

INFORMATION SECURITY WORKSHOP

on

ON POPIA AND PAIA

Presented by:

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City of
Ekurhuleni

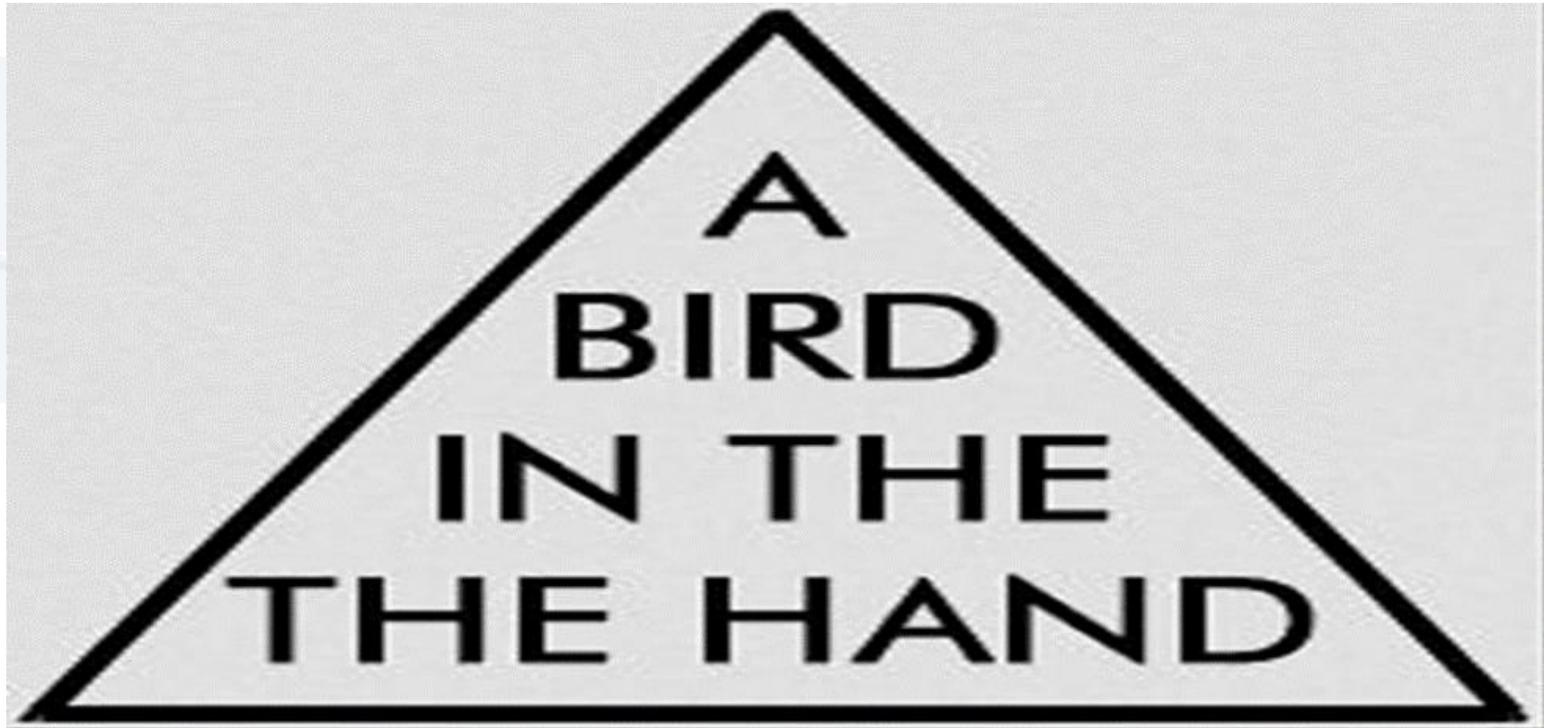
SOCIAL CONTEXT 1

FINISHED FILES ARE THE RESULT OF YEARS
AND YEARS OF SCIENTIFIC RESEARCH
COMBINED WITH THE EXPERIENCE OF
YEARS.



