

South Africa

Guidance note on processing of special personal information, 2021

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1. Definition

- 1.1. **“Consent”** means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information;
- 1.2. **“De-identify”**, in relation to personal information of a data subject, means to delete any information that—
 - 1.2.1. identifies the data subject;
 - 1.2.2. can be used or manipulated by a reasonably foreseeable method to identify the data subject; or
 - 1.2.3. can be linked by a reasonably foreseeable method to other information that identifies the data subject,
- 1.3. **“special personal information”**, as referred to in section 26 of POPIA, refers to the personal information concerning the following—
 - 1.3.1 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; or
 - 1.3.2 the criminal behaviour of a data subject to the extent that such information relates to—
 - a) the alleged commission by a data subject of any offence; or
 - b) any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.
- 1.4. **“Processing”** as defined in POPIA, means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including—
 - 1.4.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 - 1.4.2 dissemination by means of transmission, distribution or making available in any other form; or
 - 1.4.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;
- 1.5. **“Responsible party”** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information;

2. Introduction

- 2.1 Section 26 of POPIA prohibits the processing of special personal information, subject to exceptions provided for in section 27(1).
- 2.2 In terms of section 26, a responsible party may, subject to paragraph [2.3](#) below, not process any of the following special personal information of a data subject—
 - 2.2.1 religious beliefs;
 - 2.2.2 philosophical beliefs;
 - 2.2.3 race;
 - 2.2.4 ethnic origin;
 - 2.2.5 trade union membership;

- 2.2.6 political persuasion;
 - 2.2.7 health;
 - 2.2.8 sex life;
 - 2.2.9 biometric information; or
 - 2.2.10 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.
- 2.3 The prohibition on processing personal information, as referred to in paragraph [2.1](#) above, does not apply if the—
- 2.3.1 processing is carried out with the consent of a data subject;
 - 2.3.2 processing is necessary for the establishment, exercise or defense of a right or obligation in law;
 - 2.3.3 processing is necessary to comply with an obligation of international public law;
 - 2.3.4 processing is for historical, statistical or research purposes to the extent that—
 - 2.3.4.1 the purpose serves a public interest and the processing is necessary for the purpose concerned; or
 - 2.3.4.2 it appears to be impossible or would involve a disproportionate effort to ask for consent, and sufficient guarantees are provided for to ensure that the processing does not adversely affect the individual privacy of the data subject to a disproportionate extent;
 - 2.3.5 information has deliberately been made public by the data subject; or
 - 2.3.6 provisions relating to sections 28 to 33 of POPIA are, as the case may be, complied with.
- 2.4 This document provides guidance only and the responsible parties are therefore required to ensure compliance with the relevant provision of POPIA.

3. Purpose

The purpose of this Guidance Note is to guide responsible parties who are required to obtain authorisation from the Regulator to process special personal information, as provided for in section 27(2) of POPIA.

4. Authorisation for processing of special personal information

- 4.1 In terms of Section 27(2) of POPIA, the Regulator may by notice in the *Gazette* authorise a responsible party to process special personal information if the Regulator is satisfied that the such processing is—
- 4.1.1 in the public interest; and
 - 4.1.2 appropriate safeguards have been put in place to protect the special personal information of the data subject.
- 4.2 **Public interest**
- 4.2.1 POPIA does not define public interest.
 - 4.2.2 Public interest is a wide and diverse concept that cannot, and should not, be limited in its scope and application. The definition of what constitutes public interest varies across jurisdictions and should be assessed on a case-by-case basis. In its very basic formulation public interest is the notion that an action or process or outcome widely and generally benefits the public at large (as opposed to a few or a single entity or person) and should be accepted or pursued in the spirit of equality and justice.

4.3 Appropriate safeguards

4.3.1 The responsible party is required, in terms of section 19(1) of POPIA, to secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent—

4.3.1.1 loss of, damage to or unauthorised destruction of personal information; and

4.3.1.2 unlawful access to or processing of personal information.

4.3.2 In order to appropriately secure the integrity and confidentiality of special personal information in its possession or under its control, the responsible party must, in terms of section 19(2) of POPIA, take reasonable measures to—

4.3.2.1 identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;

4.3.2.2 establish and maintain appropriate safeguards against the risks identified;

4.3.2.3 regularly verify that the safeguards are effectively implemented; and

4.3.2.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

4.3.3 The responsible party must have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.

4.3.4 If the Regulator is satisfied that the application for authorisation to process special personal information meets the requirements listed in paragraph 4.1 above, it may impose reasonable conditions in respect of any authorisation granted, which conditions will be decided on a case-by-case basis.

