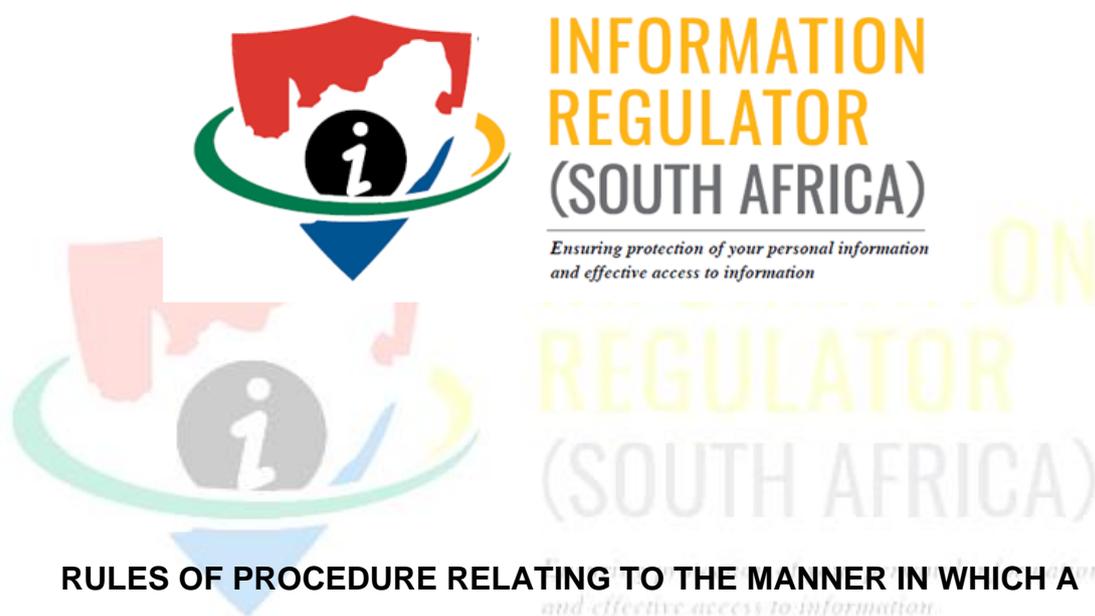


INFORMATION REGULATOR

OCTOBER 2021



RULES OF PROCEDURE RELATING TO THE MANNER IN WHICH A COMPLAINT MUST BE SUBMITTED AND HANDLED BY THE INFORMATION REGULATOR

The Information Regulator intends to make the regulations set out in the Schedule, under section 112(2)(g) of the Protection of Personal Information Act 04 of 2013

SCHEDULE

Arrangement of Rules

CHAPTER 1

1. Definitions

CHAPTER 2

2. Introduction

CHAPTER 3

3. Purpose of Rules

CHAPTER 4

4. LODGING OF A COMPLAINT

- 4.1 Who may lodge a complaint?
- 4.2 Manner of lodging complaint;
- 4.3 Submission of a complaint;
- 4.4 Information required when lodging complaint; and
- 4.5 Complaint which the Regulator may decide to take no action.

CHAPTER 5

5. PROCESSING OF COMPLAINT LODGED WITH THE INFORMATION REGULATOR

- 5.1 Delivery of documents and/or notices by the Regulator.

CHAPTER 6

6. ACTION TAKEN AFTER RECEIPT OF A COMPLAINT

- 6.1 Conducting a pre-investigation;
- 6.2 Period for concluding pre-investigation; and
- 6.3 Action taken after conclusion of pre-investigation.

CHAPTER 7

7. INVESTIGATION OF COMPLAINTS

- 7.1 Method of investigation;
- 7.2 Procedure for a Hearing;
- 7.3 Notice of proceedings;

- 7.4 Failure to participate in proceedings;
- 7.5 Persons allowed to attend proceedings;
- 7.6 Legal assistance during investigation;
- 7.7 Nature of proceedings;
- 7.8 Procedures at the commencement of proceedings;
- 7.9 Procedures during proceedings;
- 7.10 Conditions for joining, substituting or adding parties to proceedings;
- 7.11 Consolidation of complaints;
- 7.12 Obligations of the responsible parties to co-operate with the Regulator; and
- 7.13 Refusal or failure to co-operate with the Regulator.

CHAPTER 8

8. GENERAL ASPECTS IN RESOLVING COMPLAINTS

- 8.1 Issuing of an Information Notice;
- 8.2 Cancellation or variation of the Information Notice;
- 8.3 Non referral of a complaint to the Enforcement Committee;
- 8.4 Referrals to the Enforcement Committee;
- 8.5 Issuing of an Enforcement Notice;
- 8.6 Cancellation or variation of the Enforcement Notice;
- 8.7 Appeal of the decision of the Regulator; and
- 8.8 Monitoring the implementation of an information, Enforcement and Infringement Notice.

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

CHAPTER 9

9. GENERAL PROVISIONS

- 9.1 Recording of proceedings and investigation;
- 9.2 Language used during investigation proceedings;
- 9.3 Certificate of appointment of investigating officers; and
- 9.4 Security measures on integrity and confidentiality of personal information.