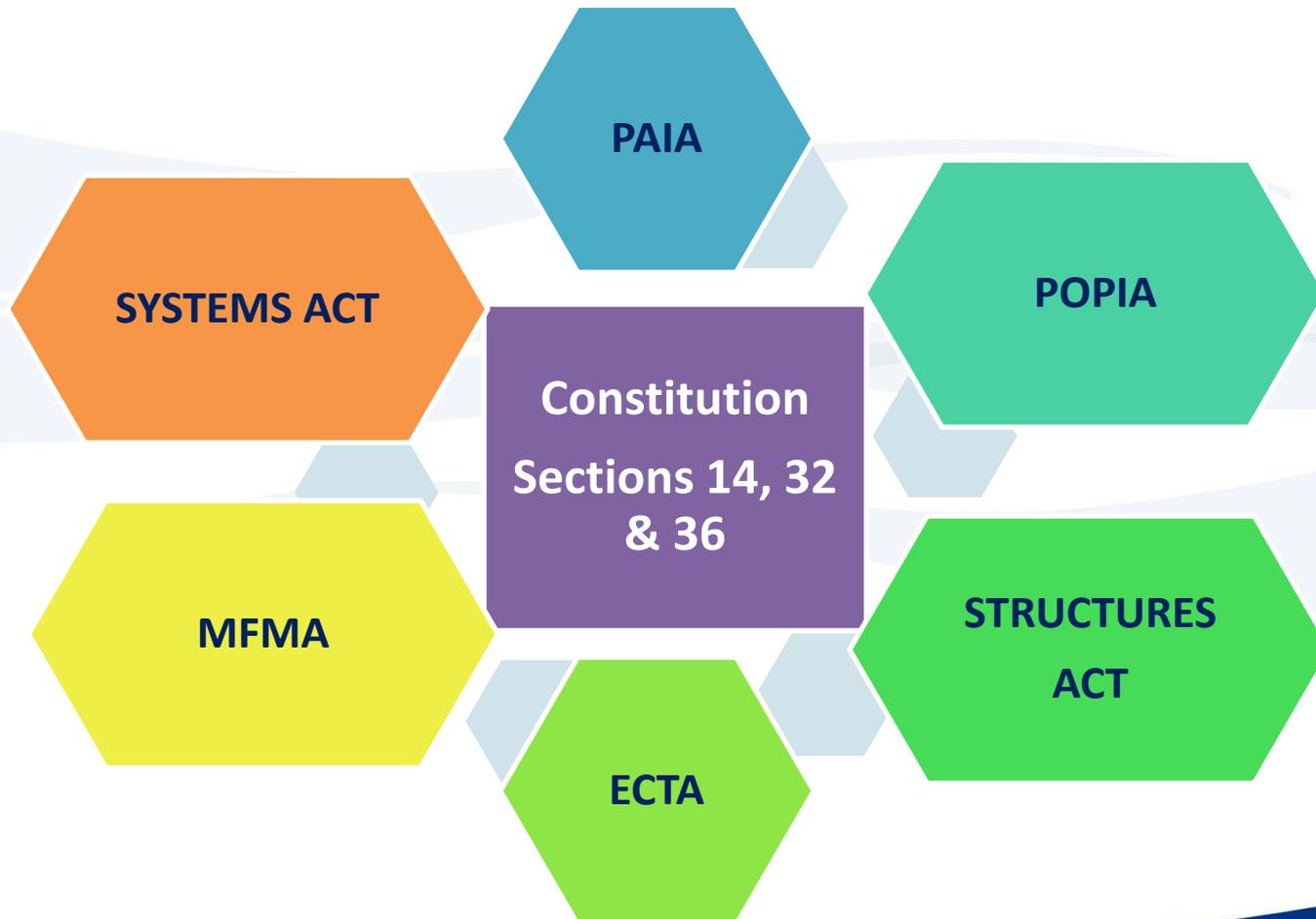
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SOCIAL CONTEXT 2

