

PROTECTION OF PERSONAL INFORMATION ACT, 2013: AT A GLANCE

The Protection of Personal Information Act, 2013 (POPIA) came into effect on 1 July 2020. The 12-month grace period for compliance commenced on 1 July 2020. This means that private and public bodies, and anyone else who determines the purpose of, and means for, processing personal information (processing entities) now have until 30 June 2021 to comply with the Act's comprehensive requirements.

Below we set out a high-level overview of the instances in which POPIA will apply to processing activities and the obligations which come with POPIA.

AM I SUBJECT TO POPIA?

- POPIA APPLIES TO JURISTIC AND NATURAL PERSONS:**
 - Who are domiciled in South Africa; or
 - Who are not domiciled in South Africa but use automated or non-automated means in South Africa, unless the personal information is only forwarded through South Africa.
- SO IF YOU PROCESS PERSONAL INFORMATION IN SOUTH AFRICA:** POPIA will apply to you even if you are not domiciled in South Africa.

NO POPIA DOES NOT APPLY

AM I PROCESSING PERSONAL INFORMATION?

"Processing" is defined broadly to include various actions that can be taken in relation to personal information, including its collection, receipt, storage and use.

YES

WHAT IS PERSONAL INFORMATION?

PERSONAL INFORMATION IS:

- Information relating to an identifiable, living natural **OR** juristic person.

POPIA defines personal information very broadly, to include a wide range of information that can be used to identify a data subject.

Notably, POPIA refers to the personal information of juristic entities, meaning that businesses will be able to enforce their data protection rights under POPIA.

YES

WHO CAN PROCESS PERSONAL INFORMATION?

A RESPONSIBLE PARTY

A **responsible party** is the person or entity that determines the purpose and means of processing personal information (i.e. determines the destiny of the information) and can act independently or jointly with other responsible parties.

RESPONSIBLE PARTY OBLIGATIONS UNDER POPIA

Determining whether a person is a responsible party or an operator will not always be an easy exercise.

A person will have to assess its processing activities very closely.

The distinction is important, because it affects the rights and obligations that fall on responsible parties and operators respectively.

OPERATOR

An **operator** processes personal information for, or on behalf of, a responsible party in terms of a contract or mandate.

OPERATOR OBLIGATIONS UNDER POPIA

GENERAL PROCESSING PRINCIPLES

A RESPONSIBLE PARTY MUST COMPLY WITH ALL 8 CONDITIONS FOR LAWFUL PROCESSING, NAMELY:

- ACCOUNTABILITY:** You will be responsible for ensuring POPIA compliance
- PROCESSING LIMITATION:** You must only process that information which you require
- PURPOSE SPECIFICATION:** Personal information must be collected for a specific purpose
- FURTHER PROCESSING LIMITATION:** Further processing of personal information (i.e. outside original purpose) must be compatible with the original purpose of collection
- INFORMATION QUALITY:** You must keep personal information records accurate and up to date
- OPENNESS:** You must disclose certain information to data subjects (i.e. that their information is being collected, where it is collected from and how it is used)
- SECURITY SAFEGUARDS:** You must secure the integrity and confidentiality of personal information
- DATA SUBJECT PARTICIPATION:** You must allow data subjects to access their personal information

OPERATOR CONTRACTS

Operators must comply with the provisions of the contract concluded with a responsible party.

DATA BREACH

Operators must notify the responsible party immediately of any suspected or actual data breach.

OPERATOR CONTRACTS

Responsible parties must conclude a written contract with operators to ensure that the operators establish and maintain measures that secure the integrity and confidentiality of personal information.

INFORMATION OFFICER

Responsible parties must appoint an Information Officer who is responsible for overseeing their compliance with the provisions of POPIA.

PRIVACY NOTICES

Responsible parties must tell individuals how their personal information is collected, why it is collected and how it will be used.

TRANS-BORDER INFORMATION FLOWS

POPIA sets out restrictions on when personal information can be transferred outside South Africa.

DATA SECURITY AND BREACH NOTIFICATION

If there is a data breach, the responsible party may have to inform the affected individuals and the Information Regulator.

PROCESSING JUSTIFICATION

A responsible party must make sure processing in these circumstances:

- With consent
- For performance of a contract
- In compliance with a legal obligation
- Legitimate interests
- Public law duty.

RECORD RETENTION

POPIA restricts the instances in which personal information can be retained by a responsible party.

RESPONSIBLE PARTY / OPERATOR EXAMPLES

| | |
|---|---|
| You manage your employee data on your IT systems | You are likely a Responsible Party |
| You are appointed to provide payroll services to your client | You are Likely an Operator |
| You provide information about your patient to a medical insurer | You are likely a Responsible Party |
| You send marketing emails to your client's customer list | You are likely an Operator |

FOR MORE INFORMATION CONTACT

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