

EXPAND.

Protection of Personal Information

All about the PoPI Act

And how it effects you



The POPI Act

The Nitty Gritty

The Protection of Personal Information Act (POPIA) is South Africa's data protection law. This act protects people from harm by protecting their personal information. The "[Conditions for lawful processing](#)" defines that "personal information" includes contact details, demographic information, personal history and communication records. Protection from harm such as theft, stopping their identity from being stolen and, as it pertains to marketing, protecting their privacy. Consequently, the PoPI Act sets conditions for when it is lawful for someone to process someone else's personal information.

Subsequently, the PoPI Act outlines three parties - both natural or juristic persons - who are affected by the act, namely the **data subject**, the **responsible party** and the **operator**. The parties are defined as follows:

THE DATA SUBJECT: the person to whom the information relates.

THE RESPONSIBLE PARTY: the person who determines why and how to process. For example, profit companies, non-profit companies, governments, state agencies and people. Called controllers in other jurisdictions

THE OPERATOR: a person who processes personal information on behalf of the responsible party. For example, an IT vendor. Called processors in other jurisdictions.



What does this mean for you?

Essentially, the PoPI act outlines various obligations on the responsible party to only use operators that comply with the lawful requirements surrounding the processing of personal data as stipulated by the PoPI Act.

Highlighted obligations

Section 69: Direct Marketing by means of unsolicited electronic communications

In relation to database marketing, section 69 of the act outlines that the processing of personal information of a data subject for the purpose of direct marketing by means of any form of electronic communication i.e. emails, SMSs, automatic calling machines or facsimile machines is prohibited unless the data subject-

- I. Has given his, her or its consent to the processing
- II. is subject to subsection (3) stating that the subject is a customer of the responsible party

In relation to point (I), a responsible party may approach a data subject to obtain the necessary consent: however, once the consent is refused, it is refused forever. Consequently, the responsible party may approach a data subject only once in order to request the consent of said data subject and the data subject's consent must be requested in the prescribed manner or form.

In relation to point (II), the rules differ slightly. When a data subject is a customer, the customer's contact details must have been obtained in the context of the sale of a product or a service. Additionally, the electronic communication can only relate to the supplier's own similar products or services, and the customer must have been given the right to opt out at the time that the information was collected and each time such a communication is sent.

Section 69 also outlines that for the purpose of direct marketing, any communication must contain details of the sender's identity or the person on whose behalf the communication has been sent as well as an address or other contact details to which the receiver may send a request that such communications cease. For a more detailed summary, please read [here](#).

Section 70: Directories

This section outlines that when a data subject, who is a subscriber to a printed or electronic directory of subscribers, and his, her or its personal information is included, they must be informed of important details, free of charge, before the information is included in the directory. Firstly, they must be made aware of the purpose of the directory as well as any further uses to which the directory may possibly be put to.

As a result, the data subject must be given an opportunity to object to the use of their personal information or to request verification, confirmation or withdrawal of such information if the data subject has not initially refused such use. Conversely, these subsections do not apply to editions of directories that were produced in printed or off-line electronic form prior to the commencement of this section. For a more detailed summary, please read [here](#).



Preparing for POPIA

The commencement date for POPIA was 1 July 2020; thus, the deadline to comply with this act is **1 July 2021**. Additionally, all parties who process personal information, including large corporations, the government as well as SMEs, are affected by this act.

A necessary step to prepare the act is to receive consent from data subjects before any of their personal information is obtained, retained and processed for communication or any other purpose. Additionally, POPI implores businesses to be extra vigilant with regards to physical and information security to prevent the information from being exposed to unauthorised parties. Consequently, businesses are obligated to protect any information relating to individuals or juristic entities from harm.

In relation to direct marketing through electronic communication, the responsible party must submit a request for written consent from the data subject to process their personal information. Conversely, it should be noted that is only for direct marketing by electronic communication to new potential clients and not to current clients as per Section 69 of the POPI Act. The written consent for electronic communication must be in the form of a data message through which any type of a signature can be used. Signatures include ticking a box, a data recording that a data subject clicked on, agreeing to terms and conditions or consented over a recorded voice call which is intended by the user to serve as a signature.

For more detailed information on consent, please read [here](#) to find out more.



Action Plan

Practical steps are outlined as follows:

- **Appoint an information officer.** For more information on what an information officer is, please read [here](#). Once you have read through the responsibilities of an information officer, the manual registration form can be found [here](#).
- **Assess what personal information you hold** as well as how and why you hold it.
- **Check security measures** and be aware of any possible breaches and know how to deal with them. Any actual or suspected breaches (called “security compromises” in POPIA) must be reported “as soon as reasonably possible” to both the Information Regulator and the data subject/s involved.
- **Consider whether your organisation needs to update its consent procedures for direct marketing to new clients.** Any approach to a data subject for the purpose of promoting or offering to supply, in the ordinary course of business, any goods or services to said data subject falls under direct marketing. **YOU MAY NEED TO SEND OUT AN EMAIL REQUESTING YOUR DATA BASED TO CONFIRM THEIR “OPT-IN” STATUS.**
- **Raise awareness within the organisation** by getting started with procedures and training. Cover all the necessary topics in relation to the processing of information in order to best equip everyone within the organisation.

Disclaimer

The information provided is by no means a substitute for professional advice. The information above is just a summary from various sources online highlighting a few important details surrounding the topic. As a result, we are not liable for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. We advise you to seek a professional advisor for specific and detailed advice.





Sources:

<https://popia.co.za/>

<https://www.michalsons.com/focus-areas/privacy-and-data-protection/protection-of-personal-information-act-popia>

<https://www.popiact-compliance.co.za/popia-information/13-direct-marketing>

<https://imm.ac.za/south-africas-popi-act-what-it-means-for-marketers/>

<https://tgssouthafrica.co.za/2021/popia-and-your-business-a-practical-5-step-action-plan-to-implement-now/>

<https://www.popiact-compliance.co.za/popia-information/34-commencement-dates-for-popia>

<https://tgssouthafrica.co.za/2021/popia-and-your-business-a-practical-5-step-action-plan-to-implement-now/>



EXPAND.