

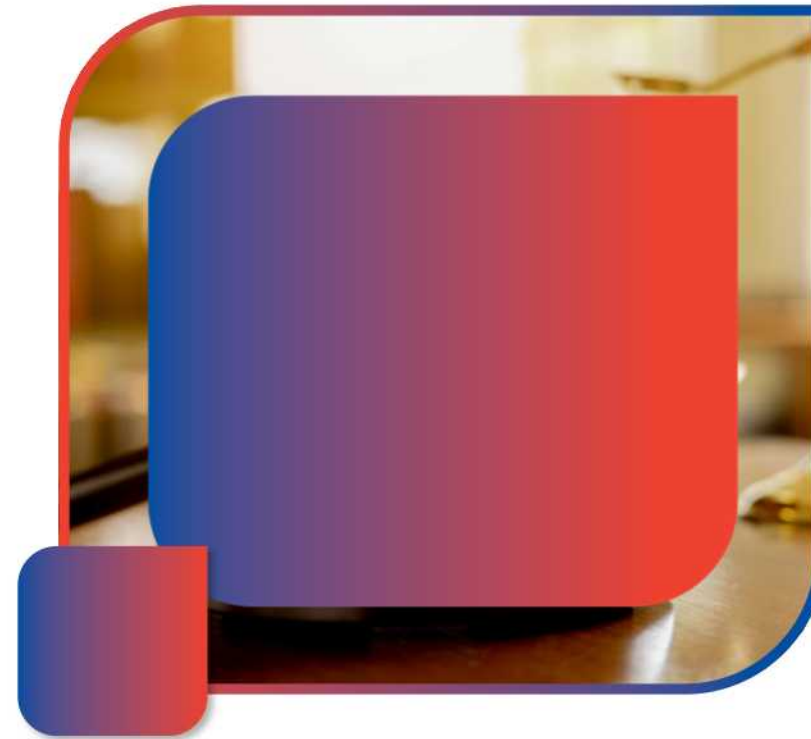


PROTECTION OF PERSONAL INFORMATION ACT (POPIA) GUIDANCE MANUAL



1. Introduction

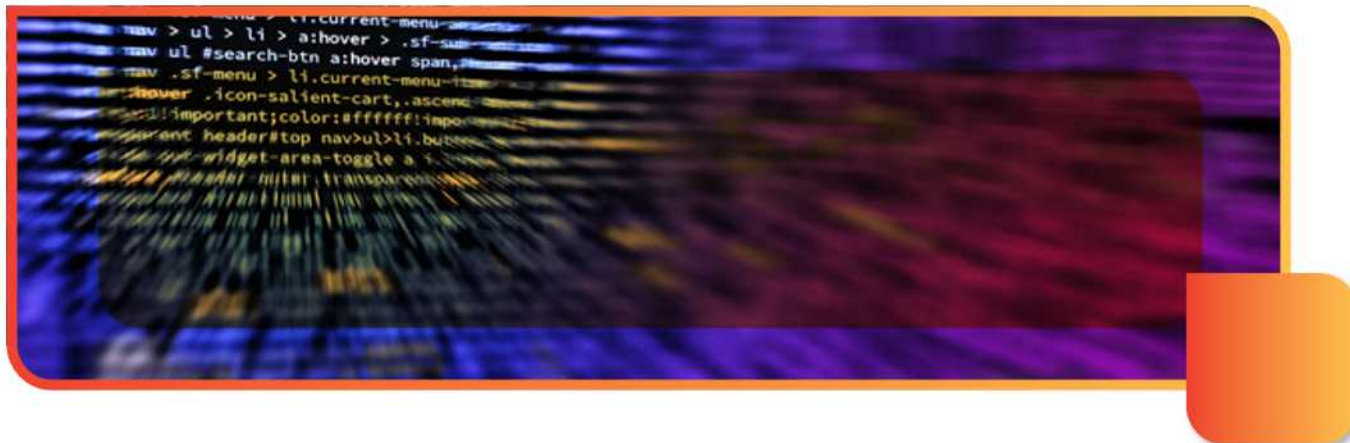
As of 01 July 2021, important sections of the Protection of Personal Information Act No. 4 of 2013 (hereafter referred to as “POPIA”) will come into full effect. This manual serves as a quick reference tool for the NLC and its personnel and should be read together with the POPIA legal framework.



