Protection of Personal Information Act

Purpose. People. Platform.

(Act 4 of 2013)

DEFINITIONS AND PURPOSE

Definitions

1. In this Act, unless the context indicates otherwise—

"biometrics" means a technique of personal identification that is based on physical, physiological or behavioural characterisation including blood typing, fingerprinting, DNA analysis, retinal scanning and voice recognition;

"child" means a natural person under the age of 18 years who is not legally competent, without the assistance of a competent person, to take any action or decision in respect of any matter concerning him or herself;

"code of conduct" means a code of conduct issued in terms of Chapter 7; "competent person" means any person who is legally competent to consent to any action or decision being taken in respect of any matter concerning a child;

"consent" means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information; "Constitution" means the Constitution of the Republic of South Africa, 1996; "data subject" means the person to whom personal information relates;

"de-identify", in relation to personal information of a data subject, means to delete any information that—

(a) identifies the data subject;

(b) can be used or manipulated by a reasonably foreseeable method to identify the data subject;

(c) can be linked by a reasonably foreseeable method to other information that

identifies the data subject;

and "de-identified" has a corresponding meaning;

"direct marketing" means to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of—

(a) promoting or offering to supply, in the ordinary course of business, any goods

or services to the data subject; or

(b) requesting the data subject to make a donation of any kind for any reason; "electronic communication" means any text, voice, sound or image message sent over an electronic communications network which is stored in the network or in the recipient's terminal equipment until it is collected by the recipient; "

enforcement notice" means a notice issued in terms of section 95;

"filing system" means any structured set of personal information, whether centralised, decentralised or dispersed on a functional or geographical basis, which is accessible according to specific criteria;

"information matching programme" means the comparison, whether manually or by means of any electronic or other device, of any document that contains personal information about ten or more data subjects with one or more documents that contain personal information of ten or more data

subjects, for the purpose of producing or verifying information that may be used for the purpose of taking any action in regard to an identifiable data subject; "information officer", of or in relation to, a

public body means an information officer or deputy information officer as contemplated in terms of section 1 or 17; or

(b) private body means the head of a private body as contemplated in section 1,

of the Promotion of Access to Information Act; 50

"Minister" means the Cabinet member responsible for the administration of justice;

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

of that party;

"person" means a natural person or a juristic person;

"personal information" means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to—

(a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

(b) information relating to the education or the medical, financial, criminal or employment history of the person;

(c) any identifying number, symbol, e-mail address, physical address, telephone 10 number, location information, online identifier or other particular assignment

to the person;

(d) the biometric information of the person;

(e) the personal opinions, views or preferences of the person;

(f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents

of the original correspondence;

(g) the views or opinions of another individual about the person; and

(h) the name of the person if it appears with other personal information relating to

the person or if the disclosure of the name itself would reveal information 20 about the person;

"prescribed" means prescribed by regulation or by a code of conduct;

"private body" means—

(a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;

(b) a partnership which carries or has carried on any trade, business or profession;

(c) any former or existing juristic person, but excludes a public body;

"processing" means any operation or activity or any set of operations, whether

ot by automatic means, concerning personal information, including—

(a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

(b) dissemination by means of transmission, distribution or making available in any other form; and

(c) merging, linking, as well as restriction, degradation, erasure or destruction of

information;

"professional legal adviser" means any legally qualified person, whether in private practice or not, who lawfully provides a client, at his or her or its request, with

independent, confidential legal advice;

"Promotion of Access to Information Act" means the Promotion of Access to

Information Act, 2000 (Act No. 2 of 2000);

"public body", means—

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or

(b) any other functionary or institution when—

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation;

"public record" means a record that is accessible in the public domain and which is in the possession of or under the control of a public body, whether or not it was created by that public body;

"record" means any recorded information—

(a) regardless of form or medium, including any of the following:

(b) Writing on any material;

(c) information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;

(d) label, marking or other writing that identifies or describes any thing of

which it forms part, or to which it is attached by any means;

(e) book, map, plan, graph or drawing;

(f) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

(g) in the possession or under the control of a responsible party;

(h) whether or not it was created by a responsible party; and

(i) regardless of when it came into existence;

"Regulator" means the Information Regulator established in terms of section 39; "re-identify", in relation to personal information of a data subject, means to resurrect any information that has been de-identified, that—

(a) identifies the data subject;

(b) can be used or manipulated by a reasonably foreseeable method to identify the data subject; or

(c) can be linked by a reasonably foreseeable method to other information that identifies the data subject,

and "re-identified" has a corresponding meaning;

"Republic" means the Republic of South Africa;

"responsible party" means a 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;

"restriction", in relation to a record, means the withholding from any

processing of the record;

"special personal information" means personal information as referred to in section 26;

"this Act" includes any regulation or code of conduct made under this Act; and "unique identifier" means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party.

