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PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013

WHY DO WE HAVE A POPI ACT?

1. The POPI Act gives effect to our Constitutional right to privacy
2. Peoples personal information has great economic value in the hands of marketers of various services and skills
3. The POPI Act ensures that all citizens conduct themselves in a responsible manner when dealing with (processing) peoples personal information
4. Certain material provisions of the POPI act became effective in July 2020 and requires that all everyone processing person information must conform with the POPI act within 1 year

WHAT IS PERSONAL INFORMATION?

5. Personal information covers a very wide range of information that can identify a person or a legal entity and includes sex, gender, marital status, age, financial history, employment history, identifying number, email address, physical address, telephone number, location information, to name a few

WHICH PARTIES ARE INVOLVED?

6. The person who determines the why and the how of handling personal information is called the Responsible Party and must appoint an Information Officer to oversee compliance with the Act
7. The person whose information is being handled is called the Data Subject who has certain rights in terms of the Act
8. The person who handles the personal information on behalf of the responsible party is called the Operator and the Responsible party must conclude a contract with the operator who must comply with the Act

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WHAT MUST BUSINESSES DO TO BE COMPLIANT?

9. Every business process that involves the handling of personal information must be analysed so as to determine the lawful reason for handling of personal information
10. Then the business needs to document the reasons thereby constituting an official record

CONDITIONS TO COMPLY WITH

11. The Act provides conditions that must be met to ensure that the handling of personal information is lawful
 - 11.1 the responsible party is accountable to ensure compliance with the Act
 - 11.2 handling of personal information may only be done if it is necessary in the conclusion of performance of a contract OR where the data subject had consented (which the data subject may withdraw)
 - 11.3 the responsible party must secure the personal information against, unauthorised destruction and unlawful access by applying the “generally acceptable security practices” and have contracts with operators to ensure operators maintain security measures
 - 11.4 the personal information may only be processed for lawful and explicitly defined reasons and the personal information must be destroyed as soon as is reasonably possible once the authorization ends
 - 11.5 the personal information may only be handled in future if the reason for handling it is compatible with the original reason
 - 11.6 the responsible party must take steps to ensure that the personal information is accurate and updated where necessary
 - 11.7 the data subject must be aware that her/his/it's personal information is being collected, the reason for it and must have access to it
 - 11.8 the data subject can request where their personal information is being kept, they may ask for the correction, deletion or destruction thereof and the identity of everyone who had access to it

12. RECORDS MANAGEMENT

Responsible parties must adopt defined records management practices that will regulate

- 12.1 how long the information may be kept, and
- 12.2 how it needs to be destroyed

13. DIRECT MARKETING CONSENT

Direct marketing by way of electronic communication (including automated calling machines, facsimile machines, SMS's or e-mail) is prohibited unless

13.1 the data subject has consented thereto,

OR

13.2 the data subject is a customer of the responsible party, provided that;

13.2.1 the data subject's personal information was obtained in the context of a sale or service, and

13.2.2 the same or similar service is being marketed and

13.2.3 the data subject is given a reasonable opportunity to object free of charge and free of formality at the time of collection and with every subsequent communication

13.3 Direct Marketing communications must contain

13.3.1 the identity of the sender, and

13.3.2 the address and contact details that the recipient can use to send a request for communications to cease

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