSTANCES WHERE PERSONAL INFORMATION CAN BE PROCESSED (SECTION 11)

Section 11 covers justifications for personal information processing.

- ❖ Where consent by the data subject or competent person in case of a minor child has been granted.
- ❖ Where processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is a party;
- ❖ Where processing complies with an obligation imposed by law on the responsible party;
- ❖ Where processing protects a legitimate interest of the data subject;
- ❖ Where processing is necessary for the proper performance of a public law duty by a public body; or
- ❖ Where processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.



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THE INSTANCES WHERE THE PERSONAL INFORMATION CANNOT BE PROCESSED.

- ❖ The Act does not apply to personal information processed in the course of a personal or household activity, or
- ❖ where the processing authority is a public body involved in national security, defence, public safety, anti-money laundering, or
- ❖ the Cabinet or Executive Council of the province or as part of a judicial function.



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RESPONSIBILITIES OF GOVERNMENT IN RESPECT OF POPI ACT

- ❖ The government must conduct itself in a responsible manner when collecting, processing, storing and sharing personal information.
- ❖ The government must comply with the 8 conditions for lawful processing of Personal Information.
- ❖ Service level agreements/ contracts between the government and service providers must contain a clause that prohibits further processing of personal information.
- ❖ To report data breaches to the regulator and data subjects.
- ❖ To inform the data subject when information is being collected, (section 18)
- ❖ To inform the subject of the source from which the information is being collected;

N.B The government can be held accountable should any of its officials abuse or compromise personal information entrusted to it.



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RIGHTS OF THE DATA SUBJECT

- ❖ To be notified that their personal information is/has been collected
- ❖ To be informed if a processor holds their personal information and to request access to it.
- ❖ To request correction, destruction, or deletion of their personal information
- ❖ To object to/withdraw consent for the processing of their personal information, in whole or part of the information.
- ❖ To submit a complaint to the regulator regarding any alleged interference with their rights.
- ❖ To initiate civil proceedings regarding “alleged interference”



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CONSEQUENCES FOR NON-COMPLIANCE WITH POPI ACT

There are essentially two legal penalties or consequences for non-compliance with the Act by the responsible party:

- ❖ The Information Regulator (South Africa), may institute a fine or imprisonment of up to 12 months.
- ❖ In some cases, depending on the Sections of the Act not complied with, or if convicted of an offence in terms of the Act, the person may be liable for a fine of up to 10 million or imprisonment of up to 10 years.

N.B (Section 107) of the Act.

N.B Paying compensation to data subjects for the damage they have suffered.



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DISPOSAL OF THE PERSONAL INFORMATION COLLECTED

Once the personal information is no longer needed for the specific purpose, it must be disposed of, unless the responsible party need to keep it (or are allowed to keep it) by law, or

- ❖ It is keeping the records for its own lawful purpose or
- ❖ in accordance with the contract between itself and the subject, or
- ❖ the subject has consented to keeping of the records. (section 14)

Responsible Party is entitled to keep records of personal information for historical, statistical or research purposes if it have established measures to prevent the records being used for any other purposes.

Records must be destroyed in a way that prevents them from being reconstructed.



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STATUTORY LIMITATION OF POPI ACT

- ❖ The rights contained in the Bill of rights is not absolute in terms of section 36 (1) (e), it may be limited by law of general application, as long as the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- ❖ Section 3 (3) of the POPI Act states that the Act must be interpreted in a manner that does not prevent any public or private body from exercising its duties in terms of the law in so far as those powers relate to the processing of personal information.



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THE RELATIONSHIP BETWEEN POPIA AND PAIA

- ❖ The Protection of Personal Information Act (POPIA) and the Promotion of Access to Information Act (PAIA) hold a special relationship.
- ❖ PAIA is an "Access" law, all about Freedom of Information.
- ❖ POPIA on the other end, is about Privacy - prevention of exposure of information.
- ❖ PAIA sets limits on the types of information that can be accessed.
(manual)
- The POPI Act sets out the minimum standards regarding accessing and 'processing' of any personal information belonging to another.



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COMPLIANT PROCESS

- ❖ Complaint - Regulator – Enforcement Committee
 - recommendation by the Committee to the regulator – enforcement notice

N.B (section 92, 93 and 95 of the POPI Act)



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Thank You...



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