Purpose of Act

2. The purpose of this Act is to—

(a) give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at—

(i) balancing the right to privacy against other rights, particularly the right

of access to information; and

(ii) protecting important interests, including the free flow of information within the Republic and across international boundaries;

(b) regulate the manner in which personal information may be processed, by establishing conditions, in harmony with international standards, that 30

prescribe the minimum threshold requirements for the lawful processing of personal information;

(c) provide persons with rights and remedies to protect their personal information from processing that is not in accordance with this Act; and

(d) establish voluntary and compulsory measures, including an independent

Information Regulator, to ensure respect for and to promote, enforce and fulfil the rights protected by this Act.

APPLICATION PROVISIONS

Application and interpretation of Act

3. (1) This Act applies to the processing of personal information

(a) entered in a record by or for a responsible party by making use of a automated or non-automated means: Provided that when the recorded personal informa- tion is processed by non-automated means, it forms part of a filing system or is intended to form part thereof; and

(b) where the responsible party is—

(i) domiciled in the Republic; or

(ii) not domiciled in the Republic, but makes use of automated or non-automated means in the Republic, unless those means are used only to forward personal information through the Republic.

(2) (a) This Act applies, subject to paragraph (b), to the exclusion of any provision of

any other legislation that regulates the processing of personal information that is materially inconsistent with an object, or a specific provision, of this Act.

(b) If any other legislation provides for conditions for the lawful processing of personal information that are more extensive than those set out in Chapter 3, the extensive conditions prevail.

(3) This Act must be interpreted in a manner that—

(a) gives effect to the purpose of the Act set out in section 2; and

(b) does not prevent any public or private body from exercising or performing its powers, duties and functions in terms of the law as far as such powers, duties

and functions relate to the processing of personal information and such

processing is in accordance with this Act or any other legislation, as referred to in subsection (2), that regulates the processing of personal information.

(4) "Automated means", for the purpose of this section, means any equipment capable of operating automatically in response to instructions given for the purpose of processing information.

Lawful processing of personal information

2. (1) The conditions for the lawful processing of personal information by or for a responsible party are the following:

"processing", is presumed to be in accordance with this Act, unless the contrary is proved.

(2) This section does not apply to personal information that is excluded from the processing of personal information prescribed in terms of section 6 or 7, from the operation

of this Act

(3) exempted in terms of section 37 or 38, from one or more of the conditions

concerned in relation to such processing.

(4) The processing of the special personal information of a data subject is prohibited in terms of section 26, unless the

(a) exceptions in sections 27 to 33 are applicable; or

(b) Regulator has granted an authorisation in terms of section 27(2),

in which case, subject to section 37 or 38, the conditions for the processing of information as referred to in Chapter 3 must be complied with.

(4) The processing of the personal information of a child is prohibited in terms of section 34, unless the—

(a) provisions of section 35(1) are applicable; or 50

(b) Regulator has granted an authorisation in terms of section 35(2),

in which case, subject to section 37, the conditions for the lawful processing of personal information as referred to in Chapter 3 must be complied with.

(5) The processing of the special personal information of a child is prohibited in terms

of sections 26 and 34 unless the provisions of sections 27 and 35 are applicable in which case, subject to section 37, the conditions for the lawful processing of personal information as referred to in Chapter 3 must be complied with.

(6) The conditions for the lawful processing of personal information by or for a responsible party for the purpose of direct marketing by any means are reflected in Chapter 3, read with section 69 insofar as that section relates

to direct marketing by means of unsolicited electronic communications.

(7) Sections 60 to 68 provide for the development, in appropriate circumstances, of codes of conduct for purposes of clarifying how the conditions referred to in subsection (1), subject to any exceptions which may have been granted in terms of section 37, are

to be applied, or are to be complied with within a particular sector.

