



INFORMATION REGULATOR (SOUTH AFRICA)

*Ensuring protection of your personal information
and effective access to information*

INVITATION FOR PUBLIC COMMENTS

PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013): AMENDMENT OF THE REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION, 2018.

1. The Information Regulator (Regulator) hereby, under section 113(3) (c) of the Protection of Personal Information, 2013 (Act no. 4 of 2013), invites interested parties to submit written comments on the proposed draft regulations that amend the regulations issued under Section 112(2) of the Protection of Personal Information Act, 2013 (Act 4 of 2013 published under Government Gazette Notice 42110 on the 14 December 2018).
2. A copy of the proposed regulations is available on the Regulator's website at <https://justice.gov.za/infoereg/>.
3. The comments on the draft regulations must be submitted to Ms Varsha Sewlal or Ms. Hlengiwe Shelembe **on or before 15 November 2021**. The contact details are:
 - 3.1 JD House, 27 Stiemens Street
Braamfontein
Johannesburg
2001

3.2 P.O. Box 31533
Braamfontein
Johannesburg
2017

3.3 E-mail address: VSewlal@infoRegulator.org.za or
HShelembe@infoRegulator.org.za

Signed at JOHANNESBURG on this the 13th day of October 2021.

A handwritten signature in black ink, appearing to read "F.P. Tlakula", enclosed in a thin black rectangular border.

Adv. F.P. Tlakula

Chairperson

By order of the Chairperson of the Information Regulator



**INFORMATION
REGULATOR
(SOUTH AFRICA)**

*Ensuring protection of your personal information
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INFORMATION REGULATOR

October 2021

PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT 4 OF 2013): REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION, 2021

The Information Regulator intends, in accordance with section 113(3) of the Protection of Personal Information Act, 2013 (Act 4 of 2013), to amend Regulations relating to the Protection of Personal Information Act: Regulations: **GG 42110, RG 10897, GoN 1383**, 14 Dec 2018, in the Schedule.

SCHEDULE

Amendment of Regulation 1

1. Regulation 1 of the Regulations is hereby amended by–

- a) the insertion of the following definition before the definition of “data message”.

"Complainant" means any person who lodges a complaint with the Information Regulator;

"Complaint" means-

- (a) a matter reported to the Information Regulator in terms of section 74(1) and (2) of the Act;
- (b) a complaint referred to in section 76(1)(e) and 92(1) of the Act; and
- (c) a matter reported or referred to the Information Regulator in terms of other legislation that regulates the mandate of the Information Regulator;

- b) Insertion of the following definition after the definition of “data message”.

"Day" means a calendar day, unless the last day of a specified period happens to fall on a Sunday or on any public holiday, in which case the time shall be calculated exclusive of that Sunday or public holiday in accordance with section 4 of the Interpretation Act, 1957 (Act No. 53 of 1957);

- c) Insertion of the following definitions before the definition of “signature”

"Office Hours" -

- (a) in respect of offices of the Information Regulator, means the hours between 08:00 and 16:00 on Monday to Friday, excluding public holidays; and

- (b) in respect of offices designated by the Information Regulator, means the hours during which the offices are operating;

Substitution of Regulation 2

- 2. Regulation 2 is hereby substituted in the Regulations for the following:

Objection to the processing of personal information

2.1 A data subject who wishes to object to the processing of personal information in terms of section 11(3)(a) of the Act, must submit the objection to the responsible party at any time and free of charge.

2.2 A data subject who wishes to object to the processing of personal information in terms of section 11(3)(b) of the Act, must submit the objection to the responsible party at any time and free of charge.

2.3 A data subject who wishes to object to the processing of personal information must do so on a form substantially similar to **Form 1** or in any manner that may be expedient, free of charge and reasonably accessible to the data subject, including-

2.3.1 electronic mail;

2.3.2 telephonically;

2.3.3 SMS;

2.3.4 facsimile;

2.4 The responsible party must explicitly bring to the attention of the data subject their right to object which is distinct from any other information.

2.5 An objection to the processing of personal information of a data subject by telephonic means shall be electronically recorded by the Responsible party and such recording must, upon request, be made available to the data subject in any manner, including the transcription thereof which shall be free of charge.

