

POPIA Act Impact on Residential Estates



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Background to the POPI Act

- Where did it come from?
 - UK led the way, Data Protection Act, 1984
 - EU issued a directive in 1995 (3 year window)
 - UK and others complied with the EU in 1998
- What is the POPI Act?
 - A new (2013) law, in development for 10 years!
 - Gives us all better privacy rights as promised in the Constitution of RSA, 1994
 - A new way of thinking and acting



Data Protection Act 1998

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 4 of 2013: Protection of Personal Information Act, 2013.

....the POPI Act has been signed into law

- Under section 115 of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), hereby fix 11 April 2014 as the date on which
 - (a) section 1;
 - (b) Part A of Chapter 5;
 - (c) section 112; and
 - (d) section 113,of the said Act come into operation.
- Given under my Hand and the Seal of the Republic of South Africa at Pretoria on this seventh day of April Two Thousand and Fourteen.



Government Gazette

....Information Regulator appointed

- On 26 October 2016, the long overdue appointment of the Information Regulator took place with Adv Pansy Tlakula being named as chair
- On 1 December 2016, the Information Regulator took up office in the Department of Justice and Correctional Services

Commencement of the POPI Act

- Final POPI Act Regulations were published in the Government Gazette in December 2018
- Commencement date with a 1 year transition/grace period was 1 July 2020
- Enforcement date was 1 July 2021
- POPIA is now fully in effect

The first European Union Data Protection Directive was issued in 1995

- Privacy regulations were needed;
- POPI Act based on UK Data Protection Act;
- Alignment with international practices



EU General Data Protection Regulation (GDPR) replaces European Union Data Protection Directive

- EU GDPR was adopted on 27 April 2016
- Applies from 25 May 2018
- Applies to all foreign organisations processing data of EU residents



The POPI Act on a slide

- Legislation that regulates how personal information is processed
- Has 8 lawful processing conditions
- Specifies 6 additional requirements
- Sets new requirements in terms of security safeguards for personal information
- The Information Regulator has started work; the Act is not yet fully in force



The POPI Act: 8 Conditions (1)

Condition	Description
<i>Accountability</i>	Assigning ownership in your organisation
<i>Processing Limitation</i>	Processing information for lawful reasons and in a manner that does not infringe privacy (includes consent)
<i>Purpose Specification</i>	Only obtaining and holding personal information for a specific purpose
<i>Further Processing Limitation</i>	Further processing of personal information must be compatible with the purpose for which it was collected
<i>Information Quality</i>	Ensuring that personal information is complete, accurate and not misleading

The POPI Act: 8 Conditions (2)

Condition	Description
<i>Openness</i>	Informing individuals that their information has been obtained and the purpose thereof
<i>Security safeguards</i>	The confidentiality and integrity of personal information must be secured using appropriate, reasonable, technical and organisational measures
<i>Data Subject Participation</i>	A data subject has the right to request access to their personal information that you hold; to request the information is deleted or corrected if appropriate

Note: Consent and Purpose are key guiding principles when implementing personal information processes

The POPI Act: Yes, there's more.....

- Special PI
- Children
- Rights of data subjects
- Information Officer appointment
- Electronic Direct Marketing
- Transborder flows



WHAT IS PERSONAL INFORMATION?



Contact Details

Email
Telephone
Address



History

Employment
Financial
Educational
Criminal
Medical



Demographics

Age
Gender
Race
Weight



Correspondence

Private correspondence
Letters
Reports



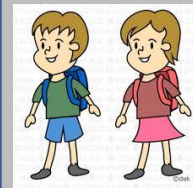
Opinions

Opinions of the person
Opinions about the person



Special Information

Religion
Ethnic Origin
Trade Union
Health
Biometrics
DNA
Sexual Preferences
Criminal History



Children under 18

All information

Key POPI Act Parties

- **Data Subject** - Living individual or juristic entity from whom PI is collected or about whom PI is processed
- **Responsible Party** – party which determines the purpose and means for processing personal information i.e. makes decisions about the lawfulness thereof and who is entrusted with it
- **Operator** – external party who processes personal information for the responsible party without coming under the direct authority of that party

Key POPI Act related Roles

- **Information Officer** – Designated head of the organisation e.g. CEO, Estate Manager, etc.
- **Deputy Information Officer** – A deputy or deputies appointed by the Information Officer (becomes responsible but not accountable for protecting and processing personal information)

POPI Act impact areas for Estates (i)

- Acquisition & disposition of personal information
- Information Officer
- Compliance audits
- Consent records / denial records
- HOA Media and public relations
- On-site and off-site information storage
- PAIA Manual
- Privacy Notices
- Creditors & Debtors
- Email and other communications
- Document retention periods
- Payroll
- Induction, training
- Contract management
- Service agreements
- Web site
- etc

POPI Act impact areas for Estates (ii)

Key impact areas:

- Contracts with service providers will require changes
- Personal information sharing agreements will be required
- Policies and notices will be required
- Personal information inventories will be required
- Processes involving personal information will require changes

POPI Act impact areas for Estates (iii)

In practice the requirements have an impact on many aspects of the processes estates use for paper and electronic records such as:

- Processing of PI of residents from collection through to disposal (new residents/owner registration, changes, disposal)
- Processing of PI of staff (recruitment to departure and beyond as required by labour legislation)
- Processing of PI of club members (where relevant)
- Physical access to the estates (visitor PI)
- Use of CCTV and photographs
- Web site content and usage