10. SHORT TITLE AND COMMENCEMENT

ANNEXURES

- a) Form 20- Request for an Internal Review

CHAPTER 1

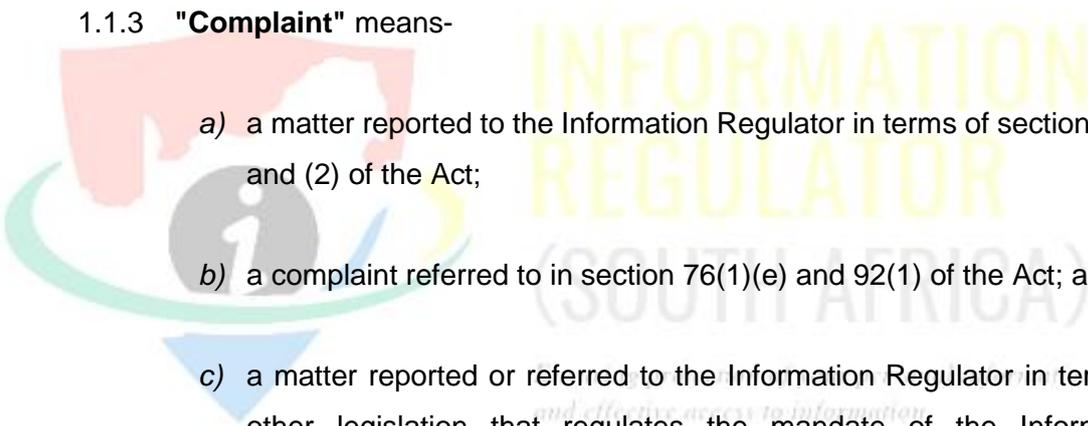
1. DEFINITIONS

1.1 In these Rules, any word or expression to which a meaning has been given in the Protection of Personal Information Act, 2013, shall have that meaning and, unless the context indicates otherwise-

1.1.1 "**the Act**" means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

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

1.1.3 "**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;

1.1.4 "**Constitution**" means the Constitution of the Republic of South Africa, 1996;

1.1.5 "**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);

1.1.6 "**Investigating Officer**" means a staff member or other suitable person designated as investigating officer in terms of section 47(1)(b) of the Act;

1.1.7 **“Professional Legal Adviser”** means any legally qualified person, whether in private practice or not, who lawfully provides a client, at his or her or its request, with independent, confidential legal advice;

1.1.8 **“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;

1.1.9 **“Parties to a dispute”** means the data subject and the responsible parties involved in the complaint;

1.1.10 **“Regulator”** means the Information Regulator established in terms of section 39 of the Protection of Personal Information Act;

1.1.11 **“Regulations”** means the Protection of Personal Information Act: Regulations: **GG 42110, RG 10897, GoN 1383**, 14 Dec 2018;

1.1.12 **“Staff Member”** means a staff member of the Information Regulator appointed in terms of section 47(1)(b) of the Act;

CHAPTER 2

2. INTRODUCTION

The Protection of Personal Information Act (POPIA (2013)), Act No.4 of 2013 provided for the establishment of an Information Regulator to exercise certain powers and to perform certain duties and functions in terms of the POPIA (2013), as stipulated in section 40, which includes-

- 2.1 receiving and investigating complaints about alleged violations of the protection of personal information of data subjects and reporting to complainants in respect of such complaints;
- 2.2 gathering such information as in the Regulator's opinion will assist the Regulator in discharging the duties and carrying out the Regulator's functions under this Act;
- 2.3 attempting to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation; and
- 2.4 serving any notices in terms of this Act and further promoting the resolution of disputes in accordance with the prescripts of this Act;

CHAPTER 3

3. PURPOSE OF RULES

3.1 The purpose of these Rules is to-

3.1.1 promote and enhance access to the Regulator

3.1.1.1 by data subjects who are alleging interference with the protection of their personal information;

3.1.1.2 by responsible parties who are aggrieved by the decision the adjudicator

3.1.2 facilitate cooperation by Responsible parties and data subjects; and

3.1.3 enhance the efficiency and effectiveness of investigations by clarifying-

3.1.3.1 procedures for-

3.1.3.1.1 the lodging of complaints in terms of section 74(1) and (2) of the Act with the Regulator;

3.1.3.1.2 Mode of complaints to Regulator in terms section 75 of the Act; and

3.1.3.1.3 Action on receipt of complaint in terms of section 76 of the Act.

3.1.3.2 time frames for the taking of actions provided for in these Rules;

3.1.3.3 time frames for data subject and responsible party to respond to the findings of the Regulator;

3.1.3.4 the steps the Regulator may take if any person or Responsible party fails to comply or adhere to stipulated time frames in the Information Notice or Enforcement Notice; and

3.1.3.5 the imposition of administrative fines as referred to in section 109(1) of the Act.

CHAPTER 4

4. LODGING OF A COMPLAINT

4.1 Who may lodge a complaint

The following person may lodge a complaint-

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

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

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

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

4.1.5 Any person acting in the public interest.

4.2 Manner of lodging a complaint

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

4.2.1.1 online complaint form available on the website of the Regulator; or

4.2.1.2 the complaints 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.

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

4.2.3 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.

4.3 Submission of a complaint

4.3.1 A complaint may be submitted at-

4.3.1.1 the offices of the Regulator during office hours, preferably in the area where the incident or conduct complained of took place;

4.3.1.2 any other office designated by the Regulator as a place where complaints may be lodged.

4.3.2 The Regulator may transfer a complaint from the office where it was lodged to any other office of the Regulator, if deems it fit.

4.3.3 The Regulator shall, in writing, inform the complainant of any transfer in terms of sub-rule 4.2.3, within fourteen (14) days of the transfer.

4.3.4 A complaint may also be submitted to the Regulator in the following manner:

4.3.4.1 by facsimile;

4.3.4.2 by post;

4.3.4.3 by courier, at the Regulator's physical address; and

4.3.4.4 by e-mail to a designated email address.

4.3.5 The Regulator shall acknowledge receipt of the complaint and provide the complaint with the reference number within fourteen (14) days after receipt thereof.