Rights of data subjects

3. A data subject has the right to have his, her or its personal information processed in accordance with the conditions for the lawful processing of personal information as referred to in Chapter 3, including the right—

(a) to know that personal information about him, her or it is being collected as provided for in terms of section 18; or

(b) his, her or its personal information has been accessed or acquired by an unauthorised person as provided for in terms of section 22;

(c) to establish whether a responsible party holds personal information of that data subject and to request access to his, her or its personal information as provided for in terms of section 23;

(b) to request, where necessary, the correction, destruction or deletion of his, her or its personal information as provided for in terms of section 24;

(d) to object, on reasonable grounds relating to his, her or its particular situation to the processing of his, her or its personal information as provided for in terms of section 11(3) (a);

(e) to object to the processing of his, her or its personal information

(i) at any time for purposes of direct marketing in terms of section 11(3)(b); or

(ii) in terms of section 69(3)(c);

(f) not to have his, her or its personal information processed for purposes of direct marketing by means of unsolicited electronic communications except as referred to in section 69(1);

(g) not to be subject, under certain circumstances, to a decision which is based solely on the basis of the automated processing of his, her or its personal information intended to provide a profile of such person as provided for in terms of section 71;

(h) to submit a complaint to the Regulator regarding the alleged interference with the protection of the personal information of any data subject or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in terms of section 74; and

(i) to institute civil proceedings regarding the alleged interference with the protection of his, her or its personal information as provided for in section 99.

Exclusions

4. (1) This Act does not apply to the processing of personal information—

(a) in the course of a purely personal or household activity;

(b) that has been de-identified to the extent that it cannot be re-identified again;

(c) by or behalf of a public body—

(i) which involves national security, including activities that are aimed at assisting the identification of the financial of terrorist and related activities, defence or public safety; or

(ii) the purpose of which is the prevention, detection, including assistance in the identification of the proceeds of unlawful activities and the combat of money laundering, activities, investigation or proof of offences, the prosecution of offenders or the execution of or enforcement of sanctions or measures, to the extent that adequate safeguards have been established in legislation for the protection of such personal information;

(d) by the Cabinet and its committees or the Executive Council of a province; or

(e) relating to the judicial functions of a court referred to in section 166 of the Constitution.

(2) "Public bodies", "security activities", "for purposes of subsection (1) (c), means those activities referred to in section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).

Exclusion for journalistic, literary or artistic purposes

5. (1) This Act does not apply to the processing of personal information solely for the purpose of journalistic, literary or artistic expression to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression.

(2) Where a responsible party who processes personal information for journalistic, literary or artistic purposes, by virtue of office, employment or profession, subject to a code of ethics that provides adequate safeguards for the protection of personal information, such code will apply to the processing concerned to the exclusion of this Act and any allegedly interference with the protection of the personal information of a data subject which may arise as a result of such processing must be adjudged by reference to the terms of that code.

(3) In the event that a dispute may arise in respect of whether adequate safeguards have been provided for in a code as required in terms of subsection (2) or not, regard may be taken—

(a) the special importance of the public interest in freedom of expression;

(b) domestic and international standards balancing the—

(i) public interest in allowing for the free flow of information to the public through the media in recognition of the right of the public to be informed; and

(ii) public interest in safeguarding the protection of personal information of data subjects;

(c) the need to secure the integrity of personal information;

(d) domestic and international standards of professional integrity for journalists; and

(e) the nature and scope of self-regulatory forms of supervision provided by the profession;

CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION

Part A

Processing of personal information in general

Condition 1
Accountability

Responsible party to ensure conditions for lawful processing

6. The responsible party must ensure that the conditions set out in this Chapter, and all the measures that give effect to such conditions, are complied with at the time of the determination of the purpose and means of the processing and during the processing itself.

Condition 2
Processing limitation
Lawfulness of processing

7. Personal information must be processed—

(a) lawfully; and

(b) in a reasonable manner that does not infringe the privacy of the data subject.

Minimality

8. Personal information may only be processed if, given the purpose for which it is 10 processed, it is adequate, relevant and not excessive.

Consent, justification and objection

9. (1) Personal information may only be processed if—

(a) the data subject or a competent person where the data subject is a child consents to the processing;

(b) processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;

(c) processing complies with an obligation imposed by law on the responsible party;

(d) processing protects a legitimate interest of the data subject;

(e) processing is necessary for the proper performance of a public law duty by a public body; or

(f) processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

(2) (a) The responsible party bears the burden of proof for the data subject's or competent person's consent as referred to in subsection (1)(a).