POPI Act impact areas for Estates (iv)

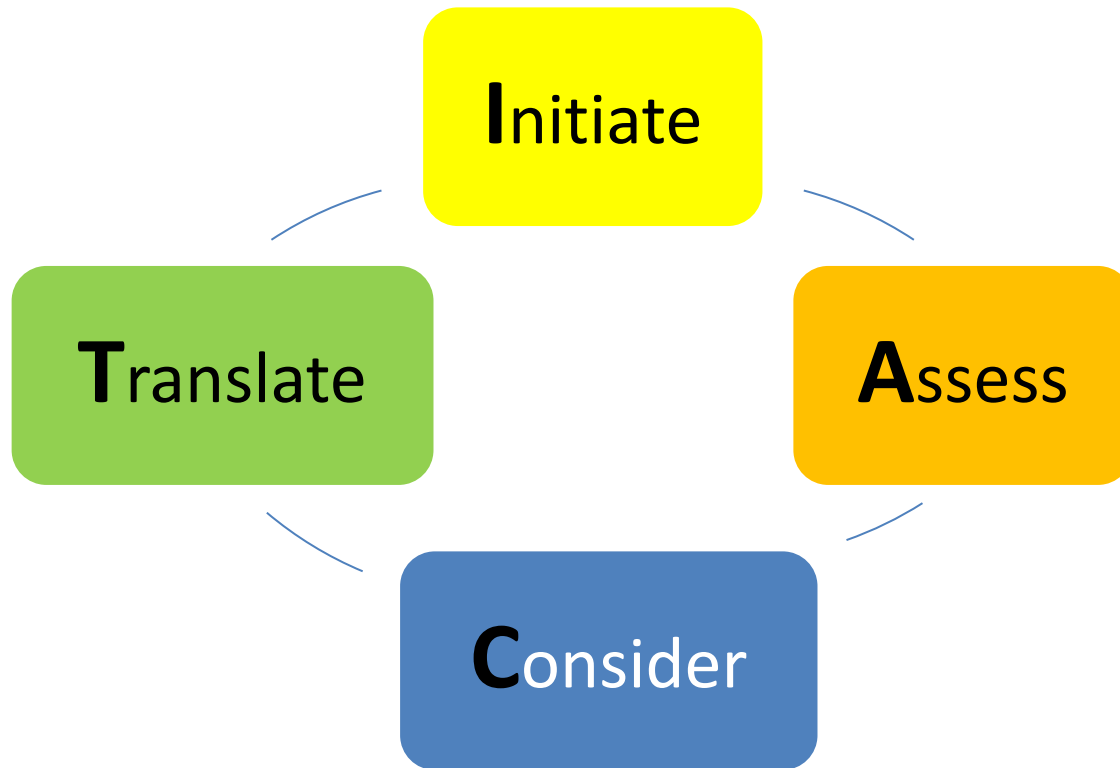
- Contracts for Security Safeguard Condition 7 – Information Security not Estate Security
 - RP to Operator (e.g. Security companies, Community portals, IT hosting service providers incl Financial Systems, CRM, Residents databases, etc.
 - Information Sharing organisations – estate industry publications, newsletters, medical aid schemes, training companies, etc.
- Contracts for Transborder Flows
 - Where legislation in the destination country is not substantially similar to POPI, a binding agreement for protecting PI in line with the POPI Act is required
 - Service providers who store and process resident PI in overseas hosting/cloud environments must address this

Sample POPI Act Project Outcomes (i)

- Completion of multiple assessments of POPI Act compliance
- Completion of stakeholder POPI Act compliance training
- Identification of personal information risks and inclusion in risk management process
- Establishing a POPI Act compliance monitoring plan
- Establishing POPI Act compliance governance structures
- Preparation and publication of a POPI Act compliance policy

Sample POPI Act Project Outcomes (ii)

- Preparation and publication of a Promotion of Access to Information Act manual
- Review and update of existing contracts and policies for POPI Act compliance
- Identification and recording of areas in which personal information is stored and processed



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Top Ten Tips (1)

What you need to do to become and remain POPI Act compliant

1. Get approval for your POPI compliance project charter
2. Appoint your Information Officer
3. Identify the extent of current & planned compliance with the POPI Act
4. Identify what Personal Information is processed; what records contain Personal Information; what user rights exist for your Personal Information
5. Develop & implement your POPI Act compliance policy

Top Ten Tips (2)

What you need to do to become and remain POPI Act compliant

6. Review your web site for POPI Act compliance and publish your Privacy Notice
7. Update your Promotion of Access to Information Act manual
8. Implement Personal Information management processes, including acquisition, processing, retention, security and destruction practices
9. Train staff on their role in POPI Act compliance
10. Make POPI Act compliance “Business-As-Usual”

What is the “POPI Stick”?

- Failure to comply by your estate in South Africa could lead to:
 - Fines (up to R 10 million)
 - Time in prison (up to 10 years)
 - Civil damages claims (incl. Class Action)
 - Damage to reputation of your estate
 - Loss of trade
 - Disruption to your organisation



What is the “POPI Carrot”?

- Your estate can demonstrate good governance
- Your estate can provide market leadership
- Your estate can enhance its image and reputation
- Your estate can avoid unnecessary downside



Who are we?

John
Cato

- Extensive IT Governance and Management implementation experience

Dr Peter
Tobin

- Extensive IT Governance and Management experience
- 17 years as a certified Project Manager

Our
network

- Local and international subject matter experts

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THANK YOU

