

OVERVIEW OF THE 8 CONDITIONS OF THE PROTECTION OF PERSONAL INFORMATION ACT (“POPIA”)

FACT SHEET ONE

ACCOUNTABILITY 1

The responsible party must ensure, and is accountable for ensuring, that the conditions set out in POPIA, and all the measures that give effect to such conditions, are complied with at the outset, when determining the purpose and means of processing and during the processing itself.

PURPOSE SPECIFICATION 3

- Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party. Steps should be taken in terms of Section 18 of POPIA to ensure that data subject is aware of the purpose of collection of the personal information unless an exception in Section 18(4) of POPIA applies.
- Records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed unless an exception in Section 14(1) of POPIA applies (one example is that retention is required or authorised by law).
- In certain circumstances, the responsible party is obliged to restrict processing of personal information (for example where the processing is unlawful and the data subject opposes destruction or deletion and requests restriction instead).
- Where the responsible party used a record of personal information to make a decision about the data subject there is an obligation to retain the record for the period of time prescribed by law or a code of conduct or, where there is no law or code of conduct, to retain it for a period which will afford the data subject a reasonable opportunity to request access to the record.
- Personal information records must be deidentified, destroyed or deleted as soon as practicable after the responsible party is no longer authorised to retain the record in terms of POPIA.

PROCESSING LIMITATION 2

Lawfulness:

Personal information must be processed lawfully and in a reasonable manner that does not infringe the privacy of the data subject.

Minimality:

Personal information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.

Lawful justification:

Personal information may only be processed if there is a lawful justification to do so as detailed in terms of Section 11(1) of POPIA (consent is one lawful justification but not always the most appropriate lawful justification). The data subject may, in certain circumstances, object to the processing of his/her/its personal information depending on the justification relied on.

Direct collection:

Personal information must be collected directly from the data subject unless an exception in Section 12(2) of POPIA applies.

FURTHER PROCESSING LIMITATION

Personal information may not be processed for a secondary purpose unless that processing is compatible with the original purpose of collection. Section 15(2) and Section 15(3) provide guidance regarding when processing may be considered compatible with the original purpose of collection.

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INFORMATION QUALITY

A responsible party must take reasonably practicable steps to ensure that personal information is complete, accurate, not misleading and updated where necessary, having regard to the purpose for which personal information is collected or further processed.

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SECURITY SAFEGUARDS

- A responsible party must secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of personal information; and unlawful access to or processing of personal information.
- A responsible party must enter into written contracts with operators which require the operator to safeguard personal information it processed for the responsible party
- The responsible party has reporting obligations to the Information Regulator and, in certain instances to the data subject, when there has been or they suspect the confidentiality of personal information has been compromised. An operator also has responsibilities to report suspected personal information breaches / incidents to the responsible party.

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OPENNESS / TRANSPARENCY

- A responsible party must maintain a record of all processing operations under its responsibility as referred to in the Promotion of Access to Information Act (PAIA).
- A responsible party must be transparent with data subjects regarding its processing activities by providing the information specified in section 18(1) of POPIA at the time that personal information is collected from the data subject or as soon as reasonably practicable after it has been collected from another source.

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DATA SUBJECT PARTICIPATION

Data subjects have a number of rights in terms of POPIA including the right to:

- confirmation of whether or not the responsible party holds personal information about the data subject;
- request a copy or description of the personal information held;
- request the correction or deletion of personal information that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or which has been obtained unlawfully; and
- request the deletion or destruction of a record which the responsible party is no longer authorised to retain in terms of POPIA.

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