(b) The data subject or competent person may withdraw his, her or its consent, as referred to in subsection (1)(a), at any time: Provided that the lawfulness of the processing of personal information before such withdrawal or the processing of personal information in terms of subsection (1) (b) to (f) will not be affected.

(3) A data subject may object, at any time, to the processing of personal information

(a) in terms of subsection (1)(d) to (f), in the prescribed manner, on reasonable grounds relating to his, her or its particular situation, unless legislation provides for such processing.

(b) for purposes of direct marketing other than direct marketing by means of unsolicited electronic communications as referred to in section 69.

(4) If a data subject has objected to the processing referred to in paragraph (a) in terms of subsection (3), the responsible party may no longer process the personal information;

Collection directly from data subject

10. (1) Personal information must be collected directly from the data subject, except as otherwise provided for in subsection (2).

(2) It is not necessary to comply with subsection (1)—

(a) the information is contained in or derived from a public record or has deliberately been made public by the data subject;

(b) the data subject or a competent person where the data subject is a child has consented to the collection of the information or has made the information public;

(c) collection of the information from another source would not prejudice the legitimate interest of the data subject;

(d) collection of the information from another source is necessary—

(i) to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and 5 punishment of offences;

(ii) to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

(iii) for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated;

(iv) in the interests of national security; or

(v) to maintain the legitimate interests of the responsible party or of a third party to whom the information is supplied;

(e) compliance would prejudice a lawful purpose of the collection; or 15

(f) compliance is not reasonably practicable in the circumstances of the particular case.

Condition 3 Purpose specification
Collection for specific purpose

11. (1) Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party.

(2) Steps must be taken in accordance with section 18(1) to ensure that the data subject is aware of the purpose of the collection of the information unless the provisions of section 18(4) are applicable.

Retention and restriction of records

12. (1) Subject to subsections (2) and (3), records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless—

(a) retention of the record is required or authorised by law;

(b) the responsible party reasonably requires the record for lawful purposes related to its functions or activities;

(c) retention of the record is required by a contract between the parties thereto; or

(d) the data subject or a competent person where the data subject is a child has consented to the retention of the record.

(2) Records of personal information may be retained for periods in excess of those contemplated in subsection (1) for historical, statistical or research purposes if the responsible party has established appropriate safeguards against the records being used for any other purpose.

(3) A responsible party that has used a record of personal information of a data subject

to make a decision about the data subject, must—

(a) retain a record of the information for such period as may be required or prescribed by law or a code of conduct or, if there is no law or code of conduct prescribing a retention period, for a period that is long enough to afford the data subject a reasonable opportunity, taking all considerations relating to the use of the personal information into account, to request access to the record;

(4) 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 in terms of subsection (1) or (2).

(5) The destruction or deletion of a record of personal information in terms of subsection (4) must be done in a manner that prevents its reconstruction in an intelligible form.

(6) The responsible party must restrict processing of personal information [...]

(a) the accuracy of the record is contested by the data subject, for a period enabling the 5 responsible party to verify the accuracy of the information;

(b) the responsible party no longer needs the personal information for achieving the purpose for which the information was collected or subsequently processed, but it has to be maintained for purposes of proof;

(c) the processing is unlawful and the data subject opposes its destruction or 10 deletion and requests the restriction of its use instead; or

(d) the data subject requests to transmit the personal data into another automated processing system.

(7) Personal information referred to in subsection (6) may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or 15 with the consent of a competent person in respect of a child, or for protection of the rights of another natural or legal person or if such processing is in the public interest.

(8) Where processing of personal information is restricted pursuant to subsection (6), the responsible party must inform the data subject before lifting the restriction on processing.

Further processing limitation

Further processing limitation Further processing to be compatible with purpose of collection

13. (1) Further processing of personal information must be in accordance or compatible with the purpose for which it was collected in terms of section 13.

(2) To assess whether further processing is compatible with the purpose of collection, the responsible party must take account of—

(a) the relationship between the purpose of the intended further processing and the purpose for which the information has been collected;

(b) the nature of the information concerned;

(c) the consequences of the intended further processing for the data subject;

(d) the manner in which the information has been collected; and

(e) any contractual rights and obligations between the parties.

