

[HOME](#)[LEGAL TOPICS](#)[PRESS OFFICE](#)[EVENTS](#)[STUDENT ZONE](#)[CAREERS](#)[ABOUT](#)

Home » Constitutional Law & Civil Rights » POPIA Alert: When does public interest trump your right to privacy?

POPIA Alert: When does public interest trump your right to privacy?



Provided By [EVERSHEDS SUTHERLAND](#)

Eversheds Sutherland Represents The Coming Together Of Two Firms With A Shared Ethos And Commitment To Client Service Excellence. We Are Known For Our Business Savvy And Industry Intelligence And For Providing Innovative And ... **MORE**

By **GRANT WILLIAMS** And **MEGHAN ANNANDALE**

Topics Constitutional Law & Civil Rights | Social Media Law

09 Jul 2021

Although everyone has a right to privacy, as enshrined in [the Constitution](#) and the [Protection of Personal Information Act 4 of 2013](#) ("POPIA"), there may be instances where public interest is deemed to outweigh your right to privacy.

On 28 June 2021, with only 2 days to go before the expiry of the POPIA compliance grace period, the Information Regulator published 2 guidance notes dealing with the process to be followed and forms to be completed by responsible parties who are required to obtain authorisation from the Information Regulator to process special personal information and personal information of children, where the processing is not in terms of the general grounds for processing such information.

The general grounds provide that special personal information (relating to religious beliefs, race, ethnic origin, political persuasion, health, biometric information or criminal behaviour), and personal information of children, may only be processed where the provisions of sections 27 to 33 (special personal information) or section 35(1) (personal information of children) are applicable. An example is where the processing is carried out with the consent of a data subject or competent person (where applicable), or where processing is necessary for the establishment, exercise or defence of a right or obligation in law.

Sections 27(2) and 35(2) provide that the Information Regulator may, upon application by a responsible party and by notice in the Gazette, authorise a responsible party to process special personal information or personal information of children, for reasons other than those provided for in the general grounds, if such processing is in the public interest and appropriate safeguards have been put in place to protect such personal information.

The guidance notes do not provide any further clarity as to what "appropriate safeguards" are, and merely state that, although "public interest" is not specifically defined in POPIA, it is a "wide and diverse concept that cannot, and should not, be limited in its scope and application."

Public interest, as referred to in POPIA, includes some wide concepts, such as (a) the interests of national security; (b) the prevention, detection and prosecution of offences; (c) important economic and financial interests of a public body; (d)

historical, statistical or research activity; and (e) the special importance of the interest in freedom of expression. As public interest is very broad and quite subjective, applications for authorisation could result in the misuse of these provisions.

Should a responsible party wish to apply for authorisation, they must do so using the prescribed forms set out in the guidance notes. The Information Regulator will assess the applications on a case-by-case basis and may impose reasonable conditions in respect of any authorisation granted.

Please [contact us](#) should you require any assistance in determining whether you need to apply for authorisation and/or in completing the prescribed forms.

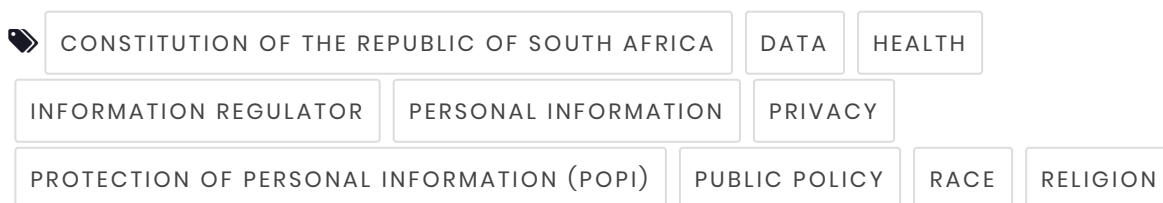
The guidance notes and application forms can be accessed at:

1. Special Personal Information – <https://www.justice.gov.za/infoereg/docs/InfoRegSA-GuidanceNote-Processing-SpecialPersonalInformation-20210628.pdf>
2. Personal Information of Children – <https://www.justice.gov.za/infoereg/docs/InfoRegSA-GuidanceNote-Processing-PersonalInformation-Children-20210628.pdf>

See also:

- [With less than 100 days to go until POPIA kicks in, the Information Regulator may be starting to flex its muscles](#)
- [The enforcement of POPI](#)
- [Registration of an Information Officer under PAIA and POPIA – Deadline looming....](#)
- [Getting compliant with the Protection of Personal Information Act \(POPIA\)](#)

(This article is provided for informational purposes only and not for the purpose of providing legal advice. For more information on the topic, please contact the author/s or the relevant provider.)



