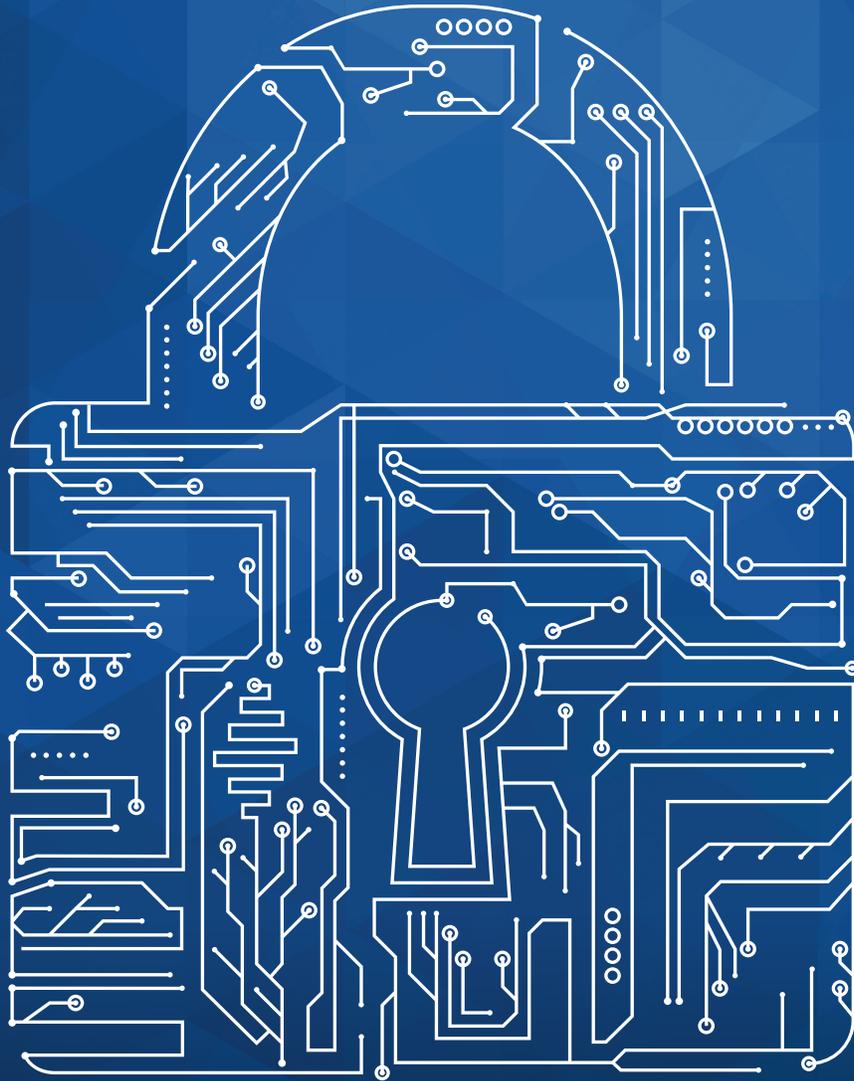


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POPIA GUIDELINES

POPIA or the POPI Act; the Protection of Personal Information Act



A quick guideline and resources for NGOs on POPIA

A QUICK GUIDELINE AND RESOURCES FOR NGOS ON POPIA*

WHAT IS POPIA?

Known as POPIA or the POPI Act, the Protection of Personal Information Act of 2013 came into law on 1 July 2021, for the sake of protecting personal information processed by public and private organisations or companies. This includes Trusts and NGOs.

In line with international standards, POPIA regulates the processing of personal information in a way that lawfully respects everyone's right to privacy. It provides a guideline of conditions that public and private organisations/companies need to follow to process personal information about people. POPIA also regulates personal information crossing South African borders and provides for the rights of persons regarding unwanted electronic communications and automated decision making.¹

POPIA has established an information regulator² (a national body/unit) that will exercise certain powers and perform duties and functions to ensure that organisations/companies are POPIA compliant.

If your organisation does not comply with POPIA, you could be subject to disciplinary action, a fine or even a prison sentence.

WHAT IS ITS PURPOSE?

According to Section 14 of our Constitution, everyone has the right to privacy and protection against unauthorised collection, retention, dissemination, and use of their personal information.

By requiring those who handle our personal information to protect it, POPIA helps protect us from harm, both physical and economic.

Now more than ever, it is critical that personal information be protected. Data is at greater risk than ever before because of the rise of computing power and mobile devices such as tablets and smart watches.

*Please note that the material and information contained in this guideline is for general information use and does not constitute as legal advice. While we have taken every precaution to ensure that the content in this guideline is accurate and current, your organisation should not solely rely on it to make any professional, personal or legal decisions. Please consult with the Information Regulator or legal experts where necessary.

1 Government Gazette of the Republic of South Africa, 2013. Protection of Personal Information Act - Volume 581. Cape Town, Page 1- 76. Available at: https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013protectionofpersonalinformationcorrect.pdf

2 Information Regulator (South Africa), 2021. Online Portal. Available at: <https://www.justice.gov.za/inforeg/portal.html>

TYPES OF PERSONAL INFORMATION

● WHAT'S PERSONAL INFORMATION?

Information that identifies a living person.



RACE AND GENDER



CONTACT



FINANCIAL



MEDICAL



EMPLOYMENT AND
CRIMINAL HISTORY



EDUCATION

● WHAT'S SPECIAL PERSONAL INFORMATION?

It's a subcategory of all personal information that's considered **sensitive information**. It's information that can be used to **unfairly discriminate** against a person like:



RACE AND ETHNICITY



CRIMINAL BEHAVIOUR



HEALTH



SEX LIFE



BIOMETRIC
INFORMATION



TRADE UNION
MEMBERSHIP



RELIGIOUS OR
PHILOSOPHICAL BELIEFS



POLITICAL
PERSUASION

WHAT'S DATA PROCESSING?

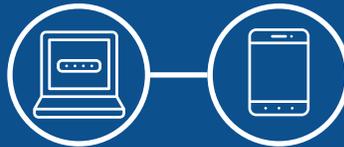
Processing personal information isn't just about opening a file, reading a document, or emailing information to someone. Processing includes:



DELETING OR EDITING DOCUMENTS



SAVING DOCUMENTS TO USB



TRANSFERRING DOCUMENTS FROM ONE DEVICE TO ANOTHER

Processing covers all the different ways you handle personal information in both physical and electronic information.



DOES POPIA ONLY APPLY TO ELECTRONIC INFORMATION?

No. POPIA applies to all personal information, regardless of what form it's in, including pictures.



PAPER



AUDIO RECORDINGS



VIDEO RECORDINGS



PICTURES



SOCIAL MEDIA

WHAT IS DATA RISK?

Data risk is the potential for a loss related to the personal information your organisation processes. This is applicable to failures in the storage, use, transmission, management and security of data. For example, you might lose data due to a technology breakdown, or someone external to the organisation might get access to the data, which can, for example, lead to identify theft.

WHO ARE THE ROLE PLAYERS IN THE ACT?

You will see in that the Act refers to:

- A The data subject.** That is the person that the information is about. At NGOs we often collect information about our beneficiaries, employees and programme implementers for example. These are all 'data subjects' under POPIA.
- B The responsible party.** That would be your organisation which is deciding how and why to collect information from people.
- C The operator.** If an organisation outsourced the processing of information on their behalf, the entity doing this work is called the operator.
- D The Information Officer** is one of the organisation's employees who has been appointed to encourage PoPIA compliance within your organisation.
- E The Information Regulator** monitors and enforces compliance by public and private organisations in South Africa in line with the POPI Act.

WHAT IS YOUR ORGANISATION'S RESPONSIBILITY IN TERMS OF PROCESSING INFORMATION LEGALLY?

- 1** You as an organisation (the responsible party) must be accountable to the POPI Act. This means you have the responsibility to comply with the Act. **[Accountability]**
- 2** You must have a good reason for collecting and processing the personal information of people. **[Processing limitation]**
- 3** The people whose information you are collecting (the data subjects) must know why you are collecting and processing the information and they must consent to that. **[Purpose specification]**
- 4** If information is used/processed more than once, it must be used for the same reasons that were originally communicated (to data subjects). **[Further processing limitation]**
- 5** You must ensure that the personal information that you collect and process is accurate and complete. **[Information quality]**
- 6** You must process the information in such a way that those whose information it is (the data subjects), know what is happening to their information. **[Openness]**
- 7** You must ensure that the information is stored in a safe and secure way. **[Security safeguards]**
- 8** You must notify/communicate to those whose information it is (the data subjects) about processing their information, and you must provide them with the opportunity to correct or update their information. **[Data subject participation]**

(Adapted from Sage: General Resources for Compliance with POPIA)³

³ Sage, 2021. POPIA Plain Language Guide. Available at: <https://www.sage.com/en-za/-/media/files/sagedotcom/southafrica/documents/legal/POPIa/sage-za-POPIa-infographic-january-2021.pdf?la=en-za&hash=5CC9C8FBD64561D62C7E2D2CDEFCE6A>

WHAT STEPS DO WE NEED TO TAKE TO BE POPIA COMPLIANT?

- 1 Download the [Act](#) and/or the [PAIA \(Promotion of Access to Information\) Manual](#) and become familiar with the regulations you need to follow.
- 2 Appoint an Information Officer and ensure that they are aware of their roles and responsibilities.
- 3 Make managers and key personnel in your organisation aware that the law has changed in accordance with the POPI Act and inform them about the consequences of non-compliance.
- 4 Document what Personal Information you currently have, where it comes from, how it is to be used and who you share it with.
- 5 Conduct an assessment of the risks/weak points of your current information protection systems.
- 6 Develop a POPIA policies and procedures guideline/manual and ensure that everyone who deals with Personal Information is aware of the legal implications of this Act. This guideline/manual should include your organisations policies with regards to:
 - > Data collection
 - > Data usage and restrictions
 - > Data storage
 - > Data security safeguards (such as password control and disaster recovery)
 - > The responsibilities of all directors, management, Information Officer, staff dealing with personal information, contractors and suppliers
 - > Complaints (the process, handling, legalities and transparency of complaints)
 - > The retention schedule and destruction schedule. Implement staff awareness training for current staff, new appointees and provide regular refresher training.
- 7 Put the procedures in place to monitor and enforce compliance.⁴

THE ROLE OF AN INFORMATION OFFICER

Your organisation will have to assign one of your staff members to the role of Information Officer. This person will be the champion of data protection within an organisation. Their responsibility is to encourage compliance, deal with requests made in relation to POPIA (by people whose information you collected [data subjects] and government's Information Regulator), work with the regulator on investigations and develop and monitor a compliance framework and manual.

Your Information Officer also needs to be registered with the Information Regulator. There is an online Information Officer Registration Portal where this is done.

The Information Officer also needs to ensure that the organisation keeps adequate records of all information. If someone withdraws consent, for example, the organisation needs to have a record of that. Your organisation should also perform data impact assessments, which is a process to help you identify and minimise the data protection risks of a project. If there is sensitive information, the Information Officer needs to be consulted.

⁴ Mullon, P., 2021. POPIA implementation | How to comply with the POPI Act. POPIact-compliance.co.za. Available at: <https://www.POPIact-compliance.co.za/POPIa-information/4-POPIa-implementation-actions>

SPECIAL PERSONAL INFORMATION AND CHILDREN

As NGOs we often work with children, so we should note that there are specific requirements in POPIA regarding children.

Children under 18 cannot consent for themselves unless they are emancipated minors, therefore consent is required from the child's parent or legal guardian.

The same conditions apply when processing special personal information. Special Personal Information includes religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information and/or criminal information.

You can process Special Personal Information only if the person whose information it is (the data subject) has consented; if it is necessary for the establishment of an obligation (information required to allow you to establish/honour a legal agreement); if it is necessary to comply with an obligation in terms of international law; if it is for historical, statistical or research purposes (in which case there are additional requirements); or if the information has deliberately been made public by the data subject.⁵

DO NGOS DO DIRECT MARKETING?

Direct Marketing entails selling products or services directly to the public by mail or telephone and not through retailers. As NGOs, we may think that Direct Marketing does not apply to us, however the information that we share in newsletters and publications to a database of interested individuals or other stakeholders, is considered direct marketing under the POPI Act.

People whose contact information you are drawing on (data subjects) have a right to object to the use (processing) of their personal information at any time for purposes of direct marketing. So all data subjects need to have consented to being on your mailing lists and receiving information from you via mail or telephone. They also cannot be approached more than once, and if someone objects, your organisation needs to notify the Information Officer immediately to remove them from your database, and you should not approach someone who has already objected again for consent.⁶

RESOURCES AND LINKS

- > The POPI Act: https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013protectionofpersonalinforcorrect.pdf
- > Information Regulator Online Portal: <https://www.justice.gov.za/inforeg/portal.html>
- > Protection of Personal Information Act website: <https://popia.co.za/>
- > The PAIA (Promotion of Access to Information Act) Manual: <https://www.justice.gov.za/paia/dojcd-paia-manual.pdf>

⁵ Government Gazette of the Republic of South Africa, 2013. Protection of Personal Information Act - Volume 581. Cape Town, Page 1- 76. Available at: https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013protectionofpersonalinforcorrect.pdf

⁶ PoPI Act Compliance, 2021. Direct Marketing. Available at: <https://www.popiaact-compliance.co.za/popia-information/13-direct-marketing>



DGMT is a South African public innovator through strategic investment. Our goal for South Africa is a flourishing people, economy and society. Towards this end DGMT currently distributes about R160-million per year and leverages and manages a similar amount of funding through joint ventures with other investors.