(3) The further processing of personal information is not incompatible with the purpose of collection if—

(a) the data subject or a competent person where the data subject is a child has consented to the further processing of the information;

(b) the information is available in or derived from a public record or has deliberately been made public by the data subject;

(c) further processing is necessary—

(i) to avoid prejudice to the maintenance of the law by any public body including the prevention, detection, investigation, prosecution and punishment of offences.

(ii) the enforcement of a law imposing a pecuniary penalty;

(d) the information is used for historical, statistical or research purposes and the responsible party ensures that the further processing is carried out solely for such purposes and will not be published in an identifiable form; or

(e) the further processing of the information is in accordance with an exemption granted under section 37.

Condition 5 Information quality
Quality of information

14. (1) A responsible party must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where 10 necessary.

(2) Taking the steps referred to in subsection (1), the responsible party must have regard to the purpose for which personal information is collected or further processed.

Condition 6
Openness
Documentation

15. A responsible party must maintain the documentation of all processing operations under its responsibility as referred to in section 14 or 51 of the Promotion of Access to Information Act.

Notification to data subject when collecting personal information

16. (1) If personal information is collected, the responsible party must take reasonably practicable steps to ensure that the data subject is aware 5 of—

(a) the information being collected and where the information is not collected from the data subject, the source from which it is collected;

(b) the name and address of the responsible party;

(c) the purpose for which the information is being collected;

(d) whether or not the supply of the information by that data subject is voluntary or mandatory;

(e) the consequences of failure to provide the information;

(f) any 10 particular law authorising or requiring the collection of the information;

(g) the fact, where applicable, the responsible party intends to transfer the information to a third country or international organisation and the level of protection afforded to the information by that third country or international organisation;

(h) any further information such as the—

(i) recipient or category of recipients of the information;

(ii) nature or category of the information;

(iii) existence of the right of access to and the right to rectify the information collected;

(iv) existence of the right to object to the processing of personal information as referred to in section 11(3); and

(v) right to lodge a complaint to the Information Regulator and the contact details of the Information Regulator,

which is necessary, having regard to the specific circumstances in which the information is collected, to enable the processing in respect of the data subject to be reasonable;

(2) The steps referred to in subsection (1) must be taken—

(a) if the personal information is collected directly from the data subject, before the information is collected, unless the data subject is already aware of the information referred to in that subsection; or

(b) in any other case, before the information is collected or as soon as reasonably practicable after it has been collected.

(3) A responsible party that has previously taken the steps referred to in subsection (1) complies with subsection (1) in relation to the subsequent collection from the data subject of the same information or information of the same kind if the purpose of 5 collection of the information remains the same.

(4) It is not necessary for a responsible party to comply with subsection (1) where—

(a) the data subject or a competent person where the data subject is a child has provided consent for the non-compliance;

(b) non-compliance would not prejudice the legitimate interests of the data 10 subject as set out in terms of this Act;

(c) non-compliance is necessary—

(i) to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;

(ii) to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

(iii) for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated;

(iv) in the interests of national security; or

(v) to maintain the legitimate interests of the responsible party or of a third party to whom the information is supplied;

(d) compliance would prejudice a lawful purpose of the collection; or 15

(f) compliance is not reasonably practicable in the circumstances of the particular case.

Condition 3 Purpose specification
Collection for specific purpose

11. (1) Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party.

(2) Steps must be taken in accordance with section 18(1) to ensure that the data subject is aware of the purpose of the collection of the information unless the provisions of section 18(4) are applicable.

Retention and restriction of records

12. (1) Subject to subsections (2) and (3), records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless—

(a) retention of the record is required or authorised by law;

(b) the responsible party reasonably requires the record for lawful purposes related to its functions or activities;

(c) retention of the record is required by a contract between the parties thereto; or

(d) the data subject or a competent person where the data subject is a child has consented to the retention of the record.

(2) Records of personal information may be retained for periods in excess of those contemplated in subsection (1) for historical, statistical or research purposes if the responsible party has established appropriate safeguards against the records being used for any other purpose.

(3) A responsible party that has used a record of personal information of a data subject

to make a decision about the data subject, must—

(a) retain a record of the information for such period as may be required or prescribed by law or a code of conduct or, if there is no law or code of conduct prescribing a retention period, for a period that is long enough to afford the data subject a reasonable opportunity, taking all considerations relating to the use of the personal information into account, to request access to the record;

(4) 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 in terms of subsection (1) or (2).