2. What is the purpose of POPIA?

2.1 Essentially, as its name suggests, the purpose of POPIA is to protect people's personal information from being used unlawfully. Therefore, the protection of the constitutional right to privacy is regarded as the foundation of POPIA.

2.2 It applies to any natural or juristic person who processes personal information, including private and public corporates such as the NLC. As it is discussed later in this manual, any failure to comply with POPIA could result in potentially serious legal consequences such as a hefty fine or imprisonment. It is therefore important that the NLC and its personnel familiarise themselves with the POPIA legal framework.



3. POPIA legal framework

3.1 The POPIA legal framework consists of the following:

1

Protection of Personal Information Act no. 4 of 2013 (POPIA)

Several dates beginning from 11 April 2014 with some other sections commencing on the 01 July 2020 and others on the 01 July 2021 to be read together with the Regulations cited below.

2

Promotion of Access to Information Act 2 of 2000 (PAIA)

09 March 2001

3

Regulations relating to the Protection of Personal Information, 2018 (POPIA Regulations)

01 July 2021

4

Guidelines to Develop Codes of Conduct, 2021 (POPIA Guidelines)

01 March 2021

5

NLC POPIA manual adopted in terms of regulation 4 of the POPIA Regulations (POPIA manual)

UNKNOWN

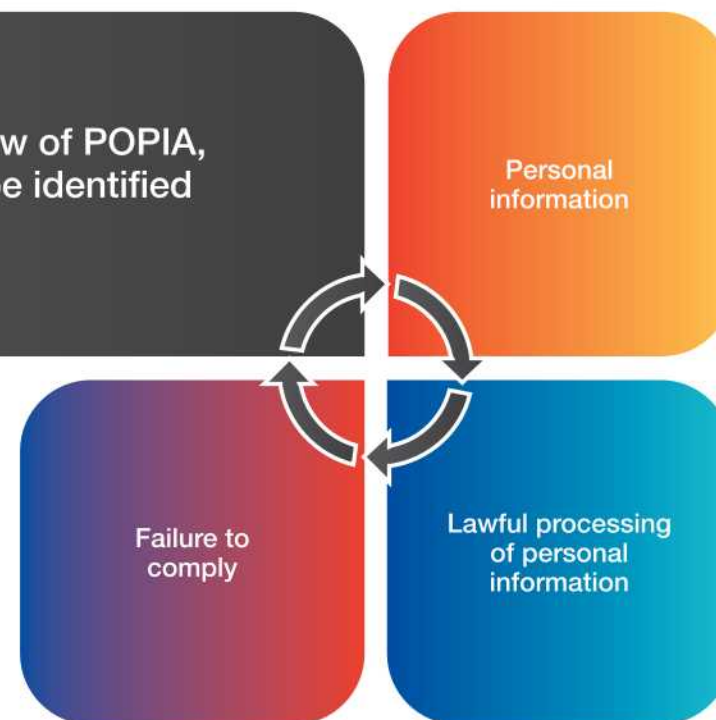
3. POPIA legal framework (Continue)

3.2 As an NLC employee or an interested third party, a good point of departure in understanding and ensuring POPIA compliance would be the POPIA manual which is listed as item 5 above. This manual must be developed, monitored and maintained by the NLC's information officer in accordance with PAIA. An information officer and deputy information officer are responsible, amongst other things, for:

- 3.2.1 Encouraging NLC's compliance with POPIA;
- 3.2.2 Dealing with requests made to the NLC in terms of POPIA; and
- 3.2.3 Working with the Information Regulator in relation to investigations.



