

ANNEXURE A

SECTION 61 & CHAPTER 4 OF PAIA

61 Access to health or other records

- (1) If the head of a private body who grants, in terms of section 50, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being-
 - (a) of the requester; or
 - (b) if the request has been made on behalf of the person to whom the record relates, of that person, (in this section, the requester and person referred to in paragraphs (a) and (b), respectively, are referred to as the '**relevant person**'), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the head may, before giving access in terms of section 60, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.
[Sub-s. (1) substituted by s. 41 of Act 42 of 2001 (wef 7 December 2001).]
- (2) If the relevant person is-
 - (a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or
 - (b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.
- (3) (a) If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person, would be likely to cause serious harm to his or her physical or mental health, or well-being, the head may only give access to the record if the requester proves to the satisfaction of the head that adequate provision is made for such counselling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.
 - (b) Before access to the record is so given to the requester, the person responsible for such counselling or arrangements must be given access to the record.

CHAPTER 4

GROUND FOR REFUSAL OF ACCESS TO RECORDS (ss 62-70)

62 Interpretation

A provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, must not be construed as-

- (a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and
- (b) not applying to a particular record by reason that another provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

63 Mandatory protection of privacy of third party who is natural person

- (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information-
- (a) about an individual who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;
 - (b) already publicly available;
 - (c) that was given to the private body by the individual to whom it relates and the individual was informed by or on behalf of the private body, before it is given, that the information belongs to a class of information that would or might be made available to the public;
 - (d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is-
 - (i) under the age of 18 years; or
 - (ii) incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;
 - (e) about an individual who is deceased, and the requester is-
 - (i) the individual's next of kin; or
 - (ii) making the request with the written consent of the individual's next of kin; or
 - (f) about an individual who is or was an official of a private body and which relates to the position or functions of the individual, including, but not limited to-
 - (i) the fact that the individual is or was an official of that private body;
 - (ii) the title, work address, work phone number and other similar particulars of the individual;
 - (iii) the classification, salary scale or remuneration and responsibilities of the position held, or services performed by the individual; and
 - (iv) the name of the individual on a record prepared by the individual in the course of employment.

64 Mandatory protection of commercial information of third party

- (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if the record contains-
- (a) trade secrets of a third party;
 - (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
 - (c) information supplied in confidence by a third party, the disclosure of which could reasonably be expected-
 - (i) to put that third party at a disadvantage in contractual or other negotiations; or
 - (ii) to prejudice that third party in commercial competition.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information about-

- (a) a third party who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;
- (b) the results of any product or environmental testing or other investigation supplied by a third party or the results of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

[Para. (b) substituted by s. 42 of Act 42 of 2001 (wef 7 December 2001).]

- (3) For the purposes of subsection (2) (b), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

65 Mandatory protection of certain confidential information of third party

The head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

66 Mandatory protection of safety of individuals, and protection of property

The head of a private body-

- (a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or
- (b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair-
 - (i) the security of-
 - (aa) a building, structure or system, including, but not limited to, a computer or communication system;
 - (bb) a means of transport; or
 - (cc) any other property; or
 - (ii) methods, systems, plans or procedures for the protection of-
 - (aa) an individual in accordance with a witness protection scheme;
 - (bb) the safety of the public, or any part of the public; or
 - (cc) the security of property contemplated in subparagraph (i) (aa), (bb) or (cc).

67 Mandatory protection of records privileged from production in legal proceedings

The head of a private body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

68 Commercial information of private body

- (1) Subject to subsection (2), the head of a private body may refuse a request for access to a record of the body if the record-

- (a) contains trade secrets of the private body;
 - (b) contains financial, commercial, scientific or technical information, other than trade secrets, of the private body, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body;
 - (c) contains information, the disclosure of which could reasonably be expected-
 - (i) to put the private body at a disadvantage in contractual or other negotiations; or
 - (ii) to prejudice the body in commercial competition; or
 - (d) is a computer program, as defined in section 1 (1) of the Copyright Act, 1978 (Act 98 of 1978), owned by the private body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the results of any product or environmental testing or other investigation supplied by the private body or the results of any such testing or investigation carried out by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.
[Sub-s. (2) substituted by s. 43 of Act 42 of 2001 (wef 7 December 2001).]
- (3) For the purposes of subsection (2), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

