



**INFORMATION
REGULATOR
(SOUTH AFRICA)**

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

Address: Braampark Forum 3, 33 Hoofd
St, Braampark, Johannesburg, 2017

Fax: 0865003351

E-mail: NNemasisi@justice.gov.za

**RE: NOTICE RELATING TO THE DEVELOPMENT OF GUIDELINES ON THE
REGISTRATION OF INFORMATION OFFICERS IN TERMS OF CHAPTER 5 OF
THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013**

The Information Regulator (Regulator) has developed draft Guidelines on the Registration of Information Officers (Guidelines). The draft Guidelines are informed by section 55(2) which requires that a responsible party registers its Information Officer with the Regulator before taking up his or her respective duties in terms of the Protection of Personal Information Act 4 of 2013 and the Promotion of Access to Information Act 2 of 2000.

The Regulator hereby invites written comments on the draft Guidelines from **17 July 2020** until **16 August 2020** (close of business at **16h00**). Comments must either be delivered to the Information Regulator at:

Physical Address: Braampark, Forum 3, 33 Hoofd Street, Braamfontein, 2017 or transmitted via **Email to:** NNemasisi@justice.gov.za



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A large, faded version of the Information Regulator (South Africa) logo is visible in the background, centered behind the title text.

**DRAFT GUIDELINES ON THE
REGISTRATION OF INFORMATION
OFFICERS**

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1. RELEVANT DEFINITIONS:

1.1. “**Body**” means public or private body;

1.2. “**Data Subject**” means the person to whom personal information relates.

1.3. “**Head**” of, or in relation to, a private body means-

(a) in the case of a natural person, that natural person or any person duly authorised by that natural person;

(b) in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;

(c) in the case of a juristic person-

(i) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or

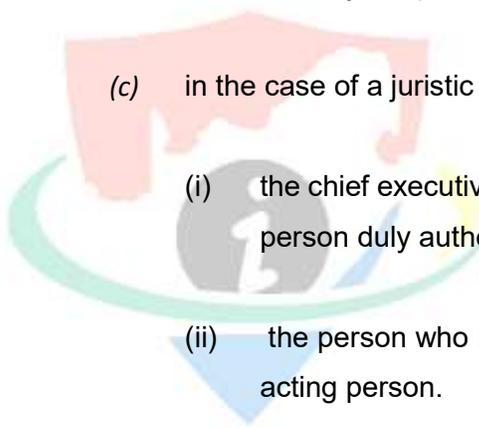
(ii) the person who is acting as such or any person duly authorised by such acting person.

1.4. “**Information Officer**”:

of, or in relation to, a –

a) public body means an Information Officer or Deputy Information Officer as contemplated in terms of section 1 or 17; or

b) private body means the head of a private body as contemplated in section 1, of the Promotion of Access to Information Act.



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1.5. **“Person”** means a natural person or a juristic person.

1.6. **“Personal Information”** –

means information relating to an identifiable, living, natural person, identifiable, existing juristic person, including, but not limited to—

- a) information relating to the race, gender, sex, national or social origin, language, age disability;
- b) information relating to the education or medical or financial history of the person;
- c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- d) the biometric information of the person;
- e) the personal opinion, views or preferences of the person;
- f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- g) the views or opinions of another individual about the person; and
- h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

1.7. **“Private Body”** means-

- (a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity.

- (b) A partnership which carries or has carried on any trade, business or profession;
or
- (c) Any former or existing juristic person.

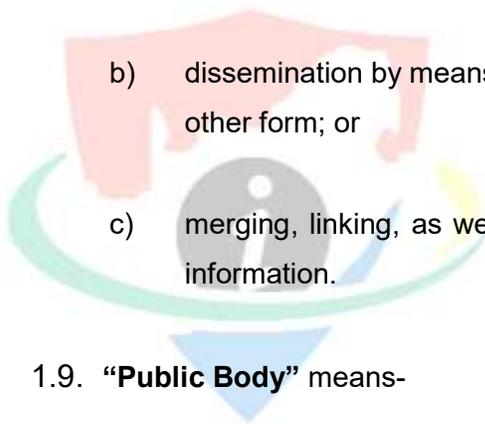
1.8. **“Processing”** means-

any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including—

- a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- b) dissemination by means of transmission, distribution or making available in any other form; or
- c) merging, linking, as well as restriction, degradation, erasure or destruction of information.

1.9. **“Public Body”** means-

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) any other functionary or institution when-
 - i. exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - ii. exercising a public power or performing a public function in terms of any legislation.