Substitution of Regulation 3

3. Regulation 3 is hereby substituted in the Regulations for the following:

Request for correction or deletion of personal information or destruction or deletion of a record of personal information

- 3.1 A data subject shall have the right, in terms of section 24 of the Act, to request, where necessary, the correction, destruction or deletion of his, her or its personal information.
- 3.2 A data subject, who wishes to request a correction or deletion of his, her or its personal information, as provided for in section 24(1) (a) of the Act, shall have the right to request for correction or deletion of personal information at any time and free of charge, if the personal information is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully.
- 3.3 A data subject, who wishes to request the destruction or deletion of a record of his, her or its personal information, in terms of section 24(1) (b) of the Act, shall have the right to request the destruction or deletion of a record of his, her or its personal information at any time and free of charge, if the the responsible party is no longer authorised to retain in terms of section 14 of the Act.
- 3.4 A request for a correction or deletion of personal information, as referred to in sub regulation 3.2 or a request for the destruction or deletion of a record of personal information, as referred to sub regulation 3.3 must be submitted to the responsible party on a form which is substantially similar to **Form 2**.
- 3.5 The responsible party must, within fourteen (14) days of receipt of the request referred to in sub regulation 3.2 or 3.3, notify a data subject, in writing, of the action taken as a result of the request.

Amendment of Regulation 4

4. The heading of Regulation 4 is hereby substituted for the following:

Additional duties and responsibilities of Information Officer

4.1 Sub regulation 4(1)(c) of the Regulations is hereby deleted.

Amendment of Regulation 5

5. Regulation 5 of the Regulations is hereby amended by-

- a) the substitution of the words “private or public body” for “relevant body/bodies”.
- b) amending form 3 of the regulations.

Substitution of Regulation 6

6. Regulation 6 of the Regulations is hereby substituted for the following regulations:

“Request for a data subject's consent to process personal information

6.1 A responsible party who wishes to process personal information of a data subject for the purposes of direct marketing through unsolicited electronic communication must in terms of Section 69(2) of the Act obtain written consent from the data subject on a form substantially similar to Form 4 or in any manner that may be expedient, free of charge and reasonably accessible to the data subject, including-

6.1.1 electronic mail;

6.1.2 telephonically;

6.1.3 SMS;

6.1.4 facsimile;

6.2 A request for a data subject’s consent to the processing of personal information of a data subject by telephonic means shall be electronically recorded by the Responsible party and such recording must, upon request, be made available to the data subject in any manner, including the transcription thereof which shall be free of charge.

- 6.3 Where a data subject objects to processing for direct marketing purposes, their personal information shall no longer be processed for such marketing purposes.
- 6.4 For the purposes of direct marketing through unsolicited electronic communications, opt-out shall not constitute consent as referred to in section 69 (2) of the Act.

Amendment of Regulation 7

7. Regulation 7 of the regulations is hereby amended by insertion of regulation 7.3 to 7.18

7.1. The following person may lodge a complaint-

7.1.1. A data subject whose personal information has been interfered with in terms of section 73 of the Act;

7.1.2. Any person acting on behalf of data subject whose personal information has been interfered with, a referred to in section 73 of the Act;

7.1.3. Any person with sufficient personal interest in the subject matter of the complaint referred to in section 73 of the Act;

7.1.4. A responsible party or data subject who is aggrieved by the determination of an adjudicator in terms of section 63(3) of the Act; or

7.1.5. Any person acting in the public interest.

7.2. A complaint submitted to the Regulator must be in writing by completing-

7.2.1. an online complaint form available on the website of the Regulator; or

7.2.2. the complaint form, **Form 5** to the Regulations, which shall be made available at the offices of the Regulator during office hours and any office designated by the Regulator.

7.3. The Regulator will assist any person who wishes to make a complaint, to put that complaint in writing.

- 7.4. Should a complainant require assistance in a language other than English, the Regulator will strive to provide a person competent in the language of the complainant in order to assist to reduce the complaint to writing.
- 7.5. A complaint may be submitted at-
 - 7.5.1. the offices of the Regulator during office hours, preferably in the area where the incident or conduct complained of took place;
 - 7.5.2. any other office designated by the Regulator as a place where complaints may be lodged.
- 7.6. The Regulator may transfer a complaint from the office where it was lodged to any other office of the Regulator, it deems fit.
- 7.7. The Regulator shall, in writing, inform the complainant of any transfer of a complaint within fourteen (14) days of the transfer.
- 7.8. A complaint may also be submitted to the Regulator in the following manner:
 - 7.8.1. by fax;
 - 7.8.2. by post;
 - 7.8.3. by courier, at the Regulator's physical address; and
 - 7.8.4. by e-mail to a designated email address.
- 7.9. The Regulator shall acknowledge receipt of the complaint and provide the complaint with the reference number within fourteen (14) days after receipt thereof.
- 7.10. A complaint form referred to in section 74(1) and (2) of the Act shall, subject to the provisions of sub-regulations 7.10 and 7.11 contain the following personal information-
 - 7.10.1. name(s) and surname/ registered name of the complainant;

