

# POPI

PROTECTION OF  
PERSONAL INFORMATION



All your POPI questions answered.

## TO WHOM DOES POPI APPLY?

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



POPI APPLIES TO

Any public or private body or any other person which, 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.

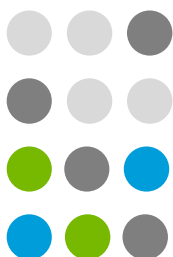


Does POPI also apply to personal information of companies?  
Yes.

Are there any exemptions or exclusions from compliance with POPI?

Yes.

There are a number of exclusions and exemptions from compliance with the information processing principles prescribed by POPI. 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 extremely widely stated and includes any information that can identify a person including but not limited to:



Email,  
telephone,  
address etc.

## CONTACT DETAILS



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

## DEMOGRAPHICS



Employment,  
financial,  
educational,  
criminal,  
medical history

## HISTORY



Opinions of and  
about the person

## OPINIONS



Biometric  
information  
Blood type etc.

## BIOMETRICS



Private  
correspondence

## CORRESPONDENCE

# What is processing?

Processing means broadly anything done with the Personal Information, including:



Collection  
usage &  
storage



Dissemination



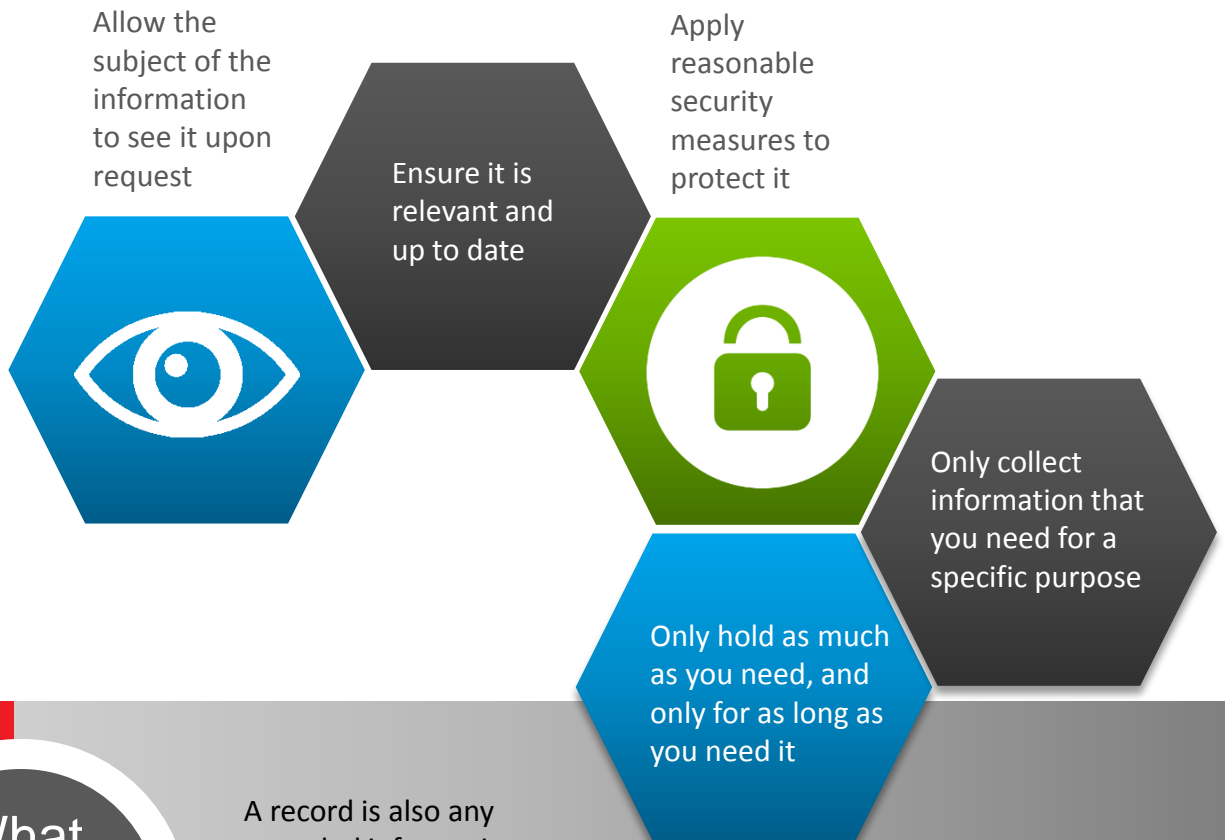
Modification &  
destruction

# When will POPI affect me?



The Act was partially enacted on 11 April 2014. We are awaiting the commencement date of the other sections of the Act. Once the Act comes into force and a compliance grace period of 1 year will apply.

## WHAT ARE SOME OF THE COMPANY OBLIGATIONS UNDER POPI ?



## What is a record?

A record is also 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?

A higher degree of protection is given to special personal information under POPI given the highly sensitive nature of such information. Special personal information includes:



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 reasonably 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 that 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 that 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

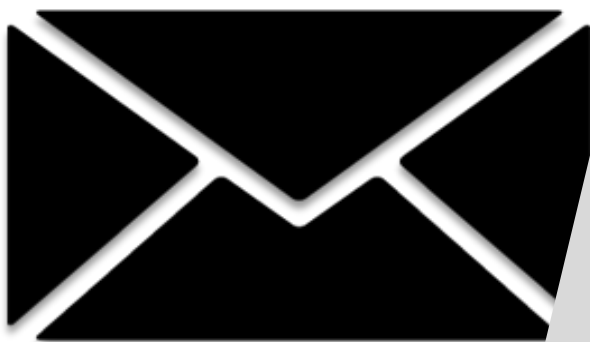
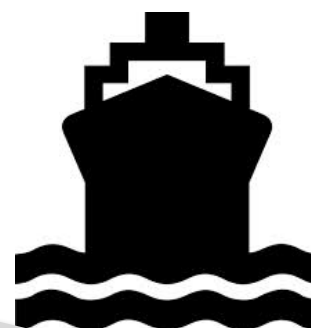
A data subject has the right to request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about the data subject and request from a responsible party the record or a description of the personal information held, including information about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

8

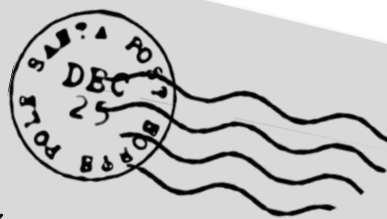
### A data subject may request a responsible party to:

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 restrictions will depend on the laws of the country to whom 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?

The Information Regulator is a juristic body that will be appointed in terms of POPI and will have wide ranging powers and duties including:



Educate the public about POPI



Monitor and enforce compliance



Handle complaints about alleged violations



Attempt 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 make guidelines to assist bodies to develop codes of conduct or to apply codes of conduct.

Subject to exemptions provided for in POPI, personal information must not be retained (any) longer than (is) necessary for achieving the purpose for which the information was collected.

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.

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

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.

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

# WHY SHOULD I COMPLY WITH POPI?

1

POPI 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

POPI 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 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 POPI?

Non-compliance with the Act could expose the Responsible Party to a penalty of a **FINE OF R10 MILLION** and / or imprisonment of up to 10 years.



## WHAT ARE THE TRANSITIONAL PROVISIONS PROVIDED FOR BY POPI?

Processing of personal information which is taking place on the date when POPI comes into force and does not conform to POPI must comply within one year of such date.