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1.10. **Requester**, in relation to-

(a) **a public body**, means-

- (i) any person (other than a public body or an official thereof) making a request for access to a record of that public body; or
- (ii) a person acting on behalf of the person referred to in subparagraph (i) above;

(b) **a private body**, means-

- (i) any person, including, but not limited to, a public body or an official thereof, making a request for access to a record of that private body; or
- (ii) a person acting on behalf of the person contemplated in subparagraph (i) above;

1.11. **“Responsible Party”** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information;

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1.12. The usage of the words “responsible party” and “body” interchangeable throughout this document depend of the contents of a specific paragraph.

2. INTRODUCTION

2.1. The Protection of Personal Information Act 4 of 2013 (POPIA) was enacted to promote the protection of personal information processed by public and private bodies and introduces-

2.1.1. minimum conditions for the lawful processing of personal information,

- 2.1.2. an obligation on Information Officers of public and private bodies to designate and delegate¹ any power or duty to Deputy Information Officers; and
 - 2.1.3. compulsory requirements for registration of Information Officers with the Information Regulator (Regulator).
- 2.2. The Information Officers are required, in terms of Section 55(2) of POPIA, to take up their duties only after being registered with the Regulator.
- 2.3. The Information Officers referred to in section 55(1) of POPIA are the same Information Officer referred to in sections 1 or 14 and 51 of PAIA.
- 2.4. The Information Officers of public or private bodies perform their duties and responsibilities in terms of both PAIA and POPIA.

3. PURPOSE

The purpose of these Guidelines is to provide guidance and procedures for the -

- 3.1. registration of Information Officers with the Information Regulator;
- 3.2. updating the details of Information Officers;
- 3.3. designation of Deputy Information Officers;
- 3.4. delegation of duties and responsibilities of the Information Officers to the Deputy Information Officers.

¹ Section 56 of POPIA and section 17

4. OBLIGATIONS AND LIABILITIES

4.1 Section 93(b)(ii) of POPIA empowers the Enforcement Committee to make any recommendation to the Regulator necessary or incidental to any action that should be taken against;

4.1.1 a responsible party in terms of POPIA; or

4.1.2 an Information Officer in terms of PAIA.

4.2 An Information Officer may be held criminally liable for the following offences, in respect of any breach of the provisions of PAIA-

Items	Sections of PAIA	Nature of offence by an Information Officer	Penalty
4.2.1	90(1)	A person who with intent to deny a right of access in terms of this Act- (a) destroys, damages or alters a record; (b) conceals a record; or (c) falsifies a record or makes a false record	A fine or imprisonment for a period not exceeding two years.
4.2.2	90(2)	The Information Officer who wilfully or in a grossly negligent manner fails to comply with the provisions of section 14 of PAIA	A fine, or imprisonment for a period not exceeding two years
4.2.3	90(3)	A head of a private body who wilfully or in a grossly negligent manner fails to comply with the provisions of section 51 of PAIA	A fine, or imprisonment for a period not exceeding two years
4.2.4	77K	Non-compliance with Enforcement Notice	A fine or imprisonment for a period not exceeding

Items	Sections of PAIA	Nature of offence by an Information Officer	Penalty
			three years or to both such a fine and such imprisonment

5. WHO SHOULD BE REGISTERED AS AN INFORMATION OFFICER

5.1 Information Officers are, by virtue of their positions, appointed automatically in terms of PAIA and POPIA. The following are categories of Information Officers per specific Body-

Nature of the body		Identity of Information Officer
Public Body or Organ of State (as defined in section 239 of the Constitution)	National Department	Director-General or the person who is acting as such.
	Provincial Administration	Head of Department or the person who is acting as such.
	Municipality	Municipal Manager or the person who is acting as such.
	Public Institutions listed in PFMA Schedule 1, 2, 3A, 3B, 3C and 3D	Chief Executive Officer or the person who is acting as such.
Private Body	Natural Person	Sole proprietor who carries on any trade, business or profession, but only in such capacity and not in his personal capacity
	Partnership	Any partner of the partnership or any person duly authorised by the partnership.
	Juristic Person	Chief Executive Officer or the Managing Director or equivalent officer of the juristic person or any

		person duly authorised by that officer or any person who is acting as such or any person duly authorised by such acting person;
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6. DUTIES OF THE INFORMATION OFFICER

6.1 Section 55(1) of POPIA sets out the duties and responsibilities of an Information Officer which include the following: -

6.1.1 the encouragement of compliance by the body with the conditions for the lawful processing of personal information. For example-

6.1.1.1 *an Information Officer may develop a policy on how employees should implement the eight (8) conditions for the lawful processing of personal information or consider issuing a circular in the case of provincial and national departments;*