- 7.10.2. unique identifier / identity number/ company registration number of the complainant, if required;
 - 7.10.3. address of the complainant;
 - 7.10.4. the telephone and facsimile numbers of the complainant and e-mail address, if available;
 - 7.10.5. reasons for the complaint;
 - 7.10.6. name(s) and surname of the responsible party / registered name of the responsible party;
 - 7.10.7. address of the responsible party;
 - 7.10.8. the telephone and facsimile numbers of the responsible party and e-mail address, if available.
- 7.11. A complaint form referred to in section 74(2) of the Act shall contain the following personal information:
- 7.11.1. If the complaint is regarding the determination of an Adjudicator in terms of section 74(2) of the Act, name(s) and surname of the Adjudicator; and
 - 7.11.2. any other information that identifies the complainant.
- 7.12. If a complaint is lodged on behalf of another person(s), it shall additionally include proof that the person submitting the complaint is authorised to act on behalf of another person.
- 7.13. A complaint may also contain any other relevant additional information about the incident or matter concerned, which may include:-
- 7.13.1. the place and date of the occurrence;
 - 7.13.2. particulars of the Information Officer concerned, if known;

7.13.3. the names and addresses of any person who could provide information relevant to the complaint, if known; and

7.13.4. any other relevant information or documents that may be used during the investigation.

7.14. If a complaint lodged with the Regulator contains any information which is protected in terms of the Protected Disclosures Act No. 26 of 2000 (PDA), the complainant will be protected by PDA.

7.15. In the event the complainant wishes his or her identity not to be disclosed, valid reasons must be submitted together with the complaint. The Regulator will consider the reasons and inform the complainant of its decision as to whether it accepts or rejects the request for non-disclosure of the complainant's identity. The complainant will then be able to either withdraw or proceed with the complaint on this basis.

7.16. A staff member, duly designated by the Regulator, must render the necessary assistance, free of charge, to enable any person to comply with this regulation".

Amendment of Regulation 12

8. Regulation 12 is hereby amended by-

"Deletion of Form 17, 18 and 19".

Insertion of new Regulation 13

9. Administrative Fines

9.1. The responsible party served with an infringement notice, in terms of section 109(1) of the Act, and who is unable to pay the administrative fine in a lump sum, may make arrangements with the Regulator to pay the administrative fine in instalments on a case by case basis.

9.2. When determining an appropriate payment period, the Regulator must consider the following factors:

- 9.2.1. The financial circumstances of the responsible party; and
- 9.2.2. Any other relevant compelling reasons that may directly or indirectly impact on the responsible party's affordability.

10. Transitional provisions

Anything done under a provision of the Regulations relating to the Protection of Personal Information Act: Regulations: **GG 42110, RG 10897, GoN 1383**, 14 Dec 2018 and which could have been done under a provision of these Regulations, is regarded as having been done under the later provision.

11. Short title

These Regulations shall be called the Regulations relating to the Protection of Personal Information, 2021 and shall commence on a date to be determined by the Regulator by proclamation in the Government Gazette.

FORM 1

OBJECTION TO THE PROCESSING OF PERSONAL INFORMATION IN TERMS OF SECTION 11(3) OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013)

REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION, 2021
[Regulation 2]

Note:

1. If the space provided for in this Form is inadequate, submit information as an Annexure to this Form.
2. Complete as is applicable.

A	DETAILS OF DATA SUBJECT
Name(s) and surname/ registered name of data subject:	
Postal or business address:	
	Code ()
Contact number(s):	
Fax number / E-mail address:	
B	DETAILS OF RESPONSIBLE PARTY
Name(s) and surname/ Registered name of responsible party:	
Postal or business address:	
	Code ()
Contact number(s):	
Fax number/ E-mail address:	
C	REASONS FOR OBJECTION IN TERMS OF SECTION 11(3)(a) <i>(Please provide detailed reasons for the objection)</i>

Signed at this day of20.....

.....
Signature of data subject/designated person

FORM 2

**REQUEST FOR CORRECTION OR DELETION OF PERSONAL INFORMATION OR
DESTROYING OR DELETION OF RECORD OF PERSONAL INFORMATION IN TERMS
OF SECTION 24(1) OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013
(ACT NO. 4 OF 2013)**

**REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION,
2021
[Regulation 3]**

Note:

1. *Affidavits or other documentary evidence as applicable in support of the request may be attached.*
2. *If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.*
3. *Complete as is applicable.*

Mark the appropriate box with an "x".