4.4 Information required when lodging complaint

4.4.1 A complaint referred to in section 74(1) and (2) of the Act shall, subject to the provisions of sub-rule 4.3.4 and 4.3.5, contain the following personal information:

4.4.1.1 name(s) and surname/ registered name of Complainant;

4.4.1.2 unique Identifier / identity number/ company registration number of the complainant, if required;

4.4.1.3 address of the complainant;

4.4.1.4 the telephone and facsimile numbers of the complainant and e-mail address, if available;

4.4.1.5 reasons for complaint;

- 4.4.1.6 name(s) and surname of responsible party / registered name of the Responsible party;
 - 4.4.1.7 address, of responsible party;
 - 4.4.1.8 the telephone and facsimile numbers of the Responsible party and e-mail address, if available.
- 4.4.2 A complaint referred to in section 74(2) of the Act shall, subject to the provisions of sub-rule 4.4.4 and 4.4.5, contain the following personal information:
- 4.4.2.1 If the complaint is regarding determination of Adjudicator in terms of section 74(2) of the Act, Name(s) and surname of Adjudicator; and
 - 4.4.2.2 any other information that identifies the complainant.
- 4.4.3 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.
- 4.4.4 A complaint may also contain any other relevant additional information about the incident or matter concerned, which may include:-
- 4.4.4.1 the place and date of the occurrence;
 - 4.4.4.2 particulars of the Information Officer concerned, if known;
 - 4.4.4.3 the names and addresses of any person who could provide information relevant to the complaint, if known; and
 - 4.4.4.4 any other relevant information or documents that may be used during the investigation.
- 4.4.5 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;

4.4.6 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 identity. The complainant will then be able to either withdraw or proceed with the complaint on this basis.

4.4.7 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.

4.5 Complaint which the Regulator may decide to take no action

4.5.1 The Regulator may, in accordance with section 77(1) and (2) of POPIA, decide to take no action or no further action in respect of the complaint.

4.5.2 The Regulator shall not accept any complaint in which the cause of action arose before 01 July 2021.

4.5.3 The Regulator may not accept a complaint which is still pending before another regulatory body/tribunal or which falls under the exclusive jurisdiction of another regulatory body or tribunal.

4.5.4 The Regulator may not accept a complaint lodged after three (3) years have elapsed from the date when the subject matter of the complaint arose and the date when the complaint was made.

4.5.5 The Regulator shall, when making a decision regarding the late lodging of a complaint provided for in section 77(1)(a) of the Act, consider-

4.5.5.1 the reasonableness of the explanation for the delay;

4.5.5.2 the extent and cause of the delay;

- 4.5.5.3 whether the alleged interference with the protection of the personal information is continuing;
 - 4.5.5.4 the seriousness of the interference with the protection of the personal information;
 - 4.5.5.5 whether the outcome of an investigation could rectify a systemic interference with the protection of the personal information;
 - 4.5.5.6 the impact of the delay on the availability of information, evidence and witnesses relating to the complaint;
 - 4.5.5.7 any steps taken by the complainant to address the complaint; and
 - 4.5.5.8 any other relevant special circumstances.
- 4.5.6 The Regulator shall, if it decides not to accept a complaint lodged after the period mentioned in paragraph 4.5.4 above, inform the complainant in writing of-
- 4.5.6.1 the decision and the reasons for the decision; and
 - 4.5.6.2 the remedy available to the complainant in terms of sub-rule 4.5.7.
- 4.5.7 The Regulator may, in the interests of justice and fairness and upon receipt of an application by the complainant, reconsider the decision, if there is new and relevant information that was not previously known and that has a material effect on the decision made.
- 4.5.8 The application referred to in sub rule 4.5.7 must be made in accordance with Form 20 and within fourteen (14) days of receipt of the decision reviewed against.
- 4.5.9 Upon receipt of an internal review referred to in sub rule 4.5.7 –

4.5.9.1 A written acknowledgement in relation to a review should be communicated to the complainant within seven (7) days from receipt;

4.5.9.2 The Regulator must inform the complainant in writing of the decision, including the reason/s for the decision, within 30 days of receipt of the application.

4.5.10 Should the Complainant still not be satisfied with the decision of the Regulator, he or she or it may, within 180 days of receipt of the review decision, approach any competent court with jurisdiction to review the decision of the Regulator.

CHAPTER 5

5. PROCESSING OF COMPLAINT LODGED WITH THE REGULATOR

5.1 Delivery of documents and/or notices by the Regulator

5.1.1 A notice or document that is required to be delivered in terms of the Act or these Rules is deemed to have been delivered on the intended recipient on the date linked to the method in question, as indicated below:

5.1.1.1 **Delivered by hand:** during the normal business hours, shall be deemed to have been delivered by a person duly authorised thereto by the Regulator and received by the intended recipient at the time and date specified on the Regulator's Return of Service;

5.1.1.2 **Registered post:** shall be deemed to have been received by the intended recipient within twenty (20) days after the date of posting;

5.1.1.3 **Transmission by electronic communication (Fax, Email or Short Message Service (SMS)):** The provisions of the Electronic Communications and Transactions Act, 2002, are applicable to all forms, records, documents or any information, which are electronically communicated;

5.1.1.4 **Service by Sherriff:** shall be deemed to have been received by the intended recipient on the date of service as reflected on the Sheriff's return of service.

5.1.2 Where such service has been effected in the manner prescribed by sub-rule 5.1.1.1, a person authorised to effect service shall indicate in the return of service of the notices or documents:-

5.1.2.1 the name of the person to whom it has been delivered; and

5.1.2.2 the capacity of the person receiving the document on behalf of the person to be served.

5.1.3 Where such service has been effected in the manner prescribed by sub-rule 5.1.1.1, a person authorised to effect service shall indicate or specify in the return of service of the exact process followed to serve the notices.

5.1.4 Where the residence or place of business of the person to be served is closed, thus preventing delivery, it shall be sufficient service to affix a copy thereof to the outer or principal door or security gate of such residence or place of business or to place such copy in the post box at such residence or place of business.

5.1.5 A person authorised by the Regulator to effect service by hand shall, on demand by the person upon or against whom process is served, produce proof of identification issued by the Regulator.