6.1.2 dealing with requests made to the body pursuant to POPIA. For example-

6.1.2.1 *an Information Officer of a body will be expected to render such reasonable assistance, free of charge, as is necessary to enable the requester or data subject to comply with the prescribed process for submitting a request in terms of section 18 of PAIA² and section 24 of POPIA³. If a requester or data subject has made any request that does not comply with the requirements of PAIA or POPIA, the Information Officer concerned may not refuse the request because of that non-compliance, unless the Information Officer has-*

a) *notified the data subject or requester of his/her intention to refuse the request and stated in the notice, the reasons for the*

² Form of requests

³ Correction of personal information

contemplated refusal, as well his/her availability to assist that requester or data subject to remove the grounds for refusal;

- b) given the requester or data subject a reasonable opportunity to seek such assistance;*
- c) as far as reasonably possible, furnished the requester or data subject with any information that would assist the making of the request in the prescribed form; and*
- d) given the requester a reasonable opportunity to confirm the request or alter it to comply with section 18 of PAIA or 24 of POPIA.*

6.1.3 working with the Regulator in relation to investigations conducted pursuant to Chapter 6 in relation to the body. For example-

6.1.3.1 *the responsible party must obtain prior authorisation from the Regulator pertaining to the following-*

- a) processing of any unique identifiers of data subjects;*
- b) processing of information on criminal behaviour or on unlawful or objectionable conduct on behalf of third parties;*
- c) processing of information for the purposes of credit reporting; and*
- d) transfer of special personal information or the personal information of children to a third party in a foreign country that does not provide an adequate level of protection for the processing of personal information as referred to in section 72⁴.*

⁴ Chapter 9 of POPIA (Transborder Information Flows)- Transfers of personal information outside Republic

6.1.3.2 *pending the authorisation⁵ or completion of investigation⁶ by the Regulator, or until such time the responsible party receives a notice⁷ that a more detailed investigation will not be conducted, the responsible party is prohibited from carrying out information processing. This means that processing that falls under paragraph 6.1.3.1 above is automatically suspended pending the authorisation from the Regulator.*

6.1.3.3 *failure to notify the Regulator of the processing listed above is an offence and upon conviction, the responsible party will be liable to a fine or imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment⁸.*

6.1.4 otherwise ensuring compliance by a body with the provisions of this POPIA.
For example-

6.1.4.1 *POPIA prescribes eight (8) conditions for the lawful processing of personal information⁹ by or for a responsible party and it is the responsibility of an Information Officer to ensure compliance with those conditions.*

6.2 The additional duties and responsibilities of the Information Officers, in terms of regulation 4 of POPIA, are to ensure that-

6.2.1 a compliance framework is developed, implemented, monitored and maintained;

6.2.2 a personal information impact assessment is done to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of personal information;

⁵ Section 57(1) of POPIA

⁶ Section 58(2) of POPIA

⁷ Section 58(3) of POPIA

⁸ Section 59 of POPIA

⁹ Section 8 to 25 of POPIA

- 6.2.3 a manual is developed, monitored, maintained and made available as prescribed in sections 14 and 51 of PAIA, as amended;
- 6.2.4 internal measures are developed together with adequate systems to process requests for information or access thereto;
- 6.2.5 internal awareness sessions are conducted regarding the provisions of the Act, regulations made in terms of the Act, codes of conduct, or information obtained from the Regulator; and
- 6.2.6 upon request by any person, copies of the manual are provided to that person upon the payment of a fee to be determined by the Regulator from time to time.
- 6.3 The Information Officer of each public body must annually, and in terms of section 32 of PAIA, submit to the Regulator a report regarding-
- 6.3.1. the number of requests for access received;
- 6.3.2. the number of requests for access granted in full;
- 6.3.3. the number of requests for access granted in terms of section 46;
- 6.3.4. the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partially;
- 6.3.5. the number of cases in which the periods stipulated in section 25(1) were extended in terms of section 26 (1);
- 6.3.6. the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record;

- 6.3.7. the number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27;
- 6.3.8. the number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 (7).
- 6.4 The Regulator may request an Information Officer of a private body, in terms of section 183(4), to furnish to the Regulator with the information listed in paragraph 6.3 above.
- 6.5 If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person would be likely to cause serious harm to his or her physical or mental health, or well-being, the information officer may only give access to the record if the requester proves to the satisfaction of the information officer that adequate provision is made for such counselling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person¹⁰.
- 6.6 Registration of Information Officers¹¹ with the Regulator is not only the prerequisite for Information Officer to take up their duties in terms of POPIA and PAIA, but is a compulsory requirement for every person identified in paragraph 5.1 above.