69 Mandatory protection of research information of third party, and protection of research information of private body

- (1) The head of a private body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose-
- (a) the third party;
 - (b) a person that is or will be carrying out the research on behalf of the third party; or
 - (c) the subject matter of the research, to serious disadvantage.
- (2) The head of a private body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of the private body, the disclosure of which would be likely to expose-
- (a) the private body;
 - (b) a person that is or will be carrying out the research on behalf of the private body; or
 - (c) the subject matter of the research, to serious disadvantage.

70 Mandatory disclosure in public interest

Despite any other provision of this Chapter, the head of a private body must grant a request for access to a record of the body contemplated in section 63 (1), 64 (1), 65, 66 (a) or (b), 67, 68 (1) or 69 (1) or (2) if-

- (a) the disclosure of the record would reveal evidence of-
 - (i) a substantial contravention of, or failure to comply with, the law; or
 - (ii) imminent and serious public safety or environmental risk; and

- (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

SECTION 53 OF PAIA

Form of request

- (1) A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.
- (2) The form for a request for access prescribed for the purposes of subsection (1) must at least require the requester concerned-
 - (a) to provide sufficient particulars to enable the head of the private body concerned to identify-
 - (i) the record or records requested; and
 - (ii) the requester;
 - (b) to indicate which form of access is required;
 - (c) to specify a postal address or fax number of the requester in the Republic;
 - (d) to identify the right the requester is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or protection of that right;
 - (e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and
 - (f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction.

ANNEXURE B: NOTICE OF SECURITY COMPROMISES IN TERMS OF SECTION 22 OF POPIA

TO: CLIENT

CHOOSE ONE OF THE FOLLOWING METHODS OF NOTIFICATION:

PHYSICAL/POSTAL ADDRESS

EMAIL

PROMINENT POSITION ON COMPANY WEBSITE

PUBLISHED IN NEWS MEDIA

AS DIRECTED BY REGULATOR

RE: NOTICE OF SECURITY COMPROMISES IN TERMS OF SECTION 22 OF POPIA

We regret to inform you that there has been a security compromise and your/your business's personal information has been accessed or acquired by an unauthorize person.

1. Details of the security compromise is as follows:
 - 1.1 The date and time the security compromise was discovered;
 - 1.2 How it came to the Company's attention and reporting structure followed;
 - 1.3 The date and time the security compromise occurred;
 - 1.4 The identity of the unauthorized person (if available);
 - 1.5 Brief description what happened;
 - 1.6 Categories of personal information compromised: (refer to definition of "personal information", section 26 for special personal information and section 57 of the POPIA.
2. Description of possible consequences of the security compromise:
 1. Description of measures the Company intends to take or has taken to address the security compromise:
 2. We recommend that you / your Company take the following measures to mitigate the possible adverse effects of the security compromise:

The security compromise was also reported to the Regulator as required on (Regulation 7(1) into section 74(1) – Part 1 of Form 5-Form to be confirmed).

The Company will further act and take all necessary steps in accordance with any direction provided by the Regulator with regards to publicity in order to protect you / your Company.

Yours faithfully

1. DEFINITIONS

2.1 The following definitions are set out or reference in the POPIA, unless the context indicates otherwise:

“**Automatic calling machine**”, for purposes of section 69(1), means a machine that is able to do automated calls without human intervention.