CHAPTER 6

6. ACTION TAKEN AFTER RECEIPT OF A COMPLAINT

6.1 Conducting a pre-investigation

- 6.1.1 The Regulator shall, in respect of every complaint received, conduct a pre-investigation for the purposes of determining how to proceed with a complaint.
- 6.1.2 The Regulator shall inform the complainant, the data subject to whom the investigation relates (if not the complainant) and any person alleged to be aggrieved (if not the complainant) on **Part I of Form 8**, of the Regulator's intention to conduct the investigation within twenty-one (21) days from the date of receipt of a complaint.
- 6.1.3 The Regulator must inform the responsible party to whom the investigation relates on **Part II of Form 8** of the complaint, or the subject matter of the investigation, and must inform the responsible party of the right to submit a written response to the complaint or the subject matter of the investigation within twenty-one (21) days from the date of receipt of the notification.
- 6.1.4 The information referred to in sub-rule 6.1.2 and 6.1.3, must also include the investigator's name and his/her contact particulars.
- 6.1.5 Should the responsible party fail to respond to the notice referred to in sub-rule 6.1.3, the Regulator may decide to conduct an investigation in accordance with sub-rule 6.1.5.2.

6.2 Period for concluding pre-investigation

- 6.2.1 The Regulator shall conclude its pre-investigation within thirty (30) days of receipt of a complaint.
- 6.2.2 In the event the pre-investigation cannot be concluded within the period referred to in sub-rule 6.2.1, the Regulator shall, within fourteen (14) days of expiry of this period, inform the complainant of the reasons for the delay and the anticipated period within which the pre-investigation is likely to be completed.

6.3 Action taken after conclusion of pre-investigation

6.3.1 After the conclusion of a pre-investigation, the Regulator may-

6.3.1.1 decide to take no further action on the complaint, in accordance with section 77(1) and (2) and in writing inform the complainant and the responsible party of the decision and the reasons for it within fourteen (14) days of conclusion of the pre-investigation;

6.3.1.2 endeavour to resolve a complaint through mediation, conciliation, negotiation or any other appropriate dispute resolution mechanisms. If the Regulator intends to resolve a complaint through any other appropriate dispute resolution, the Regulator must notify the parties to whom the investigation relates of such intention on either Form 6 or Form 9 of the Regulations. Any matter referred to the dispute resolution mechanisms must be completed within thirty (30) days of referral. The Regulator must issue a settlement certificate on **Form 10** within fourteen (14) days after the date of the conclusion of the settlement meeting.

6.3.1.3 refer a complaint to another regulatory body established in terms of any law, as referred to in section 78 of the Act, if the Regulator considers that the complaint relates, in whole or in part, to a matter that is more properly within the jurisdiction of that body. The Regulator shall, in writing and within fourteen (14) days of the transfer of a complaint, inform the complainant about-

6.3.1.3.1 the transfer and the reasons for the transfer of a complaint; and

6.3.1.3.2 name and contact details of the regulatory body.

6.3.1.4 decide to conduct a full investigation of the complaint in terms of section 76(1)(d) of the Act;

6.3.2 The Regulator may, in the interest of justice and fairness, and upon application by the complainant within fourteen (14) days of receipt the decision referred to in sub-rule 6.3.1.1 above, reconsider its decision, if there

is new and relevant information that was not previously known and that has a material effect on the decision made.

- 6.3.3 If any of the parties to a dispute fail to honour the agreement or to comply with any of their obligations in terms of the agreement, the Regulator may, on application from the aggrieved party, refer the agreement to the Enforcement Committee.

CHAPTER 7

7. INVESTIGATION OF COMPLAINTS

7.1 Method of investigation

7.1.1 The method of an investigation is within the discretion of the Regulator as envisaged in section 81 of the Act and may include any of the following information gathering methods:

- 7.1.1.1 communication by telephone, email or any other form of correspondence;
- 7.1.1.2 research, inspections *in loco*, surveys or questionnaires;
- 7.1.1.3 meetings with affected parties or persons reasonably believed to have information relevant to the investigation;
- 7.1.1.4 appearance of a person in a hearing before the Regulator for purposes of obtaining or clarifying information, producing any document or giving evidence in terms of section 81(a) to (c) of the Act;
- 7.1.1.5 obtaining records or documents relevant to the investigation which are in possession or under control of any person; and
- 7.1.1.6 conducting public enquiries to obtain relevant information on the subject matter.

7.2 Procedure for a Hearing

7.2.1 The Regulator may decide to conduct a hearing under the circumstances it deems fit, including the following:

7.2.1.1 When prior attempts at resolving a dispute have failed or the Regulator is of the opinion that such proceedings will enable it to conclude an investigation or obtain an appropriate resolution of the complaint;

7.2.1.2 if the Regulator deems it in the public interest to hold such proceedings; or

7.2.1.3 if in the opinion of the Regulator the complaint cannot be fairly decided only on the basis of documentary evidence or written statements submitted by the parties to a dispute or by any other person.

7.3 Notice of proceedings

7.3.1 The Regulator shall give the parties to a dispute and any other person whose attendance before the Regulator is required, a notice of the intended proceedings by means of –

7.3.1.1 A formal letter; or

7.3.1.2 Summons issued in terms of section 81(a) of the Act.

7.3.2 The notice referred to in sub-rule 7.3.1 shall be given at least fourteen (14) days before the date of such proceedings, unless the Regulator and persons concerned agree to a shorter period or the matter is extremely urgent.

7.3.3 The notice referred to in sub-rule 7.3.1 shall contain the following information:

7.3.3.1 the place where the proceedings will be held;

7.3.3.2 the date and time of the proceedings;

7.3.3.3 the aspects in respect of which evidence will be required;

7.3.3.4 an invitation to the parties to the dispute to bring any person who has personal knowledge about the issues in respect of which evidence is to be given at the proceedings;

7.3.3.5 an indication whether or not a person who will attend the proceedings shall bring any document to such proceedings; and

7.3.3.6 any other information which the Regulator deems necessary.