Request for:

- a) Correction or deletion of personal information about the data subject which is in possession or under the control of the responsible party.

Please select applicable reasons for the selected request:

- (a) Inaccurate
- (b) Irrelevant
- (c) Excessive
- (d) Out of Date
- (e) Incomplete
- (f) Misleading
- (g) Obtained unlawfully

- b) Destruction or deletion a record of personal information about the data subject which is in the possession or under the control of the responsible party who is no longer authorised to retain the record of information.

A	DETAILS OF THE DATA SUBJECT
Name(s) and surname / registered name of data subject:	
Postal or business address:	

	Code ()
Contact number(s):	
Fax number/E-mail address:	
B	DETAILS OF RESPONSIBLE PARTY
Name(s) and surname / registered name of responsible party:	
Postal or business address:	
	Code ()
Contact number(s):	
Fax number/ E-mail address:	
C	PERSONAL INFORMATION TO BE CORRECTED/DESTROYED/DELETED <i>(Please specify the personal information required to be corrected / destroyed / deleted)</i>
D	EXPLANATION FOR THE SELECTED REASON FOR A REQUEST <i>(Please provide detail explanation for the selected reasons for the request for correction or deletion of personal information which is in possession or under the control of the responsible party)</i>

Signed at this day of20.....

.....
Signature of data subject/ designated person

FORM 3

APPLICATION FOR THE ISSUE OF A CODE OF CONDUCT IN TERMS OF SECTION 61(1)(b) OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013)

REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION, 2021
[Regulation 5]

A	DETAILS OF THE RELEVANT BODY /BODIES
Name of the relevant body/bodies	
List the class of body or any industry size, profession, or vocation, you represent: <i>(Attach proof of representation)</i>	
Total number of members of industry, or any class of bodies, profession or vocation:	
Proportion of representation (expressed as a percentage) in the industry, class of bodies, profession or vocation <i>(Attach proof of representation)</i> :	
Business address:	
	Code ()
Contact number(s):	
Fax number/ E-mail address:	
B	DETAILS OF PERSON WHO COMPLETES THIS FORM
Name(s) and surname of person completing this form:	
Capacity in body:	
Does the person completing this Form have the authorisation of the body he/she	

FORM 4

**REQUEST FOR THE CONSENT OF A DATA SUBJECT FOR THE PROCESSING OF
PERSONAL INFORMATION FOR THE PURPOSE OF DIRECT MARKETING IN TERMS
OF SECTION 69(2) OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013
(ACT NO. 4 OF 2013)**

**REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION,
2021
[Regulation 6]**

PART A

TO: _____

(Name of data subject)

FROM: _____

Contact number(s): _____
Fax number: _____
E-mail address: _____
(Name, address and contact details of responsible party)

Specify goods or services to be marketed: _____

Full names and designation of person signing on behalf of responsible party:

.....
Signature of designated person

Date: _____

PART B
DATA SUBJECT'S CONSENT

I, _____ (*full names of data subject*) hereby:

Give my consent.

To receive direct marketing by means of electronic communication in respect of the goods or services to be marketed

SPECIFY METHOD OF PREFERRED COMMUNICATION:

FAX

E - MAIL

SMS:

OTHERS – Please specify:

Signed at this day of 20.....

.....
Signature of data subject

FORM 5

COMPLAINT REGARDING INTERFERENCE WITH THE PROTECTION OF PERSONAL INFORMATION/COMPLAINT REGARDING DETERMINATION OF AN ADJUDICATOR IN TERMS OF SECTION 74 OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013)

REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION, 2021 [Regulation 7]

Note:

1. *Affidavits or other documentary evidence as applicable in support of the request may be attached.*
2. *If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.*
3. *Complete as is applicable.*

Mark the appropriate box with an "x".

Complaint regarding:

Alleged interference with the protection of personal information

Determination of an adjudicator.

PART I	ALLEGED INTERFERENCE WITH THE PROTECTION OF THE PERSONAL INFORMATION IN TERMS OF SECTION 74(1) OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013 (Act No. 4 of 2013)
A	PARTICULARS OF COMPLAINANT
Name(s) and surname / registered name of data subject:	
Unique Identifier / Identity Number if required	
Address:	
	Code ()
Contact number(s):	
Fax number/ E-mail address :	

Address:	
	Code ()
Contact number(s):	
Fax number/ E-mail address:	
C	REASONS FOR COMPLAINT <i>(Please provide detailed reasons for the grievance)</i>

Signed at this day of20.....

.....
Signature of data subject/ designated person