In order to give a brief overview of POPIA, three distinct categories will be identified and discussed



4. Synopsis of POPIA

4.1 PERSONAL INFORMATION

4.1.1 The definition of personal information under section 1 of POPIA is given a very wide meaning. A few key examples are listed below:



Race, gender, sex, pregnancy, marital status



information relating to the financial, education, medical or employment history of a person



the personal opinions, views or preferences of a person



any physical, postal or e-mail address of a person. Any identifying number of a person



the biometric information of a person



the views or opinions of another individual about a person

4.1.2 The above definition affects every department within the NLC. In other words, every NLC department deals with personal information at some point in time. It is therefore important to know whether the information is being dealt with lawfully as required by POPIA.

4.2 LAWFUL PROCESSING OF PERSONAL INFORMATION

- 4.2.1 This is a two-legged enquiry in that personal information must be processed and it must be processed lawfully. "Processing" of personal information is also given a very wide definition under section 1 of POPIA:

"Any operation or activity, whether or not by automatic means, concerning personal information including:

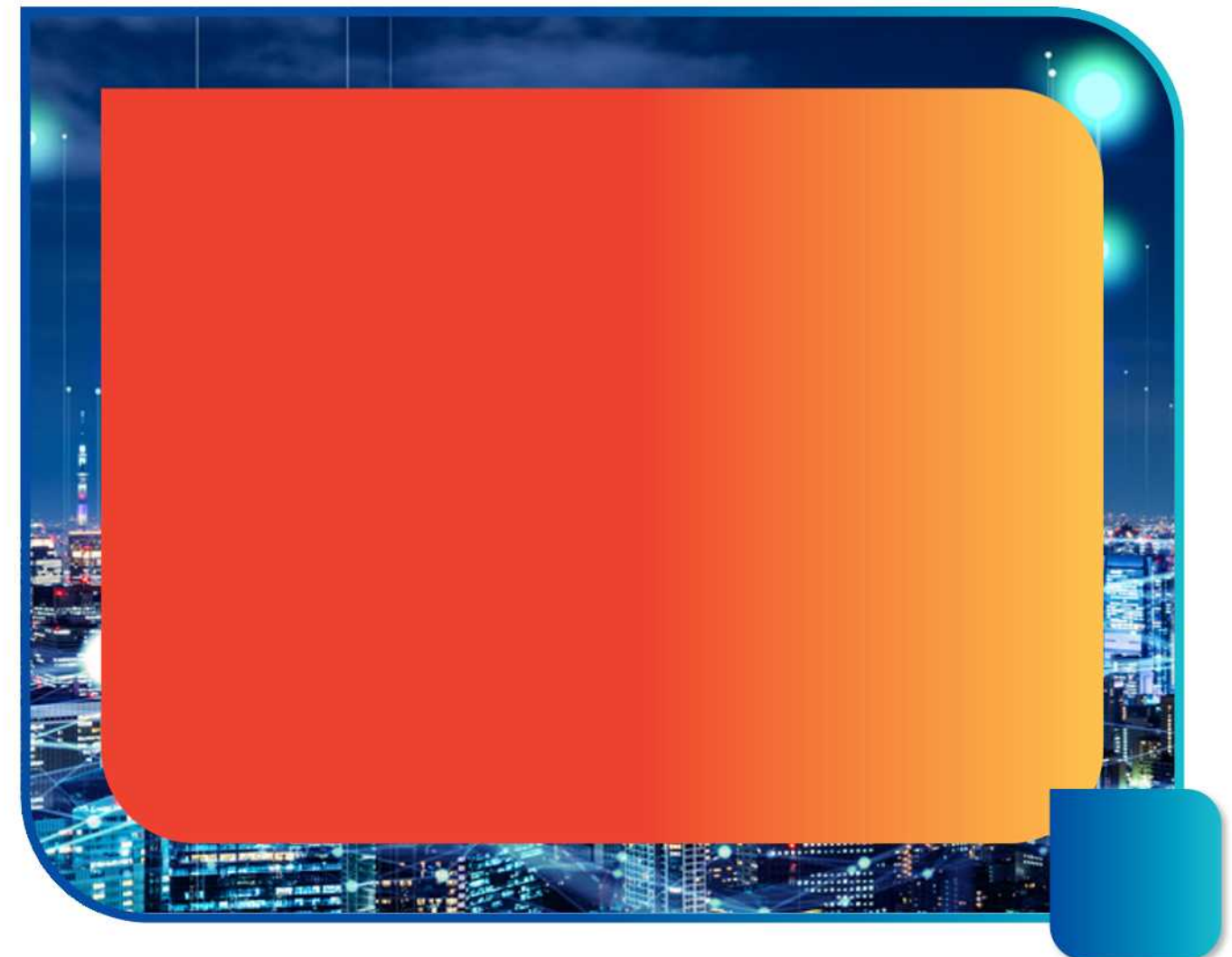
- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- (b) dissemination by means of transmission, distribution or making available in any other form; or
- (c) merging, linking, as well as restriction, degradation, erasure or destruction of information".

- 4.2.2 The above definition includes the making and receiving of internal and external telephone calls; sending, receiving or talking about e-mails; posting documents by normal or registered post; sending and receiving of SMS texts; sending, receiving or talking about social media posts. Though the definition is quite broad it is limited by the fact that all processing of information has to be lawful.
- 4.2.3 All personal information must be processed in a lawful manner in terms of POPIA. There are eight (8) conditions to be followed in order to lawfully process personal information:

A	Accountability	Section 8
B	Processing limitation	Section 9 to 12
C	Purpose specification	Section 13 to 14
D	Further processing limitation	Section 15
E	Information quality	Section 16
F	Openness	Section 17 to 18
G	Security safeguards	Section 19 to 22
H	Data subject participation	Section 23 to 35

- 4.2.4 The above conditions are extremely important in understanding how to lawfully process personal information. These conditions will be briefly discussed in "Annexure A" which is attached, for clarity. Any personal information which is processed in contravention to these conditions will be regarded as a breach of the lawful processing of personal information unless it is subject to exemptions issued by the Information Regulator.
- 4.2.5 Each condition imposes different duties and rights on people for processing personal information. For example, in terms of section 19 of POPIA, the NLC is expected to take appropriate and reasonable technical measures to secure the integrity and confidentiality of personal information. This includes putting measures in place to avoid e-mails being sent to and received by the wrong recipients. The NLC's ICT policy addresses these issues.

- 4.2.6 In terms of section 13 information must be collected for a specific and lawful purpose. In terms of section 11(1) consent must be obtained if the personal information being processed belongs to a minor. Different kinds of personal information within the NLC will be affected differently by all these conditions. This will range from Grant Applications, CV's, e-mails to Whatsapp chats and Twitter posts.
- 4.2.7 Unfortunately, it is not possible to list all of the personal information being processed by the NLC or even how all of it will be affected by these conditions. Parliament probably recognised that many organisations may experience the same challenges and accordingly gave the Information Regulator powers to create a code of conduct in terms of section 65 of POPIA which will bind relevant bodies processing personal information. Bodies like the NLC are also obliged to develop and implement POPIA compliance manuals.



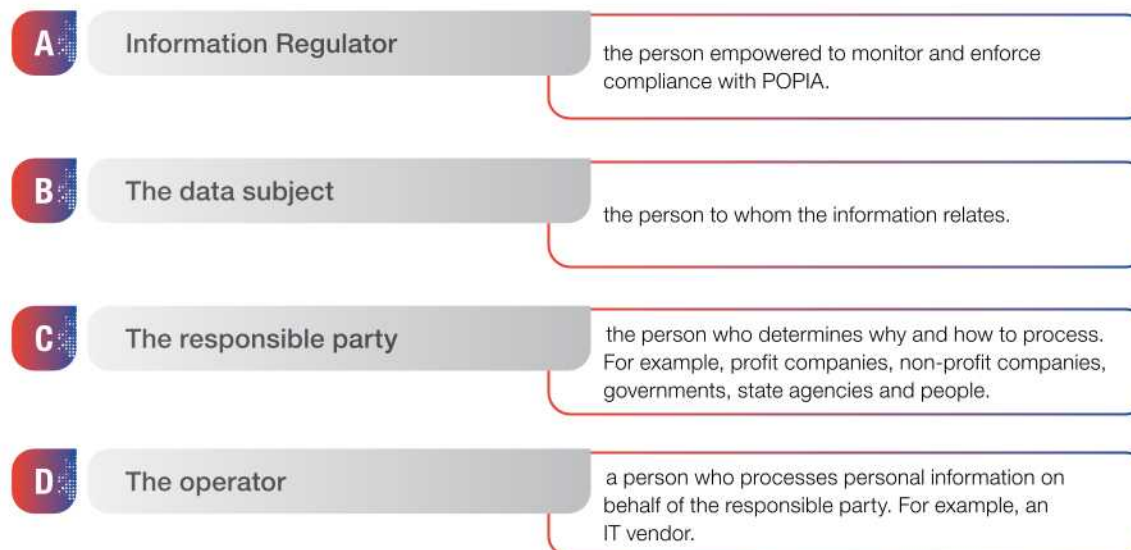
4. Synopsis of POPIA (Continue)

4.3 FAILURE TO COMPLY

4.3.1 The consequences of failing to comply with the provisions of POPIA are regulated under Chapter 10 and 11. Chapter 10 regulates the complaint and investigation procedure by the Information Regulator whereas Chapter 11 deals with the penalties.

4.3.2 The Information Officer for the NLC is the Commissioner, Ms TCC Mampane

The NLC's Deputy Information Officers are Ms Gugulethu Yako and Mr Sikhumbuzo Thomo



4. Synopsis of POPIA (Continue)

4.3.3 The relevant steps resulting from failure to comply can be summarised as follows:



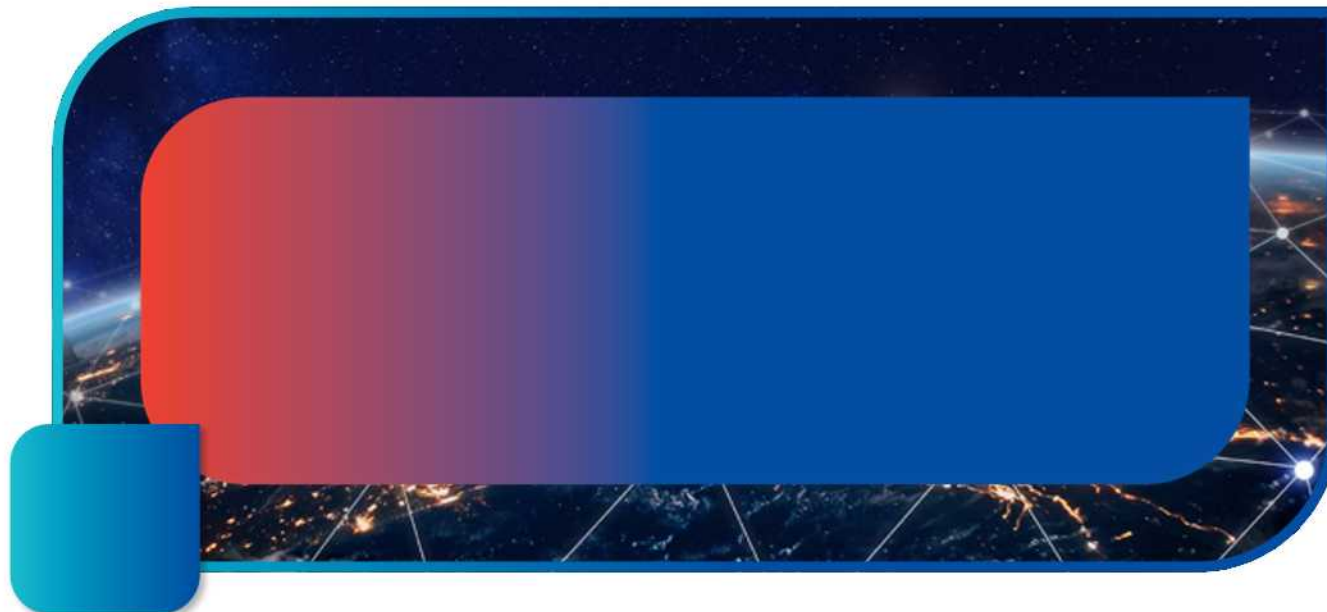
4.3.4 It is important to note that POPIA does not necessarily replace any pre-existing NLC disciplinary policies for as long as they do not contradict POPIA. Therefore, any policy breaches may still be dealt with in accordance with internal procedures.

5 Conclusion

- 5.1 POPIA is aimed at giving effect to the constitutional right to privacy by protecting people's personal information from being processed unlawfully. The people protected are natural and juristic persons.
- 5.2 Organisations such as the NLC have to ensure that they are compliant with the POPIA legal framework, including:



- 5.3 It is impossible to compile a complete list of what personal information is being processed by the NLC. Information within grant applications, grant agreements, investigation reports, e-mails, letters and even social media posts can easily be regarded as the processing of personal information. It is therefore important that NLC personnel familiarise themselves with the POPIA legal framework starting with the POPIA manual. Learning about the eight (8) conditions discussed above would also be extremely helpful.



Annexure A

8 Conditions for Lawful Processing

It is important to note that these conditions apply as a general principle despite The Act classifying different classes of who the data subject is, and what kind of personal information intends on being processed.

For purposes of the below, a "responsible party" is a person or entity who is processing the personal information and a "data subject" is a person or entity whose personal information is being processed.





Further processing limitation

Further processing must be in accordance with or compatible with the purpose for which it was collected. In order for the processing to be compatible, the responsible party should consider the following:

- A) The **relationship** between the purpose of the intended further processing and the purpose for which the information was collected;
- B) The **nature** of the information concerned;
- C) The **consequences** of the intended further processing of the data subject;
- D) The **manner** in which the personal information was collected; and
- E) Any **contractual** rights and obligations between the parties



Information quality

The responsible party must take reasonable steps to ensure that the personal information is complete, accurate and not misleading and updated where necessary. The responsible party should always have regard to the purpose for which the personal information was collected.



Openness

This condition provides that the responsible party must maintain the documentation of all processing operations under its responsibility as contemplated in section 14 of the Promotion of Access to Information Act (PAIA). The responsible party must also ensure that the data subject is aware of certain aspects, some of these will be listed below, however for the sake of brevity, only a few will be listed (please refer to section 18(1) of the Act for the complete list):

- A) The **information** being collected and where it is not obtained from the data subject, the source from which it is collected;
- B) **The name and address** of the responsible party;
- C) **The purpose** for which the information is being collected; and
- D) **The consequences** of the failure to provide the information.



Security safeguards

This condition relates to the responsible party having to ensure that integrity and security of the personal information which it collected, is secured. Therefore, the responsible party should develop a system that prevents the risk of information “leaks”.



Data subject participation

This condition provides that a responsible party should allow the data subject to participate where its information is concerned. The responsible party must develop a prescribed manner in which the data subject can have access to the personal information obtained by the responsible party, can request that it be corrected or deleted, if the need arises. It is important to note that the manner of access by a data subject is subject to the provisions of section 18 and 15 of PAIA.