7.3.4 The notice or summons referred to in sub-rule 7.3.1 may be served to the person concerned in any manner expedient in the circumstance, as referred to in sub-rule 5.1.1, having regard to the date of the proceedings and ensuring that the person receives the notice or information,

7.3.5 The Regulator shall keep proof of receipt of the notice referred to in sub-rule 7.3.1.

7.4 Failure to participate in proceedings

7.4.1 The Regulator may, if a party to a dispute is absent at proceedings-

7.4.1.1 continue with the proceedings; or

7.4.1.2 postpone the proceedings.

7.4.2 The Regulator may, if a party to a dispute or a person who has been notified to be present at the proceedings in terms of sub-rule 7.3.1.1 is absent at the proceedings without any valid reasons, issue a summons in terms of section 81(a) of the Act, to compel the person to attend such proceedings and to give evidence or to produce a document during the proceedings.

7.4.3 The Regulator may dismiss a complaint if the complainant fails to participate in proceedings in accordance with the provisions of these Rules.

7.4.4 The Regulator shall, in writing, notify both parties to a dispute of the dismissal and the reasons thereof.

7.5 Persons allowed to attend proceedings open proceedings vs closed proceedings

7.5.1 The following persons may attend proceedings:

7.5.1.1 A person who lodged a complaint to the Regulator in terms of section 74 of the Act;

7.5.1.2 the investigator or any person designated by the Regulator to lead evidence during the proceedings;

7.5.1.3 a person appointed, in terms of section 47(7) of the Act, to provide assistance to the Regulator;

7.5.1.4 a person authorised to conduct an investigation on behalf of the Regulator in terms of section 47(1)(b) of the Act;

7.5.1.5 a person required to give evidence or to produce any document or record to the Regulator;

7.5.1.6 professional legal adviser who is legally assisting the person appearing before the Regulator; and

7.5.1.7 a person employed by a responsible party and authorised to represent the responsible party.

7.5.2 Any person other than the persons referred in sub-rule 7.5.1 above may attend proceedings with the permission of the Regulator.

7.6 Legal assistance during investigation (a policy decision to be made on open or closed proceedings and consequences of legal representation)

7.6.1 A person summoned or directed to appear in terms of section 81(a) of the Act may not be assisted by a professional legal adviser at a hearing unless he or she has applied to the Regulator to be so assisted and the Regulator has approved the application in accordance with the process prescribed in sub-rule 7.6.3.

7.6.2 Subject to sub-rule 7.6.3, the parties to a dispute may obtain legal assistance for the purposes of the investigation to be conducted in terms of section 76(1) (d) of the Act, but are obliged to personally provide any information, documents or evidence requested from them by the Regulator.

7.6.3 Subject to sub-rule 7.6.2, parties to a dispute may be assisted by his or her or its legal representative, who may accompany a party to any proceedings of the Regulator with the permission of the Regulator and to the extent determined by the Regulator.

7.6.4 The Regulator shall, in exercising its discretion in terms of sub-rule 7.6.3, take into consideration the following factors:

7.6.4.1 the nature of the information, issues or the evidence to be provided to the Regulator;

7.6.4.2 the complexity of the matter investigated or any specific aspect thereof;

7.6.4.3 the seriousness of the matter investigated;

7.6.4.4 the extent to which allowing legal representatives will affect the timeous conclusion of the investigation or any part thereof; and

7.6.4.5 any other factor which is, in the opinion of the Regulator, relevant to the investigation.

7.6.5 Any person appearing before the Regulator or professional legal adviser assisting during the examination, may be entitled to peruse such of the relevant documents or records of any evidence pertinent to the hearing and which are in the possession of the Regulator obtained during an investigation as reasonably necessary to refresh his or her memory.

7.7 Nature of proceedings

7.7.1 The Regulator shall conduct proceedings pertaining to an investigation in an inquisitorial manner.

7.7.2 A party to a dispute may, with the permission of the Regulator and through the Regulator, put questions to any witness at proceedings pertaining to an investigation.

7.7.3 The parties to a dispute may, in respect of representations made to the Regulator during the proceedings, ask questions in order to clarify any uncertainties.

7.7.4 The Regulator's duly authorised employee may at any stage of the proceedings-

7.7.4.1 put any relevant question to a witness, and any party to a dispute;

7.7.4.2 rephrase a question put to a witness by a person or a party to a dispute;

7.7.4.3 clarify any uncertainties in respect of any evidence given; or

7.7.4.4 in any other appropriate manner, elicit information from a witness or a party to a dispute.

7.7.5 The parties to a dispute must act in good faith and refrain from any actions or conduct that might be construed as disparaging, insulting or defamatory.

7.8 Procedures at the commencement of proceedings

7.8.1 The Regulator shall explain to the parties to a dispute and witnesses, at the commencement of the proceedings-

7.8.1.1 the purpose of the proceedings;

7.8.1.2 the inquisitorial nature of the proceedings; and

7.8.1.3 the procedures which will be followed at the proceedings.

7.8.2 any person acting on behalf of or under the direction of the Regulator, including any person appointed or designated to record the proceedings of an investigation in writing or mechanically, or employed / appointed to transcribe the records of the proceedings, must preserve the confidentiality of any matter or information that may come to his or her knowledge in the performance of his or her duties, except in so far as the publication of such matter or information is necessary or incidental to any report of the Regulator.

7.8.3 Any person whose presence is not required may be excluded from attending the proceedings held in terms of section 81(a) of the Act.

7.8.4 At the commencement of the proceedings, the Regulator shall summarise the complaint and narrow the issues to be investigated during such proceedings and determine the order for the leading of evidence.

7.8.5 The Regulator may make a determination about any submission, declaration, explanation, information, statement, and any other evidence to be disclosed at the proceedings.

