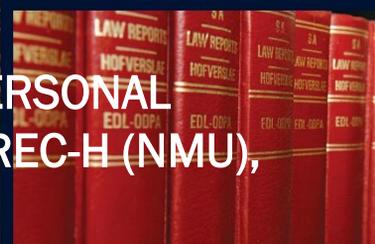
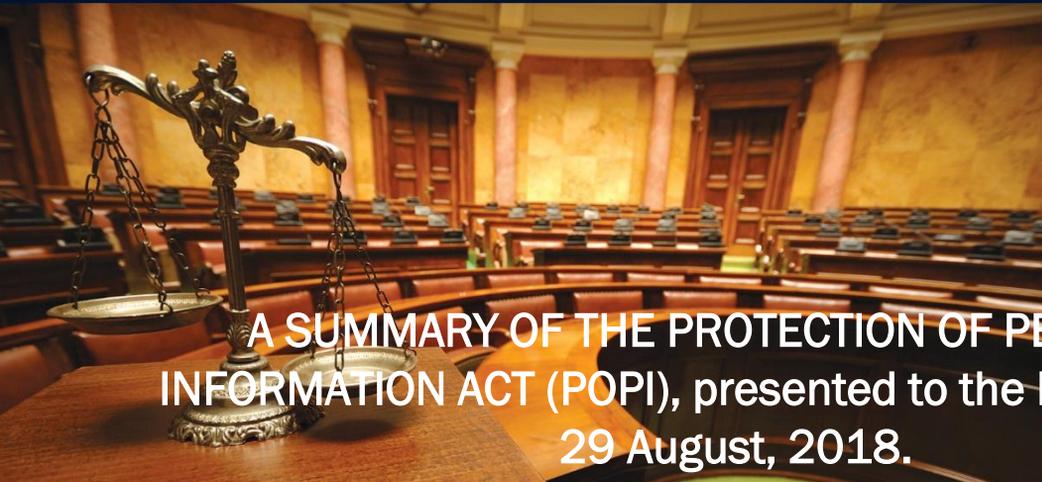


NELSON MANDELA UNIVERSITY



A SUMMARY OF THE PROTECTION OF PERSONAL INFORMATION ACT (POPI), presented to the REC-H (NMU), 29 August, 2018.

Leah A. Ndimurwimo (LLB (Tanzania), LLM (NMU), LLD (NWU). Lecturer in law: Criminal and Procedural Law Department, Faculty of Law, Nelson Mandela University. E-mail:

leah.ndimurwimo@mandela.ac.za, Web: <http://law.mandela.ac.za/Staff>

INTRODUCTION

- Section 14 of the Constitution provides that everyone has a right to privacy.
- Privacy includes the right to protection against collection, retention and the dissemination and use of personal information.
- The Protection of Personal Information Act (POPI Act) Act No 4 of 2013 seeks to promote the protection of personal information. i.e.
 - ❖ **what is done** to someone's personal information,
 - ❖ **how** someone's personal information is processed or shared,
 - ❖ **who** receives such information or with whom is shared,
 - ❖ **what** type of personal information is processed or shared, and
 - ❖ **why** such personal information is processed or shared.

SELECTED DEFINITIONS

- **Biometrics**
- **Child**
- **Competent person**
- **Consent**
- **Data subject**
- **De-identify**
- **Electronic communication**
- **Filing system**
- **Operator**
- **Person**
- **Personal information**
- **Processing**
- **Record**
- **Regulator**
- **Responsible party**
- **Restriction**
- **Special personal information**

PROTECTION OF PERSONAL INFORMATION

- Personal information is becoming more accessible and easier to manipulate, duplicate, delete and abuse across multiple platforms.
- The University for example, as a juristic person must ensure that it protects the personal information entrusted to it in course of discharging its duties, such as, giving permission to conduct research and employment relations.
- Intentional or reckless acts or conducts in handling information entrusted to the university may not only lead to face regulatory sanctions, but also run the risk of damaging the university's business relationships and more importantly, criminally be held liable or face civil action for damages.