“**biometrics**” means a technique of personal identification that is based on physical, physiological or behavioural characterisation including blood typing, fingerprinting, DNA analysis, retinal scanning and voice recognition;

“**child**” means a natural person under the age of 18 years who is not legally competent, without the assistance of a competent person, to take any action or decision in respect of any matter concerning him- or herself;

“**code of conduct**” means a code of conduct issued in terms of Chapter 7;

“**competent person**” means any person who is legally competent to consent to any action or decision being taken in respect of any matter concerning a child;

“**consent**” means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**data subject**” means the person to whom personal information relates;

“**de-identify**”, in relation to personal information of a data subject, means to delete any information that—

- (a) identifies the data subject;
- (b) can be used or manipulated by a reasonably foreseeable method to identify the data subject; or
- (c) can be linked by a reasonably foreseeable method to other information that identifies the data subject, and “**de-identified**” has a corresponding meaning;

“**direct marketing**” means to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of—

- (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the data subject; or
- (b) requesting the data subject to make a donation of any kind for any reason;

“**electronic communication**” means any text, voice, sound or image message sent over an electronic communications network which is stored in the network or in the recipient’s terminal equipment until it is collected by the recipient;

“**enforcement notice**” means a notice issued in terms of section 95;

“**filing system**” means any structured set of personal information, whether centralised, decentralised or dispersed on a functional or geographical basis, which is accessible according to specific criteria;

“information matching programme” means the comparison, whether manually or by means of any electronic or other device, of any document that contains personal information about ten or more data subjects with one or more documents that contain personal information of ten or more data subjects, for the purpose of producing or verifying information that may be used for the purpose of taking any action in regard to an identifiable data subject;

“information officer” of, or in relation to, a—

- (a) public body means an information officer or deputy information officer as contemplated in terms of section 1 or 17; or
- (b) private body means the head of a private body as contemplated in section 1, of the Promotion of Access to Information Act;

“Minister” means the Cabinet member responsible for the administration of justice;

“operator” means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party;

“person” means a natural person or a juristic person;

“personal information” means information relating to an identifiable, living, natural person, and where it is 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 5 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 information, 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

- (i) 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 information about the person;

“prescribed” means prescribed by regulation or by a code of conduct;

“private body” means—

- (a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;
- (b) a partnership which carries or has carried on any trade, business or profession;
- or
- (c) any former or existing juristic person, but excludes a public body;

“processing” means any operation or activity or any set of operations, 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;

“professional legal adviser” means any legally qualified person, whether in private practice or not, who lawfully provides a client, at his or her or its request, with independent, confidential legal advice;

“Promotion of Access to Information Act” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

“public body” means—

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) any other functionary or institution when—
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation;

“public record” means a record that is accessible in the public domain and which is in the possession of or under the control of a public body, whether or not it was created by that public body;

“record” means any recorded information—

- (a) regardless of form or medium, including any of the following:
 - (i) Writing on any material;

- (ii) information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;
- (iii) label, marking or other writing that identifies or describes anything of 60 which it forms part, or to which it is attached by any means;
- (iv) book, map, plan, graph or drawing;
- (v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;
- (b) in the possession or under the control of a responsible party;
- (c) whether or not it was created by a responsible party; and
- (d) regardless of when it came into existence;

“Regulator” means the Information Regulator established in terms of section 39;
“re-identify”, in relation to personal information of a data subject, means to resurrect any information that has been de-identified, that—

- (a) identifies the data subject;
- (b) can be used or manipulated by a reasonably foreseeable method to identify the data subject; or
- (c) can be linked by a reasonably foreseeable method to other information that identifies the data subject,

and **“re-identified”** has a corresponding meaning;

“Republic” means the Republic of South Africa;

“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;

“restriction” means to withhold from circulation, use or publication any personal information that forms part of a filing system, but not to delete or destroy such information;

“special personal information” means personal information as referred to in section 26 concerning-

- (a) 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
- (b) the criminal behaviour of a data subject to the extent that such information relates to—
 - (i) the alleged commission by a data subject of any offence; or
 - (ii) any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.

“this Act” includes any regulation or code of conduct made under this Act;

“unique identifier” means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party.

“Subscriber”, for purposes of this section, means any person who is party to a contract with the provider of publicly available electronic communications services for the supply of such services.

“binding corporate rules” means personal information processing policies, within a group of undertakings, which are adhered to by a responsible party or operator within that group of undertakings when transferring personal information to a responsible party or operator within that same group of 20 undertakings in a foreign country;

“group of undertakings” means a controlling undertaking and its controlled undertakings.