

POPIA Step 1 webinar 6 August 2020

Q&A Summary

No	Name	Question	Answer
1.	Bruce	this seems a little onerous for the small companies with less than 5 employees!!	@Bruce: I agree with you. Unfortunately, it doesn't exempt you from complying. The good news, however, is that you should be completing your checklist with a lot less detail!
2.	Sanet Vermaak	Can you help with details of where to buy the PAIA and POPI Acts? I would like to have that small books?	@Sanet: I have included links to the Acts in your webinar material, so you don't need to buy any of them. It might be cheaper to have them printed and bound at e.g. PostNet The POPIA Act PAIA
3.	Bruce	Could consent be the special power of attorney that SARS gives templates for?	@Bruce: Yes
4.	Cormac	I don't see that we can operate with data on Servers located in South Africa. It's impossible to use any software of repute and NOT have the data on an international server	@Cormac: We all agree. Until the Information Regulator decides otherwise, we have to comply with the current legislation.
5.	Janine Jones	what is the role of the regulator?	@Janine: You can refer to your Webinar Material on page 9: The Information Regulator (South Africa) is an independent body established in terms of Section 39 of the POPIA. It is subject only to the law and the Constitution and it is accountable to the National Assembly. The Information Regulator is, among others, empowered to monitor and enforce compliance by public and private bodies with the provisions of the PAIA, and the POPIA. There is a large body of staff working under the Information Regulator. The Information Regulator's duties are varied and he/she has the power and authority to handle all matters relating to the POPIA. The Information Regulator must immediately be advised in the event of a breach which resulted in Personal Information falling into the wrong hands.

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6.	Marie Louise	must you register the information officer somewhere specific or should their detail only be available / stipulated in your compliance "pack"?	@MarieLouise: There is a draft requirement out whereby all information officers must register with the Information Regulator by 31 March 2021. Comments are only due by 16 August 2020, so we will keep you updated once this is finalised.
7.	Lydia	can information officer /deputies be external people?	@Lydia: Yes, the Information Officer may be outsourced to an expert service provider – However this may change following the finalisation of the registration of the information Officer document mentioned above.
8.	Mandy	As part of our services we lodge trusts at the Masters Office. Documents submitted include original certified copies of ID documents and proofs of address (as required by FICA). How is this affected by POPI given that we are handing such identifying information over to a third party who will keep the information	@Mandy: You are processing personal information, so you must comply with POPIA. I would suggest that you include the consent from your client in your engagement letter.
9.	Nichol	What about social media posting showing me in similar situation as just used at robbery	@Nichol: It is a breach of your privacy, and you are able to report the original publisher of the post. <i>With this specific example, remember that the Police and other national security / processors of information used for criminal investigations have special exemption to process our data. However, you are still within your rights to request (from the responsible party, using form 2) that your information be hidden or deleted, as long as it does not hinder the investigation.</i> <i>It is also possible that you would have to prove to the Regulator, just how the exposure is especially harmful to you. The Regulator would use their discretion in this situation.</i> <i>Note that Social Media is still a subject of contention with the Regulator and more detail on how it will be regulated may be produced at a later stage, in the interim, we advise exercising caution.</i>
10.	Nichol	liability of person posting the video clip would it be same as Fuel co?	@Nichol: See above – yes, you will be liable. Even the person sharing it!
11.	Myburgh	May we share the general checklist that we got in the previous webinar with our clients?	@Myburgh: With pleasure!

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12.	Niel van Straaten	Is there a template for the Appointment of the Information Officer and Deputy?	<p>@Niel: Delegation of authority document – there is no standard template available at the moment, as this is somebody’s intellectual property and not freely available.</p> <p><i>You are more than welcome to contact the POPIA experts to assist you in this regard by way of a consultation.</i></p>
13.	Denise van der Vyver	In the set up of a pharmacy, clients often see the screen of the system to guide the pharmacist on which profile is theirs. On this screen it may show similar surnames with the other profiles' addresses - could this present a problem under the Acts?	<p>@Denise: Yes, it will be a problem. The pharmacy needs to find another way, so that info is only seen once no other is displayed.</p>
14.	Marieke le Roux	What about invoices from clients that they send you for VAT purposes? These invoices contain names, addresses, bank details, etc of your clients suppliers.	<p>@Marieke: Yes, you need to keep these secure. You don’t need consent, but safeguarding is vital.</p> <p><i>NB your consent is/ can come in the form of your appointment / engagement letter or contractual agreement that allows you to be a (data processing) service provider in this situation.</i></p>
15.	Niel van Straaten	Will the Consent forms for Client that was mentioned be posted on our Profiles?	<p>@Niel: There is no customised template available at the moment, as this is somebody’s intellectual property and not freely available.</p> <p>You can use your engagement letters for this by including a paragraph on consent.</p> <p><i>The Regulator has a consent form for Direct Marketing service providers, that is called “Form 4” – This can be used as a template to create one that suits your clients and business.</i></p>
16.	Lydia	What is difference between project sponsor and deputies?	<p>@Lydia: Deputies are Information Officers, and they can be held liable.</p> <p>Project sponsors are optional, and cannot be liable as they are in support function.</p>
17.	Leanne	what if our client is no longer with our business and we have deleted their information already?	<p>@Leanne: In your framework, you need to document the fact that you will delete the information once you no longer need it, but provide a reason or practically, e.g. need space or redundant or risky to keep, etc.</p>