7. DESIGNATION OF A DEPUTY INFORMATION OFFICER

- 7.1. Section 17 of PAIA provides for the designation of a Deputy Information Officer of a public body, and section 50(6) of POPIA extends the designation of a Deputy Information Officer for a private body.

¹⁰ Section 30(3)(a) and section 61(3)

¹¹ Section 55(2) of POPIA

- 7.2. Information Officers of public and private body are required to designate one or more Deputy Information Officers;
- 7.3. More than one (1) Deputy Information Officer can be designated, depending on the size, structure and the complexity of the operations of a specific body;
- 7.4. A designation to a Deputy Information Officer must be in writing;
- 7.5. A person designated as a Deputy Information Officer must be afforded sufficient time, adequate resources and the financial means to devote to matter concerning POPIA and PAIA;
- 7.6. A Deputy Information Officer must report to the highest management office within a body. This means that only an employee at a level of management and above should be considered for designation as a Deputy Information Officer of a body;
- 7.7. The duties and responsibilities of a Deputy Information Officer should not be in conflict with other duties assigned to him or her;
- 7.8. A Deputy Information Officer must be accessible to everyone, particularly to a data subject in respect of POPIA or a requester, in terms of PAIA;
- 7.9. A Deputy Information Officer(s) should be suitably qualified and must have a reasonable understanding of POPIA and PAIA in order to execute his or her duties.
- 7.10. A Deputy Information Officer(s) should have a reasonable understanding of the business operations and processes of a body. An employee(s) with institutional knowledge must be preferred for designation as a Deputy Information Officer(s).

8. TRAINING OF INFORMATION OFFICERS / DEPUTY INFORMATION OFFICERS

It is recommended that a body must ensure that an Information Officer and Deputy Information Officer(s) receive appropriate training and keep abreast of the latest developments in POPIA and PAIA.

9. DELEGATION OF AUTHORITY BY AN INFORMATION OFFICER TO A DEPUTY INFORMATION OFFICER

- 9.1. An Information Officer(s) of both a public or private body must¹², subject to legislation and policies governing the employment of personnel of the body concerned, delegate powers or duties and responsibilities conferred or imposed on him or her to a Deputy Information Officer(s) of that body.
- 9.2. The delegation referred to in paragraph 9.1 above must be in writing, using the template substantially similar to the attached Delegation of Authority. An Information Officer should develop a framework for the delegation of his or her authority to a Deputy Information Officer.
- 9.3. The delegation of any powers or duties and responsibilities to a Deputy Information Officer does not prohibit an Information Officer from exercising the powers or performing the duty that he or she has delegated to a Deputy Information Officer¹³;
- 9.4. Any power, duties and responsibilities delegated to a Deputy Information Officer(s) must be exercised or performed subject to such conditions as an Information Officer may consider necessary. Any conditions of delegation, as conferred on the Deputy Information Officer(s), must be reasonable and ensure sufficient and appropriate accessibility of a body by data subjects or requesters.
- 9.5. An Information Officer of a body must ensure that he or she reserves his or her rights in the aforesaid delegation to -
- 9.2.1 exercise the powers or to perform the duties and responsibilities concerned himself or herself; and
 - 9.2.2 withdraw or amend the aforesaid delegation at any time.

¹² section 56(b) of POPIA

¹³ Section 17(6)(b) of PAIA

- 9.6. An Information Officer must be aware that any right or privilege acquired or any obligation or liability incurred as a result of a delegation of any powers, duties and responsibilities is not affected by any subsequent withdrawal or amendment of the decision to delegate.
- 9.7. To ensure a level of accountability by a designated Deputy Information Officer, bodies are encouraged to ensure that such duties and responsibilities or any power delegated to a Deputy Information Officer(s) is part of his or her job description.
- 9.8. Despite the above-mentioned designation a Deputy Information Officer(s), an Information Officer retains the accountability and responsibility for the functions delegated to the Deputy Information Officer.

10. PROCEDURE FOR THE REGISTRATION OF AN INFORMATION OFFICER

10.1 An Information Officer of a body identified in paragraph 5.1 above, must complete and submit the attached registration form to the Regulator on or before **31 March 2021**.

10.2 The registration form requires the following key information-

10.2.1 Name of the Information Officer and designation;

10.2.2 Name of the Deputy Information Officer(s) designated in terms of section 55(1) of POPIA or section 17(1) of PAIA;

10.2.3 The official postal and street address, phone, fax number and, electronic mail address of-

10.2.3.1 the Information Officer, and

10.2.3.2 every Deputy Information Officer(s) designated.

