Western Cape Government
Cultural Affairs and Sport

STRATEGIC AND OPERATIONAL MANAGEMENT SUPPORT

DEPARTMENTAL INFORMATION MANAGENT
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POPIA FREQUENTLY ASKED QUESTIONS (FAQs)

1. What is POPIA?
The Protection of Personal Information Act, Act No.4 of 2013.

2. What is the purpose of POPIA?
The purpose is to regulate the processing of Personal Information. It is aimed to encourage the flow of information in a secure and responsible manner. The spirit of the Act is to ensure that organisations that hold and process personal information do so carefully and with respect for the rights and interests of the people to whom it pertains.

3. Who does POPIA apply to?
Public and Private Sector.
Natural and Juristic persons (meaning registered companies and organisations).
Paper and electronic records.

4. Who is the Information Officer?
The Head of Department, Mr. Guy Redman

5. Who is the Deputy Information Officer?
The Director: Strategic and Operational Management Support, Mr. Shaun Julie

6. What is the role of the Information Officer?
The Information Officer is responsible for ensuring that the organisation complies with PAIA and the POPI Act. They must be registered with the Information Regulator.

7. What is considered personal information (PI)?
PI is information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing, juristic person. Therefore, any information about an identifiable human being or an identifiable company.

- **Examples of PI include but not limited to:**
  Race, Gender, Sex, Marital Status, Nationality, Sexual Orientation, Age, Physical or Mental Health, Disability, Religion, Language, Education, Medical, Financial, Employment, ID, Email, Address, Telephone Number, Location information, Blood Type, Biometric Information, Personal Opinions, Preferences, Private or Confidential Correspondence, Views or Opinions of another person.

8. What is the definition of a Responsible Party?
A person or company who collects, processes, stores and uses personal information.

9. Who is an Operator?
A person or company who processes personal information on behalf of the responsible party.

10. Who is the Data Subject?
A person who provides information about himself/herself. These can be individuals or businesses.

11. How much information about a person can I collect, process and use?
As stated in the condition of processing limitation, the POPI Act requires you to apply the principle of minimality and only collect PI that you absolutely need to be able to service a customer, staff member or third party. Since the POPI Act also requires that you specify the reasons for the collection of PI, if you don't have a valid reason for why you need certain personal information, you shouldn't be collecting it.

12. What does consent mean?
Consent means any voluntary, specific and informed expression of will in terms of which a data subject agrees to the processing of personal information relating to him or her or it.

13. How should we get "consent"?
- A person must have a choice whether to consent or not (it must be voluntary)
- The consent must relate to a specific purpose and you must specify your purpose.
- You must notify the data subject of various things as set out in section 18 of the POPIA.
- You must inform the person sufficiently to enable them to decide.
- The person must express their will in some form.

14. What is "processing"?
Processing means any operation or activity, whether by automatic means, concerning personal information including:

- **OBTAINING:**
  Collection, Receipt, Recording, Organisation, Collation, Storage, Updating, Modification, Retrieval, Alteration
- **DISSEMINATION:**
  Transmission, Distribution, Making available
- **DESTROYING:**
  Merging, Linking, Restriction, Erasure, Destruction

15. What are common examples of the breach of POPIA?
- Loss of personal information due to inadequate security safeguards
- Collecting personal information without having obtained the necessary consent
- Sending personal information to people who are not supposed to have it
- Breach of security safeguards (network with personal information is hacked)

- Not complying with an enforcement notice issued by the Information Regulator
- Processing special personal information without there being a necessity

16. What can I not do with PI?
Use it for any purpose other than the purpose for which it was authorised.

17. Who can I send PI to?
Only people and organisations authorised by the data subject or those people and organisations allowed under the POPI Act. Once you have established justification for forwarding the PI you must ensure that those people or organisations also comply with the POPI Act and have appropriate security safeguards.

18. What are the POPIA conditions for protecting PI?
There are eight (8) conditions and four (4) special conditions. The eight conditions are Accountability, Processing Limitation, Purpose Specification, Further Processing Limitation, Information Quality, Openness, Security Safeguards and Data Subject Participation.

19. Can I keep PI for longer than the legally prescribe period?
Your Records Retention Policy will inform retention periods for all types of PI you collect from your data subjects. If there is a valid business reason as to why you should keep the information beyond the prescribed retention periods, you can do so, provided that you have informed the Regulator and the Data Subject of the intention and purpose.

20. Who can have access to PI?
Authorised people using the specific personal information for its intended purpose.

21. How does POPIA apply to company information?
A juristic person (non-natural) is regarded as an entity covered by the POPI Act. Therefore, organisations also have personal information and special personal information as defined by the Act.

22. What happens if the Department don't comply with the Act?
There are significant consequences for non-compliance, including up to R10million in fines per offence and/or up to 10 years in prison per offence.

23. What happens if an employee doesn't comply with the Act?
Disciplinary procedures can be instituted against the employee/s.

24. Can I store job applicant's CVs indefinitely, even after their application have failed?
No, unless you have obtained their specific consent for this.

25. Can I keep PI about employees who have left the Department?
You are required by certain laws to keep records of staff (even when they leave) for certain periods of time. Beyond this retention period, you should dispose of the information. The retention period for employees that have left the organisation should be defined in the Records Retention Policy.

26. Can employees share PI of customer, employees & service providers?

Yes and no. It depends on the context of the situation. If it is business-related, i.e. for the intention of servicing the customer (e.g. resolving a query or complaint) then yes, it is normal that a customer's information would need to be shared across business units to get an issue resolved. If the employee is sharing customer's information with a friend or relative to assist their business in finding customers or for example is sending a customer list to a competitor, then no that is strictly forbidden.

27. How does POPIA apply to supplier information?

As the responsible party, you share certain personal information with suppliers that you interact with. It is important to have formal third–party agreements with all your suppliers, especially the ones that make use of your data subject's personal information to provide services on your behalf. This contract between you and your supplier prescribes the privacy and requirements that you can hold your suppliers accountable to with regards to the processing of personal information.

28. Will the Department be held liable if the Department get a third party to process PI on our behalf?

Yes, if a third party or supplier breaches any of your customer, employee or other suppliers' information, you will still remain accountable and liable to the data subject. You can be found to be in breach of the POPI Act and will be liable for the penalties.

29. What happens when a third party breaches the POPI Act?

A third party is held to be an Operator in terms of the Act. That means they are still responsible for what happens by way of the contract they would have concluded with you before they started to act on your behalf. The Departmental Security Manager will have to investigate the breach according to your Departmental Incident and Breach Management procedures.

30. Do cloud solutions have to be POPIA compliant?

Absolutely. There is a vast array of concerns. While in transit, the PI must be protected (encrypted, de-identified if possible). The cloud environment, if in another country, must provide the same if not more protection as is required in South Africa.

31. Where can I send comments, questions for clarity to?

You can send all comments, questions for clarity or general enquiries pertaining to POPI to Carmen September at Carmen.September@westerncape.gov.za.