7.8.6 The Regulator may direct that any portion or all the evidence be given, or a part or the whole of the proceedings be held behind closed doors, if the Regulator determines that it is in the interest of the investigation to do so, after having allowed the parties to the dispute a reasonable opportunity to address the Regulator.

7.8.7 The Regulator may give directions in respect of the disclosure or publication of any information or evidence obtained behind closed doors.

7.8.8 The Regulator may give directions on any other aspect of the proceedings to facilitate and promote co-operation by the parties to a dispute and to ensure that the proceedings are conducted in an expeditious manner.

7.9 Procedures during proceedings

7.9.1 The Regulator may hear evidence from any person, in such manner as the Regulator deems fit and at any place determined by the Regulator.

7.9.2 The Regulator may, if deems necessary and in accordance with section 81(b) of the Act, administer an oath or an affirmation to any person appearing as a witness.

7.9.3 The Regulator shall take any step it deems necessary to establish the truth, correctness and relevance of any submission, declaration, explanation, information, statement, affidavit or any other evidence.

7.9.4 The Regulator may receive or accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Regulator sees fit, irrespective of whether or not such evidence is admissible in a court of law.

7.9.5 At any time during the proceedings, the Regulator may postpone, stand down or adjourn the proceedings, where the Regulator deems it necessary do so.

7.9.6 The parties shall, subject to sub-rule 7.7, be given a reasonable opportunity to respond to the evidence given at the proceedings.

7.9.7 A party may, in responding to the evidence given at the proceedings, provide information or an explanation by giving evidence, calling witnesses and/or handing in documents and/or submissions.

7.9.8 The Regulator may decide whether sufficient evidence has been given to conclude the investigation and order that no further evidence shall be given.

7.9.9 The parties to the dispute shall be given a reasonable opportunity to make a closing statement and to present, if they so require, further arguments in writing.

7.9.10 The Regulator shall conclude the proceedings by informing the parties to the dispute of further steps to be taken in the investigation or the resolving of the complaint.

7.9.11 If it appears to the Regulator during the course of an investigation that any person is being implicated in the matter being investigated and that the implications may be to the detriment of that person or result in an adverse finding against that person, the Regulator must afford that person an opportunity to reply in connection therewith in any manner that may be expedient under the circumstances.

7.10 Conditions for joining, substituting or adding parties to proceedings

7.10.1 The Regulator may on its own accord or on the request in writing by a party or any other person, join, substitute or add any number of persons as parties in the proceedings-

7.10.1.1 If it is relevant and necessary to do so; and

7.10.1.2 if such parties so joined or substituted have a substantial interest in the subject matter of the proceedings, and may give appropriate directions as to further procedures for the proceedings.

7.10.2 A request to join, substitute or add a person as a party in the proceedings must contain the following:

7.10.2.1 the grounds for the application;

7.10.2.2 full particulars of the person concerned; and

7.10.2.3 any additional documents as may be required by the Regulator.

7.10.3 The Regulator shall on receipt of a request for the joining, substitution or adding of any number of persons as parties, in writing inform all affected parties of the request and give such parties the opportunity to make representations.

7.10.4 The joining, substitution or adding of persons in the proceedings in terms of these Rules must not affect any steps already taken in these proceedings, except if the Regulator determines otherwise.

7.11 Consolidation of complaints

7.11.1 The Regulator may, on its own accord or on a request in writing by a party to a dispute, consolidate two or more complaints and deal with these complaints in the same proceedings, if the outcome of the complaints depends on substantially the same question of law or fact; and it is in the interests of justice to do so.

7.11.2 The Regulator shall, when deciding on the consolidation of complaints, in writing inform all affected parties and give such parties the opportunity to make representations.

7.12 Obligations of the responsible parties to co-operate with the Regulator

7.12.1 The responsible parties must-

7.12.1.1 allow the Regulator prompt and full access to its officials or employees for purposes of obtaining information;

7.12.1.2 allow the Regulator prompt and full access to documents, records, data and material under its possession or control or under the possession or control of its officials or employees or Operators;

7.12.1.3 respond within the prescribed timelines, accurately and fully to the enquiries of the Regulator in every complaint;

7.12.1.4 attend meetings requested by the Regulator for purposes of an investigation and resolving any dispute;

7.12.1.5 comply with a notice or directive issued by the Regulator in terms of the Act; and

7.12.1.6 respect and comply with agreements reached through appropriate dispute resolution processes.

7.13 Refusal or failure to co-operate with the Regulator

7.13.1 Where any person refuses to co-operate with the Regulator, or fail to comply with a summons issued in terms of section 81 of the Act, the Regulator may open a criminal case against such a person.

CHAPTER 8

8. GENERAL ASPECTS IN RESOLVING COMPLAINTS

8.1 Issuing of an Information Notice

8.1.1. The Regulator may, in accordance with section 90(1) of the Act, serve the responsible party with an information notice requiring the responsible party to furnish the Regulator with the following information, within a period of not less than thirty (30) days and in a form specified in the notice—

8.1.1.1. a report indicating that the processing is taking place in compliance with the provisions of the Act; or

8.1.1.2. such information relating to the request or to compliance with the Act as is so specified;

8.1.2. In the event the information, referred to in sub rule 8.1.1, is required as a matter of urgency, the Regulator may serve the responsible party with an information notice together with a statement of its reasons for such urgency, requiring the responsible party to furnish the Regulator with the information

within a period of not less than three (3) days from the date of receipt of the notice.

- 8.1.3. The Regulator must inform the complainant of the information notice, referred to in sub rule 8.1.1, within five (5) days of serving the notice to the responsible party.

8.2 Cancellation or variation of the Information Notice

- 8.2.1 The Regulator may, on its own accord and on written notice to the responsible party and the complainant, cancel an information notice as soon as is reasonably practicable.