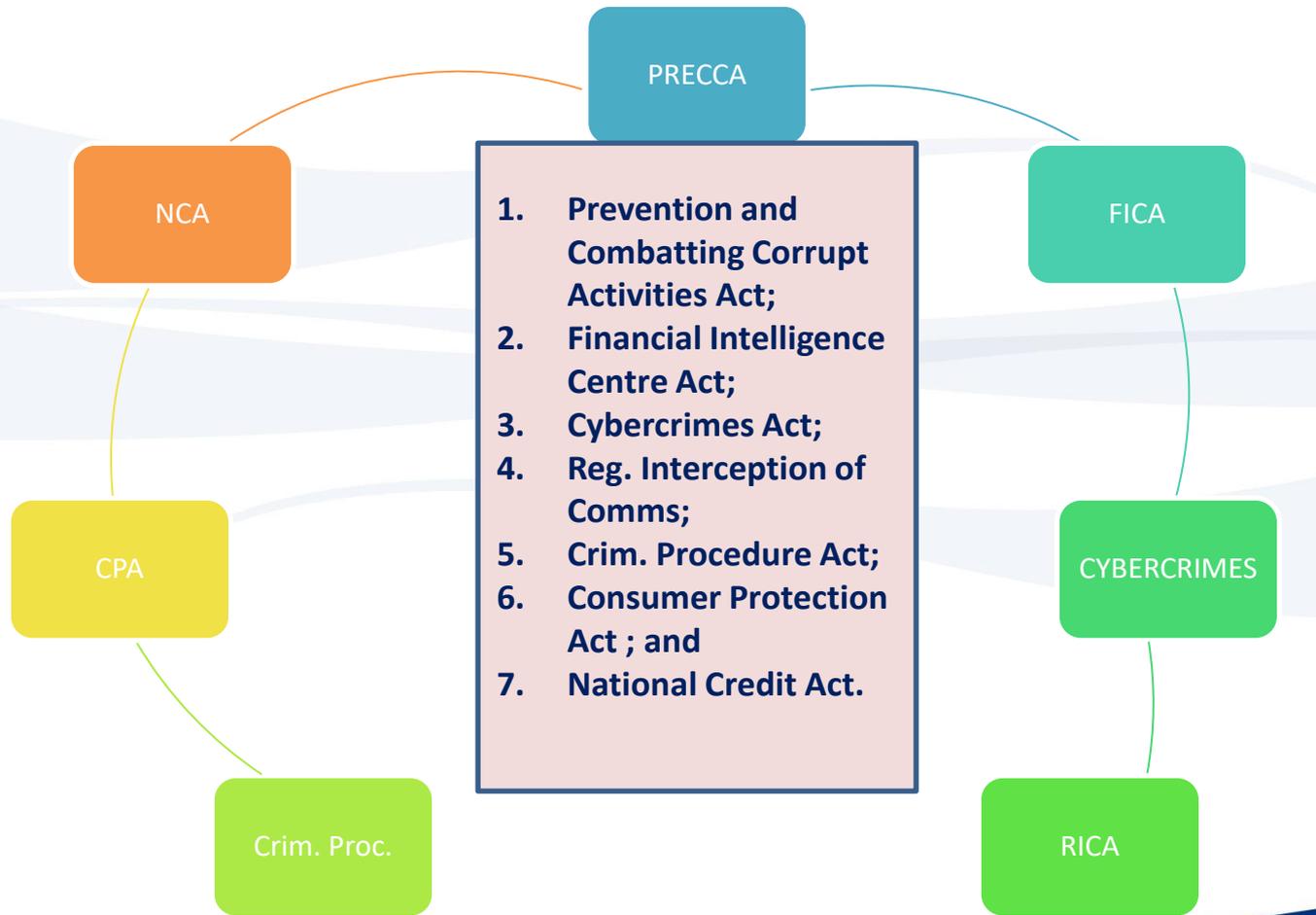


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MUNICIPAL COMPLIANCE



RELATED LEGISLATION



WORKSHOP CONTENT

PAIA

- ❖ INTRODUCTION
- ❖ PURPOSE
- ❖ WHAT INFORMATION CAN BE REQUESTED
- ❖ WHEN REQUEST INFORMATION i.t.o PAIA
- ❖ RELATIONSHIP BETWEEN PAIA AND OTHER LEGISLATION
- ❖ WHOM MUST MAKE THE DECISION
- ❖ GROUNDS FOR REFUSAL
- ❖ PUBLIC INTEREST- EXCEPTION
- ❖ PRACTICAL IMPLICATIONS
- ❖ QUESTIONS & COMMENTS

POPIA

1. INTRODUCTION
2. PURPOSE
3. IMPORTANT DEFINITIONS
4. WHY PERSONAL INFORMATION PROTECTED?
5. CONDITIONS FOR LAWFUL PROCESSING OF PI
6. LATEST DEVELOPMENTS
7. RECENT COURT CASE
8. PENALTIES and FINES
9. IMPLICATION TO CITY OF EKURHULENI
10. REFERENCES

