

THE PROTECTION OF PERSONAL INFORMATION ACT, 2013

FREQUENTLY ASKED QUESTIONS

1. What is the POPIA?

The Protection of Personal Information Act, 2013, or POPIA for short, is a piece of legislation that was enacted to promote and protect an individual's right to privacy. This right is located in section 14 of the Constitution, 1996.

2. Where can one obtain a copy of POPIA?

You can visit this website to obtain a copy of the Act - <https://popia.co.za/>.

3. What is the Right to Privacy?

The Right to Privacy is enshrined in the Constitution of the Republic of South Africa, 1996 which states that everyone has the right to privacy which includes the right to not have their person, home or property searched, their possessions seized or the privacy of their communications infringed.

4. What is the PAIA?

The Promotion of Access to Information Act, 2000, or PAIA for short, is a piece of legislation that was enacted to promote and enable an individual's constitutional right of Access to Information in terms of section 32 of the Constitution, 1996.

5. What is the purpose of the POPIA?

The POPIA was enacted to promote and protect an individual's right to privacy which includes the protection against unlawful collection, use, disclosure and destruction of their Personal Information. A Person has a duty to protect the Personal Information it processes and they need to have measures in place to prevent breaches and liability in terms of the POPIA.

6. What is the purpose of the PAIA?

The PAIA was enacted to promote and enable an individual's constitutional right of access to information. The main objective is to promote openness, accountability and effective governance of a Person. In terms of the PAIA, a Person must create a manual describing the types of records it holds and procedures in place when access to information is requested.

7. Who is a Person in terms of the POPIA and PAIA?

A Person means a natural or juristic person. A natural person is an individual human being and a juristic person is a legal entity, such as a company, trust or close corporation.

8. Who does the POPIA apply to?

The POPIA applies to a natural or juristic person, public or private body, domiciled within or outside of South Africa, that processes Personal Information within South Africa.

9. Is the POPIA applicable to smaller contractors and registered companies?

Yes, the POPIA is applicable to any contractor or company that processes personal information. If your company's processes fall within the definitions provided for in the Act, you are required to comply with its provisions.

10. What is Processing?

Processing means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including the collection, receipt, recording, collation, storage, updating or modification, retrieval, alteration, consultation or use, dissemination by means of transmission, distribution or making available in any other form, or merging, linking, as well as restriction, degradation, erasure or destruction of information.

11. Once an owner is no longer a member of a Body Corporate, how long must their information be retained before it must be destroyed?

Information must be retained by a person for as long as required by applicable legislation, otherwise it must be destroyed as soon the information is no longer required for the purposes that the information was originally processed for.

12. What effect does the POPIA have on Facebook and WhatsApp Groups?

These groups are permitted in terms of the POPIA but it is a requirement that one obtain consent to add a person to a group. All participants must also be cautioned that if any information shared on the group is processed thereafter, the further processing must comply with the conditions set out by the POPIA.

13. Is consent required when information relating to an owner is required or requested?

No, if there is a lawful basis that empowers you to process the information then no consent is required. For sectional title schemes the lawful basis is Prescribed Management Rule (“PMR”) 27 of the Sectional Titles Schemes Management Act. For homeowner associations one needs to refer to the Constitution or Memorandum of Incorporation to see if there is a clause that empowers you to share personal information.

14. What effect does the POPIA have on PMR 27?

A body corporate or Managing Agent must still comply with PMR 27, irrespective of the POPIA. PMR 27 allows for the processing of personal information. As long as there is a lawful basis within which information can be shared, then you are empowered to do so.

15. Can a Chairperson obtain email addresses of owners from the managing agent for communication purposes?

Yes, PMR 27 allows you to do so.

16. In what circumstances can personal information (e.g. CCTV footage) be provided to law enforcement and attorneys?

If the footage requested relates to a member of a body corporate or other community scheme, then one would be required to provide the information to an attorney if that member requested it. They are empowered to do so in terms of PMR 27. One would need to look at a homeowner association’s Constitution or Memorandum of Incorporation to see if the governing document empowers the release of the information.

If the footage request comes from someone other than a member of a community scheme, they would have to apply for the information in terms of the process outlined by the Promotion of Access to Information Act.

When sharing information of this nature, whether you are empowered to do so or not, it is important that the requirements for the processing of personal information in terms of the POPIA also be complied with.

Personal information requested by the SAPS falls outside the ambit of the POPIA, parties must provide personal information to the SAPS when requested.

17. Must levy statements sent to owners be password protected or encrypted?

There is no requirement in terms of the POPIA that documents be password protected or encrypted. The party sending out statements just needs to ensure that the information being sent is being done so securely.