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18.	christie-anne van Wyngaardt	Is an entity that was previously exempt from PAIA still exempt now with POPI in effect?	<p>@Christie-Anne: Yes, but only until 31 December 2020 when the extension for exemption expires / when the handover from SAHRC to Information regulator is official in July 2021.</p> <p>However, due to the duties of the information officer, that have been clearly set out in POPIA, which include the development and display of a PAIA manual, it stands to reason that the exemption may be amended – We will seek clarity with the Regulator and revert back.</p>
19.	Lydia	Must deputies then be internal or may they also be external?	@Lydia: Deputies should be internal, but this has not been formally stipulated.
20.	Myburgh	What then are the "role" of employees in for e.g. an accounting firm - are they operators?	@Myburgh: Yes, they are deemed operators because they are processing info on behalf of the Responsible party and should be duly covered by a NDA / or terms of non-disclosure in their employment contracts.
21.	Kobus	Our firm has branches in both the UK and SA, and so GDPR is applicable alongside POPIA now, how do the two Regulations compare?	<p>@Kobus: There is a comparison slide with POPIA and GDPR.</p> <p>Generally, if you comply with GDPR, you also comply with POPIA, however, do not ignore one for the other.</p>
22.	Theo	Could we not just include this in our engagement letter?	@Theo: Yes, you could.
23.	Bruce	Can we store info on both local AND international servers?	@Bruce: Yes, you can. Speak to Jacques for options. If you keep it local, this is currently the preference.
24.	Theo Knoesen	<p>So how would one handle an operator should they breach info?</p> <p>Then what does the labour law stipulate...is termination immediately?</p>	<p>@Theo: Have an addendum to their contracts that stipulates breaching.</p> <p>If it's a staff member, your disciplinary processes are applicable. You would evaluate the severity of the offense, and take into account all the specifics of the case.</p> <p>A standard NDA will suffice, however the outcomes of the breach by operator will need clarity - We will have to follow up with the Regulator for clarity. Currently the Regulator will only require that you show that you had an agreement in place that specifies the requirement for all data to be kept securely and confidentially and stored for the duration specified by Accounting regulatory bodies in this case.</p>

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25.	Alexis	The response to GDPR question conflicts with what we were told previously as GDPR does not apply to natural persons and is less comprehensive?	@Alexis: GDPR DOES apply to natural persons. Perhaps we would need to speak to Alexis directly in order to get clarity on her question
26.	Desiree	For PAIA if not exempt anymore do all companies need to comply with the manuals as well? Or just the information officer responsibilities?	@Desiree: Yes, because all should have an IO and IOs should have a PAIA manual
27.	Clive Dryden	Can you specify what should go into our engagement letters --high level	@Clive: In my view it should include what data will be collected, what it will be used for, how long it will be kept and if it will be deleted or stored and what security measures have been put in place to secure it.
28.	Magdalena	Microsoft One Drive used for back up. Can we according to POPIA?	@Magdalena: Yes, because they use local servers
29.	Dewald	And Dropbox?	@Dewald: Dropbox is on an international server, so it's risky at this stage – until the regulator says otherwise
30.	Leanne	Do you have a PAIA manual template?	@Leanne: There is a template designed by the mandated authority overseeing PAIA (SAHRC) called "Section 51" template. This is available to you as a Source Document on Step 2's webinar on 3 September 2020.
31.	Niel van Straaten	Is there a standard format/wording of what should be at end of emails send to protect us under POPIA?	@Niel: Yes, there is. You can contact Karabo via email for this.
32.	Nichol	Tuesday in webinar Regulator indicated that the Info Reg will be taking over role of SAHRC as from 1/7/2021 and will then be Reg for PAIA as well. The current PAIA extensions applicable will be extended till the take over and it looks as if the Regulator will then make a ruling as to the exemptions pertaining to PAIA. Information Officer will have to comply with roles & responsibilities. <i>I was referring to remarks made by Information Regulator in webinar on Monday in webinar hosted by Michalsons</i>	@Nichol: You are correct in stating that there is a scheduled handover from the SAHRC to Information Regulator and this is expected to kick in 1 July 2021, until then, SAHRC is still the authority over PAIA and has only granted an exemption extension until 31 December 2021, meaning every should be in compliance by 1 January 2021. – see SAHRC Website for more info https://www.sahrc.org.za/index.php/understanding-paia
33.	Tamsyn	Are owners/directors considered IO in private sector? and managerial staff operators?	@Tamsyn: The most senior person in office is regarded as the IO (e.g. CEO / MD), with the managerial staff being operators.
34.	Sam	Just need clarity on auditors being operators. Can auditors obtain information through USBs and Emails from clients to process specifically for audit purposes?	@Sam: Yes, they can. The engagement letter is important, and should stipulate all these methods of obtaining personal information.