NATURE OF INFORMATION HANDLED BY for e.g. HRM DEPARTMENT

1. Documents with employees ID and pay numbers.
2. **Details on misconducts investigations.**
3. Information on employees' salaries, benefits.
4. **Settlement agreements e.g. back pay after reinstatements.**
5. Detailed Information on incapacity referrals e.g. diagnosis.
6. **Sanctions for misconducts.**
7. Shortlisted and interviewed candidates for recruitment purposes.
8. **Defend recruitment disputes and dealing with recruitment objections.**
9. Referred grievances -some with personal information.
10. **Salary and placement disputes.**
11. Directives from SALGA/SALGBC.
12. **Qualifications.**
13. Membership to Professional Bodies.
14. **Details of Family members, Assets, Bank Accounts, Personal Contact Details, Residential Address.**



An orange arrow pointing to the right, containing the text "PAIA".

PAIA

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POPIA



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THE PROMOTION OF ACCESS TO INFORMATION ACT No. 2 of 2000. = INTRODUCTION =

- Constitution of the Republic of South Africa, 1996:
- Section 32 provides-

(1) Everyone has the right of access to –

- (a) Any information held by the state; and
- (b) Any information that is held by another person and **is required for the exercise or protection of any rights.**

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.



PURPOSE OF PAIA

Section 9 of the Act provides details of the objectives of PAIA:

- PAIA is a National legislation that gives effect to the constitutional right to access the information held by the State as well as information held by another person , required for the exercise or protection of any rights
- Provides mechanisms and procedures to ensure that access to records is:
 - Swift,
 - Inexpensive, and
 - Effortless.
- To promote:
 - Transparency,
 - Accountability,
 - Effective governance, and
 - Empower and educate everyone:-
 - To effectively **scrutinize**, and participate in , decision making by public bodies that affects their rights.



What information can be requested?

- Access is limited to “records”.
 - Defined as “recorded information, regardless of form or medium, in the possession or under the control of that public or private body”.
- Record need not be in the original form - *CCII Systems v Fakie* 2003 (2) SA 325.
 - Access must be granted to the record and not what information holder says is in the record - *Claase v SAA [2006] ZASCA 134* .
- There is no obligation or duty on the municipality to create records under PAIA – only requests for information that is already in existence.
- But under PAJA (Promotion of Administration Justice Act 3 of 2000) -> obligation to give written reasons.



Right of access to records of public bodies – Sec 11

(1) A requester **must** be given access to a record of a public body **if-**

(a) That requester complies with all the **procedural requirements** in this Act relating to a request for access to the record; and

➤ *e.g. submission of FORM A, Power of attorney; written consent*

(b) Access to that record **is not refused** in terms of any **ground for refusal** contemplated in Chapter 4...

(3) A requester's right of access **is not affected** by-

(a) any reasons the requester gives for requesting access; or

(b) the information officer's belief as to what the requester's reasons are for requesting access.



Relationship between PAIA and other legislation

Section 5

- PAIA applies to the exclusion of any provision of any other legislation that:
 - Prohibits or restrict disclosure of a record, and
 - Is materially inconsistent with an object or specific provisions of the Act.
- The restrictions placed on the right to records in PAIA are therefore the only* applicable substantive restrictions on that right.
 - *restrictions placed by POPIA are catered for in Chapter 4
 - Section 36 of the Constitution.



Who must make the decision?

The City Manager as Information officer

- In terms of the Act, delegated to Deputy Information Officers who can make decisions on his/ her behalf;
- The Department Corporate Legal Services administers the application of the Act.
- 4 officials are appointed as Deputy Information Officers to facilitate responding to requests in terms of the Act.
- The Council adopted the resolution that The Speaker is to act as the appeal authority of the CoE.



Grounds for Refusal of Access to Records

- Two groups of grounds
 1. Mandatory – denoted by the use of the word ‘must’
 2. Discretionary – denoted by the use of the word ‘may’
- **Personal information** of third parties,
- Commercial information of third parties,
- Commercial information of information holders,
- **Confidential information**,
- Operations of public bodies,
- Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources.



PUBLIC INTEREST

- Section 46 – Public Interest
- Despite any other provision of this chapter, the Information Officer of a public body must grant a request for access to a record of the body if-
 - (a) the disclosure of the record would reveal evidence of
 - A substantial contravention of , or **failure to comply with law**; or
 - An imminent and serious **public safety or environmental risk**; and
 - (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.



Practical implications

- Audit records
 - Manuals
 - Automatically available – sec 15 manual
 - For inspection
 - For purchase
 - For copying
 - For free
 - Easier accessible other Acts – s 6
 - Restrictive Acts s 5 override
- Audit record keeping system
 - National Archive Act, instruction – EMM File Plan
 - Disposal guidelines & authorities.



Practical implications (cont)

- Your role:-
 - Assist requesters (community)
 - Provide information if clear – if not
 - Advise on PAIA procedures– provide access to FORM A
 - Forward request to PAIA@Ekurhuleni.gov.za
- If record cannot be found or does not exist?
 - Affidavit or affirmation
 - Full account of all steps taken
 - Including all communications by all searcher
 - Regarded as refusal
 - If found latter, give access unless ground for refusal.



Practical implications (cont)

- Decision-making requirements
 - Within 30 days
 - Third parties
 - Informed within 21 days
 - 21 days to make representations /give consent
 - Severability
 - Deemed refusal if not decision not taken on time
 - Extension of time once – 30 days



QUESTIONS

POINTS OF CLARIFICATIONS

THANK YOU



City of
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PROTECTION OF PERSONAL INFORMATION ACT No. 4 of 2013



City of
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1. INTRODUCTION TO POPIA

Constitution of RSA,1996:

- Section 14-
Everyone has the right to privacy.

Incremental implementation of POPIA:

- Part A – Chapter 5, sections 112 and 113 – 11 April 2014;
- All other sections (except s 110 and 114(4)) – 01 July 2020;
- All sections – 01 July 2021;
- Address changes to PAIA (Reports to Info Regulator) and PAIA Manual – 31 December 2021; and
- The Information Regulator has, in terms of section 114(3) of POPIA determined the 1 February 2022 as the date on which section 58(2) shall become applicable to processing referred to in section 57 of the said Act.



2. PURPOSE OF POPIA

The purpose of this Act is to—

- a) give effect to the constitutional **right to privacy**, by safeguarding personal information(PI) when processed by a responsible party;
 - i. balancing the right to privacy against other rights – the right of access to information
- b) establish conditions for the lawful processing of PI;
- c) provide persons with rights and remedies to protect their personal information from processing that is not in accordance with the Act; and
- d) establish voluntary and compulsory measures, including the **establishment of an Information Regulator**, to ensure respect for and promote, enforce and fulfill the rights protected by the Act.



3. IMPORTANT DEFINITIONS

3.1 Personal Information (PI):

Information relating to an **identifiable, living, natural person** and **juristic person** where applicable, including and not limited to:-

- **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;
- **education**, medical, **financial**, **criminal** or employment history;
- **identifying number**, symbol, **e-mail address**, **physical address**, telephone number, **location information**, online identifier;
- blood type or biometric information, personal opinions, views or preferences of the person;
- **Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature;**
- the views or opinions of another individual about the person; and
- name of the person if it appears with other personal information relating to the person.



TWO EXEMPTIONS TO POPI

- If the PI cannot be related back to an identifiable person then POPI will not apply
- If the person is dead then POPI does not apply

3.2 PROCESSING

Any activity or operation concerning PI –life cycle within a company;

Collection -> Usage ->Storage -> Archiving (deleted or kept indefinitely)

3.3 DATA SUBJECT

The person to whom PI relates

3.4 RESPONSIBLE PARTY

Public or private entity that determines the purpose of and means for processing personal information



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4. Why the protection of personal information?

- **PI is an asset**
 - there is value to having PI that is of good quality
 - The loss or damage to this asset results in loss of profit/revenue
- Lawful processing is a prerequisite for entry into the 'information economy'
- **Protection of reputation**
- **Compliance leads to savings**
 - Reduction in operational costs
- **Legal compliance**
 - Reduction in the risk of fines and lawsuits



INFORMATION REGULATOR

- Section 39, establishment of IR
- Jurisdiction throughout the Republic
- Independent and is subject only to the Constitution and the law
- Exercise its powers and perform its functions in terms of POPIA & PAIA
- Accountable to National Assembly



Powers and Functions of IR

- To provide education
- To **monitor and enforce compliance**
- To consult with interested parties
- To **handle complaints**
- To conduct research
- Issue codes of conduct



5. Conditions for lawful processing of PI

Chapter 3, section 8 - 25

5.1 Accountability

5.2 Processing limitation

5.3 Purpose specification

5.4 Further processing limitations

5.5 Information quality

5.6 Openness

5.7 Security safeguards

5.8 Data subject participation



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5.1 Accountability

The "responsible party" (the CoE – HRM) must ensure that the conditions for processing are complied with at all times.

5.2 Processing limitation

Processing of information for lawful reasons and in a manner that does not infringe privacy – section 11

PI may be processed if:-

- Data subject **consents** to the processing;
- Processing complies with an **obligation imposed by law** on the responsible party;
- Processing is necessary for the proper performance of a **public law duty** by a public body; etc
- For pursuing the **legitimate interests of the responsible party** or of a third party to whom the information is supplied



5.3 Purpose specification

Collection of PI must be for a specific & lawful purpose related to the functions of the responsible party. i.e. **specific COE's department.**

PI must not be retained any longer than is necessary for achieving the purpose for which the information was collected, **unless retention is required or authorised by law.**

**Refer to File Plan & Records Management Policy*

5.4 Further processing limitations

Further processing must be compatible with purpose of collection taking into account, amongst others, the nature of the information, the consequences for the data subject and the manner in which the information was collected.



5.5 Information quality

The department must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary.

5.6 Openness

The department must maintain documentation of all processing operations. When personal information is collected, the department must (subject to exceptions) take reasonably practicable steps to ensure that the data subject is aware of, *inter alia*, that the information being collected, the source, the purpose of the collection and the rights of the data subject.

**CoE through PAIA manual must ensure that data subjects are aware of right to lodge a complaint to Information Regulator. Corporate Legal Services.*



5.7 Security safeguards

The department must take reasonable measures to-

- identify all foreseeable internal and external risks,
- establish and maintain appropriate safeguards against risks identified;
- regularly verify that the safeguards are effectively implemented; and
- ensure that safeguards are continually updated.

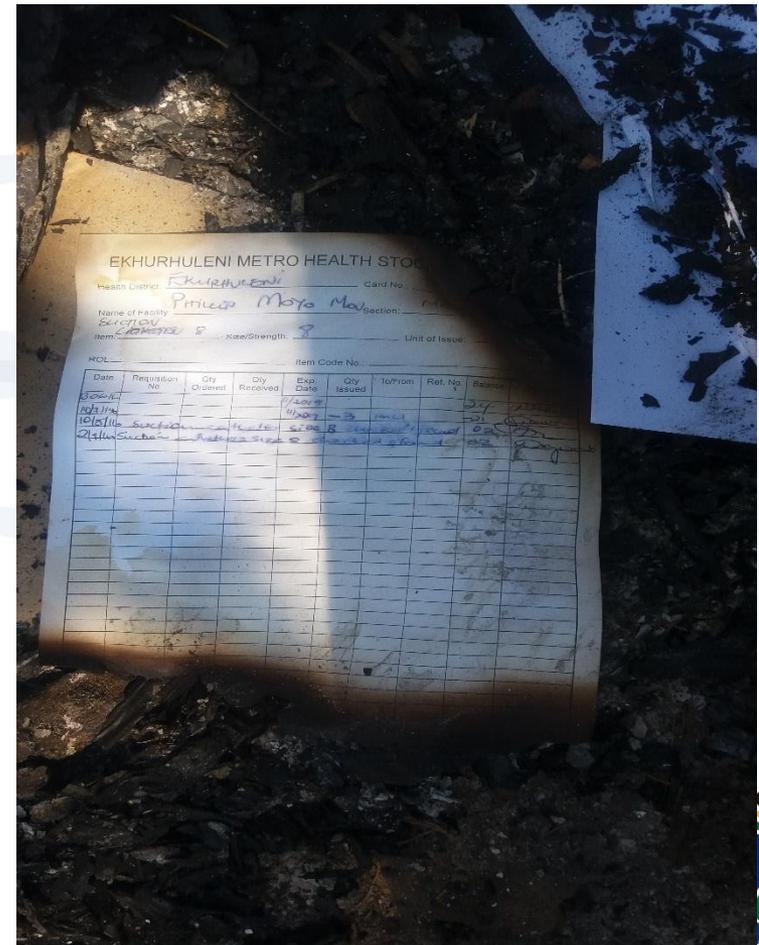
*Sec 22:CoE must notify the Information Regulator and the data subject when the PI of a data subject has been accessed or acquired by any unauthorised person.