11. UPDATING THE DETAILS OF AN INFORMATION OFFICER AND DEPUTY INFORMATION OFFICER(S)

A body should update the particulars of an Information Officer and Deputy Information Officer(s) on an annual basis or as and when it becomes necessary.

12. PUBLICATION OF THE PARTICULARS OF AN INFORMATION OFFICER

The Regulator will make the contact details of the Information Officers and that of his or her Deputy Information Officer(s) available on its website.

Adv Pansy Tlakula
CHAIRPERSON



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INFORMATION OFFICER’S REGISTRATION FORM

NOTE: *The personal information submitted herein shall be solely used for your registration with the Information Regulator (“Regulator”).*

All the information submitted herein shall be used for the purpose stated above, as mandated by law. This information may be disclosed to the public. The Regulator undertakes to ensure that appropriate security controls measures are implemented to protect all the information to be submitted in this document.

PART A INFORMATION OFFICER	
Full Name of Information Officer	
Designation	
Postal Address	
Physical Address	
Cellphone Number	
Landline Number	
Fax Number	
Direct Email Address	
General Email Address	
	<i>I consent to being contacted by the Regulator, requester or data subject at the above contact details or through my designated Deputy Information Officer(s), whose information is provided herein below.</i>

**PART B
DEPUTY INFORMATION OFFICER**

Personal details of designated Deputy Information Officer(s)	Name	Name	Name
	Direct Landline	Direct Landline	Direct Landline
	Cellphone Number	Cellphone Number	Cellphone Number
	Email Address	Email Address	Email Address
Postal Address			
Physical Address			
Fax Number			
General Email Address			
<i>I/we consent to being contacted by the Regulator, requester or data subject at the above contact details</i>			

**PART C
BODY / RESPONSIBLE PARTY**

Type of Body	Public Body		Private Body	
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Full Name of the Body (Registered Name)	
Trading Name	
Registration No, if any	
Postal Address	
Physical Address	
Landline Number	
Fax Number	
Email Address	
Website	

**PART D
DECLARATION**

I declare that the information contained herein is true, correct and accurate.

SIGNED and **DATED** at _____ on this the _____ day of _____ **2020**

INFORMATION OFFICER

PART E

THE FOLLOWING INFORMATION IS REQUIRED FOR STATISTICAL PURPOSES

Please choose a sector(s) that apply to your body

GOVERNMENT			PUBLIC ENTITIES			PRIVATE BODY			PROFESSION		
Item	Name of Entity	X	Item	Name of Public Entity	X	Item	Name of Public Entity	X	Item	Type of profession	X
1.	National Government		1.	Constitutional Entities		1	Education		1	Legal	
2.	Provincial Government		2.	Schedule 2 Public Entity		2	Insurance		2	Built Environment	
3.	Local Government		3.	Schedule 3A Public Entity		3	Health Facilities		3	Financial	
LEGISLATURE			4.	Schedule 3B Public Entity		4	Telecommunications		4	Medical and Allied Health Services	
			5.	Schedule 3C Public Entity		5	Pharmaceutical		OTHERS, Specify		
National Assembly			OTHERS, specify			6	Media and Social Media				
National Council of Provinces						7	Retail/Direct Marketing				
Gauteng Provincial Legislature						8	Tourism		5.		
Western Cape Provincial Legislature											

GOVERNMENT		PUBLIC ENTITIES	PRIVATE BODY		PROFESSION	
Northern Cape Provincial Legislature			9	Transportation, Storage and Logistics		
Limpopo Provincial Legislature			10	Manufacturing/Production		
Northwest Provincial Legislature			11	Banks		
Free State Provincial Legislature			12	International Organizations		
Mpumalanga Provincial Legislature			13	Real Estate		
Eastern Cape Provincial Legislature			OTHERS, specify			
Kwazulu-Natal Provincial Legislature						

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TEMPLATE

DESIGNATION AND DELEGATION OF AUTHORITY TO THE DEPUTY INFORMATION OFFICER

(In terms of section 56 of the Protection of Personal Information Act, 2013 (POPIA) and Section 17(1) of the Promotion of Access to Information Act, 2000(PAIA)

I, the undersigned,

(Name of the Information Officer)

hereby designate.....(**name of the person being designated**) as a Deputy Information Officer of(**name of the body or responsible party**)

Furthermore, I hereby delegate to you the powers, duties and responsibilities, as conferred or imposed on me by POPIA and PAIA.

Please be advised that I reserve the right to exercise any of the powers, duties and responsibilities conferred herein, as well as the right to amend and/or withdraw any of those powers, duties and responsibilities.

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Information Officer

By my signature herein below, I hereby accept the delegation and designation as the Deputy Information Officer

(Name of the designate)

Date: