

Protection Of Personal Information Act No. 4 of 2013 (POPI Act) - And Its Impact On Your Business

The POPI Act has serious ramifications concerning the collection, use and storage of personal information and you should thoroughly familiarize yourself with the contents from day one when you are collecting information as part of your market research and applies to many aspects in other areas of your business.

The following extracts from the Act will give you an idea of what it covers

“The Act recognizes that everyone has the right to privacy which includes a right to protection against the unlawful collection, retention, dissemination and use of personal information. The Act states that the State must respect, protect, promote and fulfil the rights in the Bill of Rights. The objective of the Act is to “regulate, in harmony with international standards, the processing of personal information by public and private bodies in a manner that gives effect to the right to privacy subject to justifiable limitations that are aimed at protecting other rights and important interests.”

A responsible party must secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent :

- (a) loss of, damage to or unauthorised destruction of personal information; and
- (b) unlawful access to or processing of personal information

An operator or anyone processing personal information on behalf of a responsible party or an operator, must :

- (a) process such information only with the knowledge or authorisation of the responsible party; and
- (b) treat personal information which comes to their knowledge as confidential and must not disclose it, unless required by law or in the course of the proper performance of their duties. Where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person, the responsible party must notify -
 - (a) the Regulator (and the person who collected the data and is responsible for the misuse thereof)”

Prohibition on processing of special personal information

A responsible party may, subject to section 27, not process personal information concerning :

- (a) the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or
- (b) the criminal behaviour of a data subject to the extent that such information relates to -
 - (i) the alleged commission by a data subject of any offence; or
 - (ii) any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.

General authorisation concerning special personal information :

- (1) The prohibition on processing personal information, as referred to in section 26, does not apply if the -
 - (a) processing is carried out with the consent of a data subject referred to in section 26;
 - (b) processing is necessary for the establishment, exercise or defence of a right or obligation in law;
 - (c) processing is necessary to comply with an obligation of international public law;
 - (d) processing is for historical, statistical or research purposes to the extent that -
 - (i) the purpose serves a public interest and the processing is necessary for the purpose concerned; or
 - (ii) it appears to be impossible or would involve a disproportionate effort to ask for consent, and sufficient guarantees are provided for to ensure that the processing does not adversely affect the individual privacy of



- the data subject to a disproportionate extent;
- (e) information has deliberately been made public by the data subject; or
- (f) provisions of sections 28 to 33 are, as the case may be, complied with.

“(2) The Regulator may, subject to subsection (3), upon application by a responsible party and by notice in the Gazette, authorise a responsible party to process special personal information if such processing is in the public interest and appropriate safeguards have been put in place to protect the personal information of the data subject.”

Make sure you are thoroughly familiar with the act and get legal advice if necessary. Identify all areas where personal information is involved - legal contracts, agreements with suppliers/service providers, employees and customers. Take the necessary steps and make the required amendments to ensure the information complies with and is protected in terms of the requirements of the POPI Act. List possible areas of concern and create an action plan to rectify the situation.

Exercise: POPI