5.8 Data subject participation

- Access to personal information
 - data subject has a right to request the department to confirm whether or not it holds personal information about the data subject (free of charge),
 - to request the record or a description of the personal information held, as well as the identity of third parties who have, or have had access to the information.
- Correction of PI
 - data subject has the right to request the correction or deletion of personal information that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully.

STORAGE / DISTRIBUTION OF RECORDS



6.LATEST DEVELOPMENTS

- 8 September 2017, 1st regulations relating personal information published
- Manner of objection to processing PI
- Request for correction or deletion of records of PI
- Duties and responsibilities of information officers
- Submission of complaint or grievance
- **Annexure of FORMS**



7. RECENT COURT CASE

- Black Sash Trust v Minister of Social Development and Others.
- The Information Regulator made submissions to the effect that the personal information of grant beneficiaries is their property and could never vest in a third party. The Information Regulator sought a declaratory order to this effect.
- **The Court Finding:** the contract between SASSA and CPS must contain terms and conditions for adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any purpose other than payment of the grants, ...” and “ ... precludes anyone from inviting beneficiaries to ‘opt-in’ to the sharing of confidential information for the marketing of goods and services .”



8. PENALTIES and FINES

- Administrative fine not exceeding **R10 million** can be imposed to the responsible party that have committed an offence in terms of the Act.
- Individuals can be fined or imprisonment for a period not exceeding 12 months, or both.



9. IMPLICATION TO COE

- The departments must conduct themselves in a responsible manner when **collecting**, **processing**, **storing** and **sharing** personal information.
- The departments must comply with the 8 conditions for lawful processing of PI.
- Service level agreements/ contracts between CoE and service providers must contain clause that prohibits further processing of personal information.
- City of Ekurhuleni can be held accountable should any department abuse or compromise personal information entrusted to it.

10.Reference

- De Stadler E and Esselar P, A guide to the Protection of personal Information Act, Juta 2015
- Protection of Personal Information Act, 4 of 2013.



POPIA

REVISION



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WHO MUST COMPLY?

- Subject to other legislation protecting a right more stringently, the Act applies to **any person or organisation who keeps any type of records relating to the personal information of anyone.**



WHY COMPLY?

- Purpose of from harm by protecting their personal information for example to stop the becoming victims of crime through identity theft, incidents of phishing (cybercrime) and generally to protect their privacy, which is a fundamental human right.
- POPIA therefore sets conditions for when it is lawful for someone to process someone else's personal information.



WHO APPLIES TO?

- POPIA involves three parties (who can be natural or juristic persons):
 - The **data subject**: the person to whom the information relates.
 - The **responsible party**: the person who determines why and how to process – e.g. profit companies, non-profit companies, governments, state agencies and people. (**Controllers** in other jurisdictions)
 - The **operator**: a person who processes personal information on behalf of the responsible party under a contract or mandate (**Processors** in other jurisdictions).



STEPS TO TAKE BY RESPONSIBLE PARTIES

- Appoint an [Information Officer](#) (Can still be same as for PAIA).
- Draft a Privacy Policy.
- Raise awareness amongst all employees.
- Amend contracts with operators.
- Report data breaches to the regulator and data subjects.



- Check that can lawfully transfer personal information to other countries.
- Only share personal information when lawfully able/ required to.
- Appoint or reassess the role of the information officer. Personal information impact assessment.
- Develop a **compliance** framework, which can include processes and policies.
- Implementation of Standard Operating Procedure.



PENALTIES FOR NON-COMPLIANCE

- There are essentially **two legal penalties** or consequences for the responsible party:
 - A fine or imprisonment of between **R1 million and R10 million** or **one to ten years in imprisonment**.
 - Paying compensation to data subjects for the damage they have suffered.
- The **other penalties** include:
 - Reputational damage;
 - Losing customers (and employees); and
 - Failing to attract new customers;



APPLICATION

- **NB:** POPIA IS NOT STAND ALONE LEGISLATION AND MUST BE CONSIDERED AND APPLIED TOGETHER WITH OTHER LEGISLATION REFERRED TO ABOVE.



Latest Developments at CoE

- Information Security Policy (ICT);
- PAIA Manual Revised (CLS); and
- POPIA Manual (CLS)



QUESTIONS

POINTS OF CLARIFICATIONS

THANK YOU



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