



Newsflash

ALL MEMBERSHIP CATEGORIES

MEMO – POPI ACT

Dear SAMA Members,

These are recommendations for schools to be informed on the Protection of Personal Information Act (or POPIA or POPI Act) in South Africa it sets conditions for how you can lawfully process personal information. Although not promulgated as yet, It has been signed by the President and is law. The Information Regulator has published the regulations for comment.

If your organisation processes personal information, complying with the POPI Act is your problem. The objective of the POPI Act is to protect people from harm and their right to privacy. The POPI Act is a difficult law to understand and apply to your specific circumstances because it deals with intangible concepts. One option is to attend a POPI workshop.

Introduction of POPI and its meaning to schools

The purpose of POPI

The Protection of Personal Information Act (POPI) was signed into law on 19 November 2013 and published in the Government Gazette on 26 November 2013. The POPI Act:

- (a) recognises that a person's right to privacy includes protection against unlawful collection, retention, dissemination and use of personal information.
- (b) introduces measures to protect personal information that is processed by public and private bodies.
- (c) prescribes minimum requirements for processing personal information. The

main purpose of POPI is to:

- (a) give effect to everyone's right to privacy as enshrined in the Constitution;
- (b) facilitate the balance between the right to privacy with other rights, such as the right to access information; and
- (c) safeguard important interests such as the free flow of information within the Republic and across international borders.

It is expected to be promulgated very soon.

What does this mean for schools?

The scope of POPI includes schools as entities that handle personal information for administrative purposes. The standards set in POPI for the protection of personal information will significantly impact upon the collection, handling and disposal of data in schools. In order to comply with POPI, schools will need to:

- (d) plan and allocate resources to lawfully collect, handle and dispose of data;
- (e) analyse their current practices in dealing with personal information;
- (f) draft or review their own data protection policy in line with the new requirements set out in POPI; and
- (g) proactively implement the significant requirements of POPI to enable schools to avoid the pressure of meeting the

compliance deadline of POPI.

What will happen if you do not comply with POPI?

Schools that do not comply with POPI may be liable to pay a penalty of up to R10 million. In their individual capacity, responsible personnel (Principal / Head) who breach POPI, may be liable for a fine and/or imprisonment for up to 12 months.

What conditions does POPI impose on schools to keep the personal information safe and secure?

POPI requires schools to:

- (a) secure the integrity and confidentiality of the personal information that it has in its possession or under its control;
- (b) take appropriate steps to prevent the loss of, or damage to, the personal information;
- (c) prevent unlawful access to, and unauthorised destruction of, the personal information;
- (d) identify internal and external risks to the personal information under its control or possession; and
- (e) establish and maintain appropriate safeguards against losing or damaging the personal information.

Definitions

What is 'personal information'?

Personal information is broadly defined in POPI as meaning information relating to an identifiable, living, natural person, and where 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 number, location, 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 personal information about the person.

What is 'processing' of personal information?

Processing refers to any act that can be performed when handling personal information. POPI defines processing to include collecting, recording, organising, updating, storing, distributing, destroying or deleting personal information.

Schools are strongly encouraged to start putting plans, policies and procedures in place in order to be compliant with the requirements of POPI. Once it is promulgated, compliance will be required within one year.

For further information please refer to the many links on the internet.