- 8.2.2 A responsible party on whom an information notice has been served, in accordance with sub rule 8.1.1, may, in accordance with section 97(1) of the Act and within 30 days of receiving the notice, appeal to the High Court having jurisdiction for the setting aside or variation of the information notice.

- 8.2.3 An application, referred to in sub rule 8.2.2, does not suspend the Information Notice, unless a High Court having jurisdiction determines otherwise.

8.3 Non referral of a complaint to the Enforcement Committee

- 8.3.1 The Regulator shall not refer a complaint to the Enforcement Committee, if the Regulator finds after conducting an investigation that no interference with the protection of the personal information of a data subject has taken place.

- 8.3.2 The Regulator must inform the complainant and the responsible party, within five (5) days of its finding referred to in sub rule 8.3.1, of the closure of the complaint and the reasons therefore.

8.4 Referrals to the Enforcement Committee

- 8.4.1 After completing an investigation of a complaint and as soon as reasonably practicable, the Regulator may refer its investigation report to the Enforcement Committee for consideration, a finding in respect of the

complaint and a recommendation in respect of the proposed action to be taken by the Regulator.

8.4.2 The Regulator may refer any other matter to the Enforcement Committee for consideration, a finding in respect of that matter and a recommendation in respect of the proposed action to be taken by the Regulator.

8.4.3 The Regulator must, within seven (7) days from the date of the referrals, referred to in sub-rule 8.4.1 or 8.4.2, inform the complainant and the responsible party in accordance with **Form 14** of the Regulations.

8.5 Issuing of an Enforcement Notice

8.5.1 The Regulator must, after having decided to issue an enforcement Notice in terms of section 95 of the Act and within thirty (30) days from the date of receipt of the recommendation from the Enforcement Committee, serve the responsible party and the complainant with an Enforcement Notice in terms of section 95 of the Act, in accordance with **Form 15** of the Regulations.

8.5.2 The Enforcement Notice must be served using any of the methods stipulated in sub-rule 5.1.1.

8.6 Cancellation or variation of the Enforcement Notice

8.6.1 A responsible party on whom an enforcement notice has been issued and served may apply to the Regulator, at any time after the expiry of a period of thirty (30) days from date of receipt of the Enforcement Notice and in writing in accordance with Form 16, for the cancellation or variation of the Enforcement Notice.

8.6.2 An application in terms sub rule 8.6.1 will only be heard by the Regulator where as a result of a change in circumstances, all or any of the provisions in the Enforcement Notice need not be complied with in order to ensure compliance with the conditions for lawful processing of personal information.

8.6.3 The application referred to in sub rule 8.6.1 must set out:

8.6.3.1 the relevant change in circumstances and

8.6.3.2 those provisions in the Enforcement Notice that may subsequently not require compliance with.

8.6.4 If the Regulator, when considering an application in terms of sub rule 8.6.1, decides that all or any of the provisions of an enforcement notice need not be complied with in order to ensure compliance with conditions for the lawful processing of personal information, it may cancel or vary the Enforcement Notice by written notice to the responsible party and complainant.

8.6.5 An application for cancellation or variation of the Enforcement Notice to the Regulator does not suspend the Enforcement Notice, unless a High Court having jurisdiction determines otherwise.

8.6.6 The Regulator must consider the cancellation or variation of the Enforcement Notice within sixty (60) days of receipt of the application and inform the responsible party and the complainant of its decision in accordance with **Form 16** of the Regulations.

8.7 **Appeal of the decision of the Regulator**

8.7.1 A responsible party on whom an information notice or enforcement notice has been served may, within 30 days of receiving the notice, appeal to the High Court having jurisdiction for the setting aside or variation of the notice.

8.7.2 A complainant, who has been informed of the Regulator's decision to take no action or no further action on a complaint in terms of section 77(3) of the Act, may, within 180 days of receiving the decision, appeal against the decision to the High Court having jurisdiction.

8.7.3 A complainant who is aggrieved by the Regulator's decision to cancel or vary an enforcement notice in terms of section 96 of the Act, may, within 180 days of receiving the decision, appeal against the decision to the High Court having jurisdiction.

8.7.4 An appeal application, referred to in sub rules 8.7.1 to 8.7.3, must be served in accordance with the applicable rules of the court, on all the parties to a complaint, including the Regulator.

8.7.5 The Regulator must, within seven (7) days of receipt of the appeal application, referred to in sub rules 8.7.1 to 8.7.3, inform the complainant and the responsible party in accordance with **Form 17**.

8.7.6 An appeal application, referred to sub rules 8.7.1 to 8.7.3, does not suspend the Regulator's decision appealed against, unless a High Court having jurisdiction determines otherwise.

8.7.7 The Regulator must, within seven (7) days of receipt of the court order in an appeal application, inform the complainant and the responsible party on either **Form 18** of the Regulations.

8.8 **Monitoring the implementation of an information, Enforcement and Infringement Notice**

8.8.1 The Regulator may monitor the implementation of an Enforcement Notice issued in terms of section 95(1) of the Act, Information Notice issued in terms of section 90 of the Act or Infringement Notice issued in terms of section 109(1) the Act.

8.8.2 The Regulator may, if a responsible party is alleged to have committed any of the offence in terms of the Act-

8.8.2.1 hand over or refer the matter to the South African Police Service and inform the responsible party and/or any known person who may be criminally liable under the Act, within seven (7) days of such hand over or referral; or

8.8.2.2 issue an Infringement Notice against the responsible party, in accordance with section 109(1) of the Act;

8.8.3 The Regulator may, if an Infringement Notice is not complied with within the prescribed time frame or the payment arrangement in terms of section 109(2)(d)(ii) of the Act is not adhered to-

8.8.3.1 proceed with recovery proceeding against the responsible party, in accordance with section 109(5) of the Act, on ten (10) days written notice of intention to proceed with recovery proceeding.

