



## **THE PROTECTION OF PERSONAL INFORMATION ACT (POPIA) –**

### **WHAT YOU NEED TO KNOW?**

Oscar Wilde famously said: “Private information is practically the source of every large modern fortune.” In today’s age of social networking together with the advent of the global community, private / personal information is becoming an insatiably powerful source of gaining a competitive advantage in the market. The person or business holding such personal information can effortlessly gain access to an endless supply of valuable trends, characteristics, likes and dislikes of the targeted subject.

The benefits to the holders of such personal information is evident, but so too is the dangers for the subjects whose information is held. These dangers have not gone unnoticed by the legislator and have recently been addressed in the Protection of Personal Information Act, Act 4 of 2013 (POPIA). The aim of POPIA is to promulgate codified regulations that protect the constitutional right to privacy, as per section 14 of the Constitution, while also promoting an economic sphere in which information, including personal information, may flow freely without unnecessary impediments.<sup>1</sup> POPIA signifies the bare minimum standards and requirements for the recording, processing and sharing of personal information. It is essential that both individuals and businesses are acutely aware of the rights and obligations that the Act will confer on them as most, if not all, are privy to varying degrees of personal information on other people and entities.

First of all, it is important to understand that POPIA has only been partially implemented at this point in time. In 2014 certain provisions of POPIA were effected. These provisions promulgate no binding laws, however, they allow individuals and business to whom the Act will apply to familiarize themselves promptly with key definitions in the Act. Given the fact that POPIA will apply to every person and business that holds a record containing personal information of another person or entity, it is

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<sup>1</sup> Preamble of Act 4 of 2013.



difficult to fathom a scenario where one would not have to be aware of the Act and how it functions.

The following important terms are inter alia defined in section 1 of POPIA:

1. “Data subject” – means any person or entity to whom the personal information that is being protected relates.
2. “Direct marketing” – means approaching a data subject or sending a data subject an electronic or other communication about goods and services that you are promoting or selling in the ordinary course of business, or requesting a donation of any kind for any reason.
3. “Personal information” – means information relating to an identifiable and living (existing) natural or juristic person. This is an open-ended list and includes information relating to race, gender, sex, religion and opinions of the data subject’s on various matters.
4. “Processing” – means any operation or activity performed concerning personal information, regardless of the extent. This includes inter alia, collecting, storing, altering and/or distributing this information.
5. “Record” - means any stored / recorded information, regardless of when it came into existence.
6. “Responsible party” – means a public or private body or any other person which determines the purpose or means of processing personal information.

The responsible parties that will keep record or process any personal information relating to a data subject, whether intending to use this information for direct marketing purposes or otherwise, will have 12 months from the date the remainder of POPIA comes into effect to adhere to all the regulations. There is as yet no definitive date when the remainder of the provisions will be implemented, but indications are that it will be by no later than 2018. In light thereof, responsible parties must ensure that they comply with the following essential regulations which will be governed by POPIA:

1. The data subject must give his/her/its consent before you share their information.



2. Personal information must be recorded for a valid reason.
3. Data subjects must be informed of the specific purpose for which personal information is collected and the use thereof is limited to this purpose. You must also notify data subjects if and how their information might have been compromised or is at risk of being compromised.
4. Data subjects must be provided with the opportunity to view and change their recorded information and to remove or destroy it if they so wish.
5. You must provide measures and/or tools to protect the information that you have recorded and limit access thereto.
6. The information you store must be accurate and correct and continued processes must be in place to ensure the integrity thereof.
7. Take additional steps to avoid the distribution of personal information that amounts to “unique identifiers”, being the combination of different information that allows another person to confirm and/or abuse someone’s identity, for example a phone number and a name together.

With the full implementation of POPIA responsible parties will have to be extra vigilant on how they deal with the personal information they hold. Beyond simply ensuring that the aforementioned steps are taken, it is essential to communicate to data subjects that this has been done. A simple but effective tool to use is to consult a data analysis specialist on how to properly protect and administer personal information and thereafter stipulating in one’s terms and conditions that you have complied with the regulations of POPIA.

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