[Grant Williams](#)

Grant Williams is a partner in our commercial group. He specialises in commercial law with an emphasis on media, telecommunications and IT. Grant's recent

experience includes assisting with the establishment... [Read more about Grant Williams](#)

[Click here to send a legal query to Grant Williams](#)



[Meghan Annandale](#)

Meghan Annandale is an Associate in our Technology, Media and Telecommunications Department at the Bryanston office. She graduated from the University of Pretoria with a BA Law degree in 2016... [Read more about Meghan](#)

[Annandale](#)

[Click here to send a legal query to Meghan Annandale](#)

Share



Constitutional Law & Civil Rights articles by Eversheds Sutherland

The POPIA prior authorisation conundrum – What is prior authorisation, and do you need it for your business?

With less than 100 days to go until POPIA kicks in, the Information Regulator may be starting to flex its muscles

I may not be (vacc)seeing you anytime soon, is it worth the shot?

Are you really giving your consent freely?

Constitutional Law & Civil Rights articles on GoLegal

Human Rights and the Transformation of Property

Getting compliant with the Protection of Personal Information Act (POPIA)

"I can't breathe" – The ethics and feasibility of trade mark registrations in the context of South Africa

Popia compliance – Cyber-attacks, ransomware and data breaches

PROVIDED BY:



BY



Grant Williams

Grant Williams is a partner in our commercial group. He specialises in commercial law with an emphasis on media, telecommunications and IT. ...







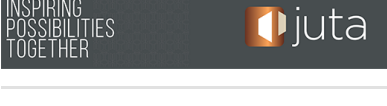







Meghan Annandale

Meghan Annandale is an Associate in our Technology, Media and Telecommunications Department at the Bryanston office. She graduated from the University of Pretoria with a BA Law degree in 2016 and an...

SEND A LEGAL QUERY TO GRANT WILLIAMS & MEGHAN ANNANDALE

EXPERTS IN CONSTITUTIONAL LAW & CIVIL RIGHTS

	Adams & Adams <i>12 Relevant articles</i>
	AJS <i>1 Relevant articles</i>
	DSC Attorneys <i>1 Relevant articles</i>
	Eversheds Sutherland <i>20 Relevant articles</i>
	Fluxmans Attorneys <i>1 Relevant articles</i>
	Gildenhuys Malatji Incorporated <i>3 Relevant articles</i>
	Juta <i>23 Relevant articles</i>
	KISCH IP <i>10 Relevant articles</i>
	Legal&Tax <i>6 Relevant articles</i>
	LexisNexis <i>11 Relevant articles</i>
	Sabinet <i>26 Relevant articles</i>
	SchoemanLaw Inc <i>18 Relevant articles</i>



UPCOMING EVENTS

What does it take to be a modern lawyer?

AUG 19 @ 8:30 AM - 9:30 am

The ABCs of corporate governance – Unpacking essential tools

AUG 24 @ 2:00 PM - 3:00 pm

Unpacking SLA's – Service Level Agreements

AUG 26 @ 2:00 PM - 3:00 pm

Insourcing versus outsourcing – The resources required

SEP 22 @ 11:00 AM - 12:00 pm

Series: Three steps to becoming a better leader (Part 3)

OCT 21 @ 2:00 PM

Want the latest legal news and views in your box?

Your email address

Subscribe

ABOUT US

GoLegal is a leading industry news and information portal for the South African legal sector, catering to attorneys, corporate counsel, legal scholars, policy makers and other corporate and legal interest groups.

[READ MORE >](#)

OUR SERVICES

Promote Legal Conferences, Events and Seminars

Advertise with GoLegal

Privacy Policy

FOLLOW US



SIGN UP FOR OUR NEWSLETTER

Want the latest legal news and views in your box?

Your email address

SUBSCRIBE

2019 GOLEGAL ALL RIGHTS RESERVED | WEBSITE POWERED BY CLOUDFUSION