18. How long can one keep CCTV and biometric information captured at access and egress points?

The POPIA requires that information only be kept for as long as required to satisfy the purpose that it was originally collected for.

19. Can a list of delinquent owners (levy arrears) be provided at an Annual General Meeting to other owners in the scheme?

Yes, it is a requirement in terms of the Sectional Titles Schemes Management Act that owners be made aware of which other owners are in arrears with their levy account.

20. How do access control systems at buildings (security, biometrics, registers) need to adapt to the POPIA?

The POPIA prescribes eight conditions / principles that need to be complied with when a person processes personal information, this includes the collecting of information via access control. These conditions are listed in section 8 to 25 of the POPIA.

21. What is Personal Information?

Personal Information is information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person and includes, but is not limited to, banking information, email addresses, biometric information, registered names, identity information, marital statuses, nationalities, registered names, service addresses, contact numbers, insurance information and accounting records.

22. Can a Managing Agent provide owner contact information to other owners?

Yes, PMR 27 authorises them to do so. The POPIA requires that the processing of personal information be done so in a lawful manner. PMR 27 is the lawful manner in this instance.

23. If an owner sends a request for their details to be updated, must they now complete a further form?

No, the POPIA creates a positive duty for a person to update personal information when it is received from an owner.

24. By when must one be compliant with the POPIA?

The POPIA came into effect on 1 July 2020. The 12-month grace period for compliance commenced on 1 July 2020. This means that every Person who processes Personal Information has until 30 June 2021 to comply with the POPIA's comprehensive requirements.

25. Who is responsible for ensuring compliance with POPIA?

Any person who processes personal information. If POPIA applies to you, then you are responsible for compliance. Furthermore, the Information Officer appointed by a company is the person responsible for compliance with the POPIA.

26. Do trustees need to sign confidentiality agreements in terms of the POPIA?

No. The POPIA creates a positive duty to protect personal information. The entering into of an agreement does not mean that if one doesn't, there is no requirement to keep information confidential.

27. In the event of a data breach how will a Person be expected to disclose such a breach and to whom?

The POPIA states that a Person must notify the Information Regulator and the data subject/s of any breach and the notification must be done as soon as possible. Any delay is only acceptable if the data subject/s' identity is unknown. The data subject/s must be notified in writing (by letter or email).

28. Will insurance cover a community scheme in the event of a data breach?

Community schemes are encouraged to contact their insurer or insurance broker to ensure that the necessary cover is in place should a data breach occur.

29. Who is a data subject?

The data subject is any party to whom Personal Information processed relates.

30. Who is the Information Regulator?

The Information Regulator was established on 1 December 2016 and is the regulator that was created by the POPIA. Data subjects are able to complain to the Information Regulator who then takes action on behalf of the complainants. One of the functions of the Information Regulator is to protect data subjects from harm and ensure that their Personal Information is protected by responsible parties. Similar to the Public Protector, the Information Regulator can hold responsible parties accountable for not complying with the POPIA.

31. What are the responsibilities of the Information Regulator?

The powers, duties and functions of the Regulator are to:

- (a) Provide education;
- (b) Monitor and enforce compliance;
- (c) Consult with interested parties;
- (d) Handle complaints;
- (e) Conduct research and to report to Parliament; and
- (f) Issue codes of conduct for different sectors.

32. Do I have to notify the Information Regulator of any and all data breaches?

Yes. Where there are reasonable grounds to believe that the Personal Information of a data subject has been accessed or acquired by any unauthorised person, a Person must notify the Regulator. Any number of breaches requires a notification to the Regulator, including just one minor breach. The Regulator may instruct the responsible party to publicise the breach if this publication would protect the data subjects and enable them to timeously deal with the consequences of any breach.

33. What happens if I do not follow the POPIA?

If a Person acts recklessly with Personal Information, one not only faces regulatory sanctions, but they also run the risk of damaging client relationships and their overall business reputation. Non-compliance can also expose a Person to penalty or fine of up to R10 million and / or imprisonment of 12 months up to 10 years.

34. How does a Person become compliant with the POPIA?

STEP ONE - Training

Knowledge is power. Having a high-level awareness and understanding of the POPIA is crucial in helping a Person decide what their next steps should be.

It is advisable that a Person consult with a suitably qualified professional to assist them in achieving their POPIA compliance before 30 June 2021.

STEP TWO - Appoint an Information Officer and register them with the Information Regulator

The POPIA requires that a Person appoint and register its Information Officer with the Information Regulator before taking up his or her respective duties in terms of the POPIA.