(5) The destruction or deletion of a record of personal information in terms of subsection (4) must be done in a manner that prevents its reconstruction in an intelligible form.

(6) The responsible party must restrict processing of personal information [...]

(a) the accuracy of the record is contested by the data subject, for a period enabling the 5 responsible party to verify the accuracy of the information;

(b) the responsible party no longer needs the personal information for achieving the purpose for which the information was collected or subsequently processed, but it has to be maintained for purposes of proof;

(c) the processing is unlawful and the data subject opposes its destruction or 10 deletion and requests the restriction of its use instead; or

(d) the data subject requests to transmit the personal data into another automated processing system.

(7) Personal information referred to in subsection (6) may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or 15 with the consent of a competent person in respect of a child, or for protection of the rights of another natural or legal person or if such processing is in the public interest.

(8) Where processing of personal information is restricted pursuant to subsection (6), the responsible party must inform the data subject before lifting the restriction on processing.

Further processing limitation

Further processing limitation Further processing to be compatible with purpose of collection

13. (1) Further processing of personal information must be in accordance or compatible with the purpose for which it was collected in terms of section 13.

(2) To assess whether further processing is compatible with the purpose of collection, the responsible party must take account of—

(a) the relationship between the purpose of the intended further processing and the purpose for which the information has been collected;

(b) the nature of the information concerned.

(c) the consequences of the intended further processing for the data subject;

(d) the manner in which the information has been collected; and

(e) any contractual rights and obligations between the parties.

(3) The further processing of personal information is not incompatible with the purpose of collection if—

(a) the data subject or a competent person where the data subject is a child has consented to the further processing of the information;

(b) the information is available in or derived from a public record or has deliberately been made public by the data subject;

(c) further processing is necessary—

(i) to avoid prejudice to the maintenance of the law by any public body including the prevention, detection, investigation, prosecution and punishment of offences.

(ii) the enforcement of a law imposing a pecuniary penalty;

(d) the information is used for historical, statistical or research purposes and the responsible party ensures that the further processing is carried out solely for such purposes and will not be published in an identifiable form; or

(e) the further processing of the information is in accordance with an exemption granted under section 37.

Condition 5 Information quality
Quality of information

14. (1) A responsible party must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where 10 necessary.

(2) Taking the steps referred to in subsection (1), the responsible party must have regard to the purpose for which personal information is collected or further processed.

Condition 6
Openness
Documentation

15. A responsible party must maintain the documentation of all processing operations under its responsibility as referred to in section 14 or 51 of the Promotion of Access to Information Act.

Notification to data subject when collecting personal information

16. (1) If personal information is collected, the responsible party must take reasonably practicable steps to ensure that the data subject is aware 5 of—

(a) the information being collected and where the information is not collected from the data subject, the source from which it is collected;

(b) the name and address of the responsible party;

(c) the purpose for which the information is being collected;

(d) whether or not the supply of the information by that data subject is voluntary or mandatory;

(e) the consequences of failure to provide the information;

(f) any 10 particular law authorising or requiring the collection of the information;

(g) the fact, where applicable, the responsible party intends to transfer the information to a third country or international organisation and the level of protection afforded to the information by that third country or international organisation;

(h) any further information such as the—

(i) recipient or category of recipients of the information;

(ii) nature or category of the information;

(iii) existence of the right of access to and the right to rectify the information collected;

(iv) existence of the right to object to the processing of personal information as referred to in section 11(3); and

(v) right to lodge a complaint to the Information Regulator and the contact details of the Information Regulator.

Part B
Processing of special personal information
Prohibition on processing of special personal information

24. 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

25. (1) The prohibition on processing personal information, referred to in section 24, 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 15 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 in law to protect the rights of the data subject and that the prohibition on processing personal information referred to in section 24, does not apply to the processing.

(3) In the case where information concerning a child is processed, the responsible party must ensure that the prior authorisation of a competent person where the child is capable of giving such authorisation, has been obtained.

Authorisation concerning data subject's religious or philosophical beliefs

26. (1) The prohibition on processing personal information concerning a data subject's religious or philosophical beliefs, as referred to in section 26, does not apply if the processing is carried out by—

(a) spiritual or religious organisations, or independent sections of those organisations if—

(i) the information concerns data subjects belonging to those organisations;

(ii) it is necessary to achieve their aims and principles;

(iii) it is necessary to protect the unity of those organisations;

(b) institutions founded on religious or philosophical principles with respect to their members or employees or other persons belonging to the institution, if it is necessary to achieve their aims and principles; or

(c) other institutions: Provided that the processing is necessary to protect the spiritual welfare of the 5 data subjects, unless they have indicated that they object to the processing.

(2) In the cases referred to in subsection (1)(a) to (c), the prohibition does not apply to processing of personal information concerning the religion or philosophy of life of family members of the data subjects.

(3) In the cases referred to in subsection (1), it may not be transferred to third parties without the consent of the data subject.

Authorisation concerning data subject's race or ethnic origin

27. The prohibition on processing personal information concerning a data subject's race or ethnic origin, as referred to in section 27, does not apply to the processing is carried out to—

(a) identify data subjects and only when this is necessary for that purpose; and

(b) comply with laws and other measures designed to protect or advance persons,

or categories of persons, disadvantaged by unfair discrimination.

Authorisation concerning data subject's trade union membership

28. (1) The prohibition on processing personal information concerning a data subject's trade union membership, as referred to in section 28, does not apply to the processing by the trade union to which the data subject belongs or the trade union federation to which that trade union belongs, if such processing is necessary to achieve the aims of the trade union or trade union federation.

(2) In the cases referred to under subsection (1), no personal information may be supplied to third parties without the consent of the data subject.

Authorisation concerning data subject's political persuasion

29. (1) The prohibition on processing personal information concerning a data subject's political persuasion, as referred to in section 28, does not apply to the processing by or for an institution, founded on political principles, of personal information of—

(a) its members or persons belonging or regular contacts of the institution, if it is necessary to achieve the aims or principles of the institution.

(b) a person who has regular contact with the institution in connection with its aims.

(2) In the cases referred to in subsection (1), no personal information may be supplied to third parties without the consent of the data subject.

Authorisation concerning data subject's health or sex life

30. (1) The prohibition on processing personal information concerning a data subject's health or sex life, as referred to in section 26, does not apply to the processing by—

(a) medical professionals, healthcare institutions or facilities or social services, if such processing is necessary for the proper treatment and care of the data subject, or for the administration of the institution or professional practice concerned.

(b) insurance companies, medical schemes, medical scheme administrators and managed healthcare organisations, if such processing is necessary for—

(i) assessing the risk to be insured by the insurance company or scheme and the data subject has not 10 objected to the processing;

(ii) the performance of an insurance or medical scheme agreement; or

(iii) the enforcement of any contractual rights and obligations;

(c) schools, if such processing is necessary to provide special support for pupils or making special arrangements in connection with their health or sex life;

(d) any public or private body managing the care of a child 15 such processing is necessary for the performance of their lawful duties;

(e) any public body, if such processing is necessary in connection with the implementation of prison sentences or detention measures; or

(f) administrative bodies, pension funds, employers or institutions working for them, if such processing is necessary for—

(i) the implementation of the provisions of laws, pension regulations or collective agreements which create rights dependent on the health or sex life of the data subject; or

(ii) the reintegration or support for workers or persons entitled to benefit in connection with sickness or work incapacity.

(2) In the cases referred to under subsection (1), the information may only be processed to implement the parties subject to an obligation of confidentiality by virtue of office, employment, profession or legal provision, or established by a written agreement between the responsible party and the data subject.

(3) A responsible party that is authorised to process personal information of a data subject's health or sex life in terms of this section is not subject to an obligation of confidentiality by virtue of office, profession or legal provision, insofar as the processing does not violate the rights of the data subject.

(4) Prohibition on processing personal information of children The prohibition on processing personal information of children that is prescribed in section 34, does not apply if it is necessary to supplement the processing of personal information concerning a data subject's health as referred to under subsection (1)(a), with a view to the proper treatment or care of the data subject.

(5) Personal information concerning inherited characteristics may not be processed in respect of a data subject from whom the information concerned has been obtained, unless a

serious medical interest prevails; or

(b) the processing is necessary for historical, statistical or research activity.

(6) More detailed rules may be prescribed concerning the application of subsection (1)(b) and (6).

Authorisation concerning data subject's criminal behaviour or biometric information

31. (1) The prohibition on processing personal information concerning a data subject's criminal behaviour or biometric information, as referred to in section 26, does not apply if the processing is carried out by—

(a) a body charged by law with 5 criminal law or by responsible parties who have obtained that information in accordance with the law.