CONDITIONS LAWFUL PROCESSING OF PERSONAL INFORMATION

- **Accountability**- Responsible parties (the person, company or entity that decides on what to do with personal information) must decide how to process such information i.e. why, when and how the processing of personal information will be done.
- **Processing limitation** -Personal information must be processed lawfully and in a reasonable manner i.e. it does not infringe the privacy of the data subject. i.e. the data subject must give consent to the information processing. Responsible party **bears the *onus* of proof for the consent** and a data subject may withdraw such consent at any time.
- **Purpose specification** - Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function.
- **Further processing limitation** – if the information is shared with third parties, it has to be done as a continuation of the original purpose only.

LAWFUL PROCESSING cont...

- **Information quality** - The responsible party must take reasonable and practicable steps to ensure that personal information is complete, accurate, not misleading and updated where necessary.
- **Openness** - A responsible party must bring to the attention of the data subject, that by him/her being a participant his/her information is being collected.
- **Security safeguards** - The responsible party is responsible to secure the integrity and confidentiality of personal information which is in his/her possession or under his/her control.
- **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. Data subjects may also request that personal information be corrected.

THE RIGHTS OF THE DATA SUBJECT

- The following are rights which the data subject has:
- Right to have personal information processed in accordance with the conditions discussed.
- Right to be notified on why personal information is collected.
- Right to object to the processing of personal information.
- Right to institute civil proceedings regarding the alleged interference with the protection of his/ her personal information.
- Right to submit a complaint to the Information Regulator regarding the alleged interference with the protection of the personal information of any data subject.

EXAMPLES ILLEGAL INFORMATION PROCESSING

- The POPI Act prohibits illegal processing of personal information of the data subjects.
- **Examples:**
 - ❖ taking a photograph with your mobile device or any other device of a patient's wound (or any body part, for that matter) without his/her explicit consent;
 - ❖ taking a photograph of the patient's hospital label and storing it on a mobile device or any other device, without formally safeguarding access to this information
 - ❖ storing patient information on any data-storage device/cloud/ data bank, without restricted access;
 - ❖ accessing patient information (e.g. blood results, radiography or medical notes) on a public computer and leaving it open);
 - ❖ storing (on paper or in electronic files) patient's information without any anticipated legal research, or administrative value, for longer than 5 years.

PROCESSING OF SPECIAL PERSONAL INFORMATION

- Part B of Chapter 3 of the POPI Act deals with processing of special personal information. Section 26 prohibits the processing of special personal information.
- A responsible party may, subject to section 27 not process personal information concerning 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.
- A responsible party is not allowed to process personal information relating to the criminal behaviour of a data subject to the extent that such information relates to the alleged commission by a data subject of any offence; or any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.
- However, section 27 (2) allows the Regulator, upon an application by a responsible party and by notice in the **government Gazette**, to 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 to protect the personal information of the data subject.

ENFORCEMENT

- Chapter 10 of the POPI Act deals with the enforcement mechanisms.
- Chapter 11 goes on to create offences, penalties and administrative fines which can be imposed for non-compliance.
- Section 101 specifically provides for a breach of confidentiality and states that any person in contravention of the POPI Act is guilty of an offence. Any person convicted of such an offence will be liable to a fine or to imprisonment not less than 10 years (section 107).
- Unlawful acts by third parties in connection with account number are punishable (section 106).

CONCLUSION

- The new POPI Act is imminent.
- Given the intention of the POPI Act, it is recommended that :
 - ❖ Always inform the data subjects when acquiring their personal information and be reduced into writing if the consent agreement was done verbally.
 - ❖ Written consent is necessary when information is disclosed or published.
 - ❖ Have a comprehensive discussion on the first day of consultation with the data subjects before collecting data for any intended research activity.
 - ❖ Reduce such discussions into writing . This will not only properly inform the data subject , but also safeguard the integrity of the research activities to be carried out, REC-H and the university.

REFERENCES

- The Constitution of Republic of South Africa , 1996.
- Promotion of Access to Information Act, 2000.
- The Protection of Personal Information Act. 2013.
- Buys, M "Protecting personal information: Implications of the Protection of Personal Information (POPI) Act for healthcare professionals" *SAMJ* 2017 107 (11) 954-956.
- Myers, C "The Imminent Protection of Personal Information Act" *TFM Magazine* 2017 12 26-27.

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