35. What is an Information Officer?

An Information Officer is someone who is responsible for ensuring compliance with the POPIA. Persons appointed and as Information Officers are responsible for encouraging and ensuring compliance with the conditions imposed by the POPIA when processing Personal Information. They are also responsible for maintaining the compliance framework in step three.

A Person is also responsible to ensure that the Information Officer receives the appropriate training and keeps abreast of all the latest developments in terms of the POPIA and other data privacy regulations.

Who is permitted to be the Information Officer?

There are no legal requirements that an Information Officer have a formal qualification but it is important to ensure that the Information Officer receives the appropriate training and keeps abreast of all the latest developments in terms of the POPIA and other data privacy regulations.

36. What happens in the event that the Chairperson of a scheme does not want to be the information officer?

The Information Regulator has indicated that the head of an organisation (chairperson) is automatically appointed as the information officer of a scheme, unless someone else authorised to do so is appointed by the scheme as the information officer.

37. If no appointment of an information officer is made, does the Chairperson of a community scheme become, by default, the Information Officer?

Yes. For more information click here for access to the guidelines provided by the Information Regulator relating to the Information Officer - <https://justice.gov.za/infoereg/docs/InfoRegSA-GuidanceNote-IO-DIO-20210401.pdf>

38. Do community schemes need an Information Officer? And must they be registered with the Information Regulator by 1 July 2021?

Yes. For more information click here for access to the guidelines provided by the Information Regulator relating to the Information Officer - <https://justice.gov.za/inforeg/docs/InfoRegSA-GuidanceNote-IO-DIO-20210401.pdf>

39. What is the procedure for the registration of an Information Officer?

An Information Officer must complete and submit a registration form to the Information Regulator. This can be done so via email or via the Regulator's online portal.

Below are the details for registration:

Via email: registration.IR@justice.gov.za

Via the online portal: <https://justice.gov.za/inforeg/portal.html>

40. How do I amend the Information Officer or scheme details if already registered?

One can do so by contacting the Regulator via their email address listed above.

STEP THREE - Develop a POPIA compliance framework to guide compliance

In terms of the POPIA, a Person must develop, implement and monitor a compliance manual setting out the lifecycle of Personal Information it processes.

The POPIA manual is a document that assists the Scheme to be compliant and to align itself with the purpose and intent of the POPIA. The manual must contain the following:

- (a) The details of the Person who processes Personal Information;
- (b) The appointed Information Officer;
- (c) How Personal Information is collected;
- (d) What Personal Information is collected;
- (e) How Personal Information is used;
- (f) How Personal Information is stored;
- (g) Who has access to the Personal Information processed;
- (h) How Personal Information is shared;
- (i) How Personal Information is maintained; and
- (j) How is Personal Information destroyed.

41. Can and should one demand a POPIA manual from their Managing Agent?

The Managing Agent must advise a community scheme as to the requirements for compliance with the POPIA. They also need to provide options whereby the drawing up of the document can take place. The Managing Agent is not required to prepare the manual, they must just provide options whereby a scheme can have the document drawn up for them.

What POPI policy does a scheme need if it does not have CCTV cameras or biometric security requirements?

Step 4 - Prepare and implement a PAIA Manual

A Person must create a manual describing the types of records it holds and procedures in place when access to information is requested. The manual must also be submitted to the South African Human Rights Commission for their records.

Step 5 – Prepare and upload a Privacy Policy to your website

A person must upload a privacy policy to their website (if applicable) informing data subject/s of the lifecycle of their Personal Information when making use of the website.

42. Is a Privacy Policy a requirement if a community scheme does not have a website?

A privacy policy is a document that discloses some or all of the ways a party gathers, uses, discloses, and manages a customer or client's data when they access their website. It is not a requirement if the scheme does not have a website.

STEP 6 - Prepare addendums to all Agreements requiring parties to the agreements to be POPIA compliant

This includes agreements with managing agents, employees and service providers of a scheme.

43. What information is important to add to current or new employment contracts?

All that is required is that an employee consents to their personal information being processed by their employer.

44. 18. Don't Panic

There is no shortage of people selling offerings related to the POPIA: workshops, conferences, tech solutions, programmes and online courses.

How does one cut through the noise? **TVDM Consultants** have done the hard work and put in the hours needed to uncover what an organisation requires for compliance with the POPIA.

Contact us on info@tvdmconsultants.com or 061 536 3138 for assistance with training and consulting to determine the specific needs for yourself or your organisation.