8.8.4 The recovery proceeding, referred to in sub rule 8.8.3, must be on *ex parte* proceedings.

CHAPTER 9

9. GENERAL PROVISIONS

9.1 Recording of proceedings and investigation

9.1.1 Any proceedings in terms of this Act and any discussions held, oral submissions made or evidence given as part of an investigation in terms of section 81(a) of the Act shall be recorded by the Regulator in any manner deemed fit.

9.1.2 The Regulator or the Enforcement Committee shall, before the commencement of any recording, inform the persons present of the fact that a recording will be made and of the manner of recording.

9.1.3 A person appointed or designated to record the proceedings referred to in sub-rule 9.1.1, must at the outset take an oath or make an affirmation. in the following form:

“I, AB, declare under oath or affirm that-

I shall faithfully and to the best of my ability record the proceedings and related matters by using the method determined by the Regulator, and

In accordance with section 54 of the Act, I shall treat as confidential the personal information which comes to my knowledge in the course of the performance of my official duties, except if the communication of such information is required by law or in the proper performance of my duties”

- 9.1.4 A person appointed or designated to transcribe the record of proceedings of the Regulator, must upon completion of the transcription, certify as follows-

“I, AB, certify that I have fully and to the best of my ability transcribed the whole of the record of the proceedings of the Regulator handed to me in this matter and hereby certify that the attached documents are true, accurate and complete transcripts of the proceedings of the Regulator held on (specify dates).”

9.2 Language used during investigation proceedings

- 9.2.1 Investigations and proceedings in terms of the Act and these Rules may be conducted in any of the official languages referred to in section 6 of the Constitution.

- 9.2.2 The official language of record for the investigation or any of the proceedings of the Regulator shall be in English.

- 9.2.3 A party who requires the services of an interpreter during any stage of the proceedings in terms of the Act shall give reasonable notice to the Regulator which shall make the necessary arrangements for an interpreter, free of charge.

9.3 Certificate of appointment of investigating officers

- 9.3.1 Any person appointed by the Regulator to conduct an investigation on any allegations of interference with the processing of personal information must be issued with a certificate of appointment or Investigator’s Identity Card, signed by the Chief Executive Officer of the Regulator.

9.3.2 The certificate of appointment or Investigator's Identity Card must set out the following:

9.3.2.1 the Information Regulator's logo;

9.3.2.2 the full names and employee number of the investigating officer;

9.3.2.3 a recent photograph of the investigating officer; and

9.3.2.4 the position held.

9.4 Security measures on integrity and confidentiality of personal information

9.4.1 The Regulator shall, as referred to in section 19 of the Act, secure the integrity and confidentiality of personal information received as result of a complaint lodged or an assessment conducted, by taking appropriate, reasonable technical and organisational measures to prevent-

9.4.1.1 loss of, damage to or unauthorised destruction of personal information; and

9.4.1.2 unlawful access to or processing of personal information.

9.4.2 Subject to sub-rule 9.4.3, the Regulator shall disclose information in its possession or under its control, only to the extent necessary to-

9.4.2.1 carry out an effective investigation;

9.4.2.2 publish reports in terms of section 40(2) of the Act; or

9.4.2.3 resolve a dispute; or

9.4.2.4 give effect to constitutional right of access to information, as regulated in the Promotion of Access to Information Act 2 of 2000.

9.4.3 The Regulator shall not disclose information about the identity or personal circumstances of the complainant, or information that could lead to the identification of the complainant, without the written permission of the complainant if-

9.4.3.1 the complainant requested that his or her personal particulars be kept confidential;

9.4.3.2 the information is protected by the Protected Disclosures Act, 2000 (Act No. 26 of 2000), or any other legislation; or

9.4.3.3 the Regulator is of the opinion that confidentiality is required to prevent imminent risk or serious harm to any person.

9.4.4 The Regulator shall, when the permission of the complainant is required in terms of sub-rule 9.4.3, inform the complainant if there is a risk that the complaint cannot be investigated or resolved without such consent.

10. SHORT TITLE AND COMMENCEMENT

These Rules are called the “*Rules of procedure relating to the manner in which a complaint must be submitted and handled by the Regulator, 2021*,” and shall come into operation on the date to be determined by the Regulator.

FORM 20

REQUEST FOR AN INTERNAL REVIEW

Privacy statement

Please note that the Information Regulator (Regulator) is collecting your personal information for resolving your complaint. The information will be provided to the relevant staff of the Regulator to enable your complaint to be investigated, which may include the responsible party. The information will not be disclosed by the Regulator to any third party without your consent or unless authorised or required by law. If the Regulator asks for information and you do not provide it, the Regulator may not be able to investigate your complaint.

CONTACT INFORMATION

Note – the internal review officer may need to contact you to discuss your request or clarify any information you have provided

Full Names of Complainant

Identity / Passport Number

Postal Address

Physical Address

Cell phone Number

Landline Number, if any

Fax Number, if any

Email address, if any

COMPLAINT REFERENCE NUMBER

NB: please attach a copy of the complaint outcome we sent you.

REASONS FOR SEEKING AN INTERNAL REVIEW

Please explain why you believe the original decision was incorrect, unreasonable or deficient. If you need more space, you can attach additional information (up to a maximum of two (2) pages).

Please note: an internal review cannot be requested simply because you disagree with the original decision or process. It is your responsibility to explain why the original decision is incorrect, unreasonable or deficient.

IS THERE ANY NEW AND RELEVANT INFORMATION THAT WAS NOT PREVIOUSLY KNOWN AND THAT HAS A MATERIAL EFFECT ON THE DECISION MADE?

NB: Please note that if there is no new and relevant information, the Regulator will not consider the application.



REGULATOR
(SOUTH AFRICA)

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

WHAT IS THE RELIEF SOUGHT?

Complainant's signature:

Date: