

# POPIA

**PROTECTION  
OF PERSONAL  
INFORMATION  
ACT, 2013  
(ACT NO 4  
OF 2013)**

**All your POPIA  
questions answered.**

## TO WHOM DOES POPIA APPLY?

There are very few businesses in South Africa that will not be impacted by POPIA.

## POPIA APPLIES TO

Any public or private body or any other person who, alone or in conjunction with others, determines the purpose of and means for processing personal information (responsible party).

Any person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of the responsible party.



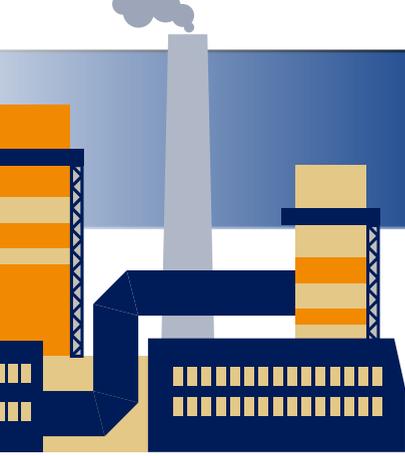
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Does POPIA also apply to personal information of **companies**?  
**Yes.**

Are there **any exemptions** or **exclusions** from compliance with POPIA?

**Yes.**

There are a number of exclusions and exemptions from compliance with the information processing principles prescribed by POPIA. These exclusions and exemptions apply depending on the type of information being processed and how it is processed.

## What is **personal information**?

Personal information is set out extremely wide stated and includes any information that can identify a person, including, but not limited to:

### CONTACT DETAILS



Email, phone no., address, etc.

### DEMOGRAPHICS

Age, sex, race, date of birth, ethnicity, etc.



### HISTORY



Employment, financial, educational, criminal, medical history

### OPINIONS

Opinions of and about the person



### BIOMETRICS



Biometric information, blood type, etc.

### CORRESPONDENCE

Private correspondence



## What is processing?

Processing broadly means anything that is done with the personal information, including:

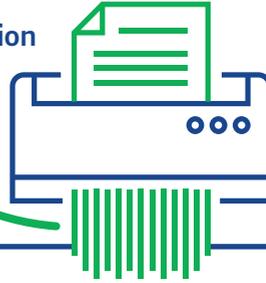


Collection, usage, and storage



Modification and destruction

Dissemination



1 July 2021

## When will POPIA come into effect?

POPIA will be fully implemented on 1 July 2021.

## What are some of the company obligations under POPIA?

Allow the subject of the information to see it upon request.



Ensure it is relevant and up to date

Only collect information that you need for a specific purpose

Only hold as much as you need, and only for as long as you need it

Apply reasonable security measures to protect it





# What is a record?

A record is any recorded information, regardless of form or medium, in the possession or under the control of a responsible party, whether or not it was created by a responsible party and regardless of when it came into existence.

## What is special personal information?



### INFORMATION CONCERNING:

- a child
- religious or philosophical beliefs
- race or ethnic origin
- trade union membership
- political opinions
- health
- DNA
- sexual life
- criminal behaviour

## What are the information processing principles?

There are

# 8

information processing principles which form the core of POPI.

These are:

**PROCESSING LIMITATION**  
 Processing must be lawful and personal information may only be processed if it is adequate, relevant, and not excessive, given the purpose for which it is processed. **1**

**INFORMATION QUALITY**  
 The responsible party must take reasonable practicable steps to ensure that the personal information is complete, accurate, not misleading, and updated, where necessary, taking into account the purposes for which it was collected. **2**

**ACCOUNTABILITY**  
 The responsible party must ensure that the eight information processing principles are complied with. **3**

## **PURPOSE SPECIFICATION**

Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party. The responsible party must take steps to ensure that the data subject is aware of the purpose for which his/her personal information is being collected.

4

## **FURTHER PROCESSING LIMITATION**

This is where personal information is received from a third party and passed on to the responsible party for further processing. In these circumstances, the further processing must be compatible with the purpose for which it was initially collected.

5

## **OPENNESS**

Personal information may only be processed by a responsible party who has notified the Information Protection Regulator. Further, certain prescribed information must be provided to the data subject by the responsible party, including what information is being collected, the name and address of the responsible party, the purpose for which the information is collected, and whether or not the supply of the information by the data subject is voluntary or mandatory.

6

## **SECURITY SAFEGUARDS**

The responsible party must secure the integrity of personal information in its possession or under its control by taking prescribed measures to prevent loss of, damage to, or unauthorised destruction of personal information and unlawful access to or processing of personal information.

7

## **DATA SUBJECT PARTICIPATION**

A data subject has the right to request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about the data subject and request from a responsible party the record or a description of the personal information held, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.

8

**A DATA SUBJECT MAY REQUEST A RESPONSIBLE PARTY TO:** correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, misleading or obtained unlawfully; or destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain.

**Can I send personal information overseas and can personal information be returned to South Africa?**



**Yes**, but there are restrictions on the sending of personal information outside South Africa, as well as on the transfer of personal information back to South Africa.

The applicable restriction will depend on the laws of the country to which the data is transferred, or from where the data is returned – as the case may be.

## Who is the Information Regulator and what are its powers?

**T**he Information Regulator is a juristic body appointed in terms of POPIA, with wide-ranging powers and duties, including:

- **Educating the public** about POPIA
- **Monitoring and enforcing compliance**
- **Handling complaints** about alleged **violations**
- Attempting to **resolve complaints** by means of **dispute resolution mechanisms** such as mediation and conciliation

Do I need to **provide an opt in or opt out** for direct marketing?



**OPT IN**

Responsible parties should **make use** of an opt-in system when using electronic communications to **conduct direct marketing**.

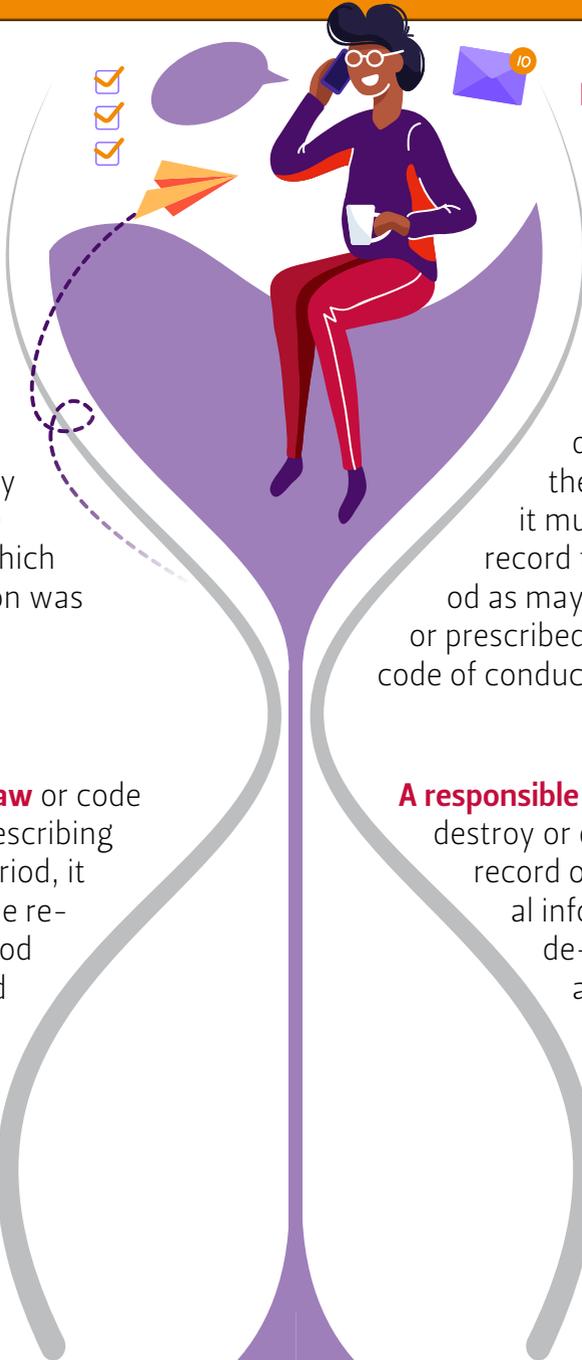
Issue, from time to time, **codes of conduct** and provide guidelines to assist bodies in developing or applying codes of conduct.

## For **how long** do I need to **retain** personal information under POPIA?

### **Subject to exemptions**

provided for in POPIA, personal information must not be retained for longer than necessary to achieve the purpose for which the information was collected.

**If there is no law** or code of conduct prescribing a retention period, it must retain the record for a period that will afford the data subject a reasonable opportunity to request access to the record.



**In addition,** if a responsible party has used the personal information of a data subject to make a decision about the data subject, it must retain the record for such period as may be required or prescribed by law or a code of conduct.

**A responsible party** must destroy or delete a record of personal information or de-identify it as soon as reasonably practicable after the responsible party is no longer authorised to retain the record.

## WHY SHOULD I COMPLY WITH POPIA?

1

POPIA promotes transparency with regard to what information is collected and how it is to be processed. This openness is likely to increase customer confidence in the organisation.

2

POPIA compliance involves capturing the minimum required data, ensuring accuracy, and removing data that is no longer required. These measures are likely to improve the overall reliability of the organisation's databases.

3

Compliance demands identifying personal information and taking reasonable measures to protect the data. This will likely reduce the risk of data breaches and the associated public relations and legal ramifications for the organisation.

**What is the sanction for non-compliance with POPIA?**

Non-compliance with the Act could expose the responsible party to a

**FINE OF R10 MILLION** and / or **IMPRISONMENT** of up to 10 years.