5. Manner of submission of an application for authorisation

5.1. Applications for authorisation to process special personal information must be submitted to the Regulator through the following channels—

Email	authorisation.SPI@justice.gov.za .
Postal	P.O Box 31533 Braamfontein Johannesburg 2017
Hand delivery	JD House 27 Stiemens Street Braamfontein Johannesburg 2001

- 5.2. Due to the current pandemic (Covid-19), the Regulator recommends that applications for authorisation to process special personal information be submitted by email to limit the transmission of the virus. However, the Regulator will accept applications in accordance with paragraph [5.1](#) above.
6. **Acknowledgement of receipt of the application**
- 6.1 Once the application is received and recorded on the system of the Regulator, the responsible party will receive an acknowledgement email or letter with a reference number for the application.
- 6.2 If you are providing additional information to your application, please include the application reference number to enable the Regulator to link the additional information to the existing application.
7. **Contact details**
- 7.1 If after reading this Guide, the responsible party still requires help in completing the authorisation application form, it may contact the Regulator's Customer Service Centre by email at: authorisation.SPI@justice.gov.za.
- 7.2 Please note that the Regulator's operating hours are from 08h30 to 17h00 Monday to Friday only.

Application form for authorisation to process special personal information

Note:

The personal information submitted herein shall be solely used for specific purposes of authorisation applications submitted to the Information Regulator ("Regulator") in terms of section 27(2) of the Protection of Personal Information [Act 04 of 2013](#) (POPIA).

All the information submitted herein shall be used for the purpose stated above, as mandated by POPIA. This Information may be disclosed to the public. The Regulator undertakes to secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of personal information and unlawful access to or processing of personal information.

Part A – Responsible Party

Type of Body	Public Body		Private Body	
Full Name of the Body (Registered Name)				
Trading Name (if any)				
Registration No, if any				
Full Name of Information Officer				
Information Officer's Registration Number, if registered				
Postal Address (Official)				
Physical Address (Official)				
Official Landline Number				
Official Cell Number				
Official Fax Number				
Official Email Address				
Website, if any				

Part B – Category of special personal information

<i>Please select a category of special personal information you intend to process which is subject to an authorisation</i>		
1.	Religious Beliefs	
2.	Philosophical Beliefs	
3.	Race	
4.	Ethnic Origin	
5.	Trade Union Membership	
6.	Political Persuasion	
7.	Health Life	
8.	Sex Life	
9.	Biometric Information of a data subject;	
10.	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	
Please explain how the processing of the selected special personal information is in the public interest, as selected or specified above.		
Is the processing of selected special personal information in compliance with the eight conditions for lawful processing of personal information? If no, please confirm if an exemption, in terms of section 37 of POPIA, has been granted by the Regulator.		

Please indicate if the responsible party in the Republic intends to transfer the special personal information to a third party who is in a foreign country? If so, please specify the name of the foreign country.	
Please specify the appropriate security measures to be implemented by the responsible party to ensure the protection of the special personal information of the data subject.	

Part C – Declaration

I declare that the information contained herein is true, correct and accurate.

SIGNED and DATED at _____ on this the _ day of _____ 2021

INFORMATION OFFICER

Part D

The following information is required for statistical purposes. Please choose a sector(s) that apply to your body.

GOVERNMENT			PUBLIC ENTITIES			PRIVATE BODY			PROFESSION		
Item	Classification of Government	X	Item	Classification of a Public Entity	X	Item	Name of Industry or Sector	X	Item	Type of profession	X
	National Government		1.	Constitutional Entities		1	Education		1	Legal	
	Provincial Government		2.	Schedule 2 Public Entity		2	Insurance		2	Built Environment	
	Local Government		3.	Schedule 3A Public Entity		3	Health Facilities		3	Financial	
LEGISLATURE			4.	Schedule 3B Public Entity		4	Telecommunications		4	Medical and Allied Health Services	
Parliament of the Republic of South Africa			5.	Schedule 3C Public Entity		5	Pharmaceutical		OTHERS, Specify		
			OTHERS, specify			6	Media And Social Media				
Gauteng Provincial Legislature			6.			7	Retail/ Direct Marketing				
Western Cape Provincial Legislature						8	Tourism		5.		
Northern Cape						9	Transportation, Storage				

Provincial Legislature				and Logistics	
Limpopo Provincial Legislature			10	Manufacturing/ Production	
Northwest Provincial Legislature			11	Banks	
Free State Provincial Legislature			12	International Organizations	
Mpumalanga Provincial Legislature			13	Real Estate	
			14	Credit Bureaus	
Eastern Cape Provincial Legislature			OTHERS, specify		
Kwazulu- Natal Provincial Legislature					