(b) a person or organisation processing personal in the service of the responsible party must take place in accordance with the rules of procedure contemplated in section 59(1) is applicable, the Regulator must determine the rules of procedure for the processing of the notification as to whether or not it will conduct a more detailed investigation.

(4) In the case that the Regulator decides to conduct a more detailed investigation, it must indicate the period within which it plans to conclude the investigation, which 5 period must not exceed 13 weeks.

(5) Upon the completion of the more detailed investigation referred to in subsection (4) the Regulator must issue a statement concerning the lawfulness of the information processing.

(6) A statement by the Regulator in terms of subsection (5), to the extent that the 10 information processing is not lawful, is deemed to be an enforcement notice served in terms of section 95 of this Act.

(7) A responsible party that has suspended its processing as required by subsection (2), and which has not received 15 the Regulator's decision within the time limits specified in subsections (3) and (4), may presume a decision in its favour and may commence with processing.

(8) If, pursuant to a decision of the Regulator, the responsible party is prevented from processing specified personal information, the responsible party 20 may, upon application by or on behalf of the data subject, be ordered by a competent court to delete the information in its possession.

(9) Any person who, knowingly or recklessly, breaches an enforcement notice in terms of section 95 is guilty of an offence and liable to a penalty as set out in section 107.

CODES OF CONDUCT

Issuing of codes of conduct

58. (1) The Regulator may from time to time issue codes of conduct.

(2) A code of conduct must—

(a) incorporate all the conditions for the lawful processing of personal information or set out obligations that provide a functional equivalent to the conditions set out in those conditions; and

(b) prescribe how the conditions for the lawful processing of personal informa- tion are to be applied, or are to be complied with, given the particular features of the sector or sectors of society in which the relevant responsible parties are operating;

(3) A code of conduct may apply in relation to any one or more of the following:

(a) Any specified information or class of information;

(b) any specified body or class of bodies;

(c) any specified activity or class of activities;

(d) any specified industry, profession, or vocation or class of industries, professions or vocations;

(4) A code of conduct must also—

(a) specify how the conditions

(b) for information matching programmes if such programmes are carried on in the public sector; or

(c) for protecting the legitimate interests of data subjects insofar as automated decision making, as referred to in section 71, is concerned;

(b) provide for the review of the code by the Regulator; and

(c) provide for the expiry of the code.

Process for issuing codes of conduct

59. (1) The Regulator may issue a code of conduct under section 58 only

(a) on the Regulator's own initiative, but after consultation with affected stakeholders or a body representing such stakeholders; or

(b) on the application, in the prescribed form, by a body which is, in the opinion of the Regulator, sufficiently representative of any class of bodies, or of any industry, profession, or vocation as defined in the code in respect of such class of bodies or such industry, profession or vocation.

(2) The Regulator must give notice in the Gazette that the issuing of a code of conduct is being considered, which notice must contain a statement of his, her or its electronic address

(i) at the time when the information was collected; and

(ii) on the occasion of each communication with the data subject for the purpose of marketing if the data subject has not initially refused such use.

(4) Any communication for the purpose of direct marketing must contain—

(a) details of the identity of the sender or the person on whose behalf the communication has been sent; and

(b) an address or other contact details to which the recipient may send a request that such communications cease.

(5) "Automatic calling machine", for purposes of subsection (1), means a machine that is able to do automated calls without human intervention.

Directories

68. (1) A data subject who is a subscriber to a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which his, her or its personal information is included, must be informed, free of charge and before the information is included in the directory—

(a) about the purpose of the directory; and

(b) about any possible further uses of the directory may possibly be put, based on search functions embedded in electronic versions of the directory.

(2) A data subject must be given a reasonable opportunity to object, free of charge and in a manner free of unnecessary formality, to such use of his, her or its personal information or to request verification, confirmation or withdrawal of such information based on the purpose of such directory or related use.

(3) Subsections (1) and (2) do not apply to editions of directories that were produced in printed or off-line electronic form prior to the commencement of this section.

(4) If the personal information of data subjects who subscribe to fixed or mobile public voice telephony services have been included in a public subscriber directory in certain editions in accordance with the law 5 governing the processing of personal information prior to the commencement of this section, the personal information of such subscribers may also remain included in this public