



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*

## **INVITATION FOR PUBLIC COMMENTS**

### **PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013) (“POPIA”): RULES OF PROCEDURE RELATING TO THE MANNER IN WHICH A COMPLAINT OR ANY MATTER IN TERMS OF THE POPIA MAY BE REFERRED TO AND CONSIDERED FOR A FINDING, AND RECOMMENDATION BY THE ENFORCEMENT COMMITTEE, 2023.**

1. The Information Regulator (Regulator) hereby, under section 113(3)(c) of the Protection of Personal Information Act 4 of 2013, invites interested parties to submit written comments on the proposed draft Rules of Procedure for the Enforcement Committee, issued under Section 92(2) of the Protection of Personal Information Act 4 of 2013.
2. A copy of the proposed Rules is available on the Regulator’s website at <https://info regulator.org.za/rules-of-procedures/>. The comments on the draft Rules must be submitted to the Chief Legal Officer, Mr Jaco Jansen **on or before 24<sup>th</sup> March 2023**. The contact details are:

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2017

E-mail address: [JJJansen@infoRegulator.org.za](mailto:JJJansen@infoRegulator.org.za)

Signed at **JOHANNESBURG** on this the **06<sup>th</sup>** day of **FEBRUARY 2023**.

*J.P. Tlakula.*

Adv. F.D.P. Tlakula

Chairperson

By order of the Chairperson of the Information Regulator (South Africa)



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# **POPIA RULES OF PROCEDURE**

**For the**

# **ENFORCEMENT COMMITTEE**

**Rules Of Procedure Relating to the manner in which a complaint or any matter in terms of the Protection of Personal Information Act 4 of 2013 (“POPIA”), may be referred to and considered for a finding, and recommendation by the Enforcement Committee**

**The Information Regulator intends to prescribe the procedure in terms of section 92(2) of POPIA**

**February 2023**

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## CHAPTER 1

### 1. DEFINITIONS

1.1. In these Rules, any word or expression to which a meaning has been given in the Protection of Personal Information Act 4 of 2013, shall have that meaning and, unless the context indicates otherwise:

1.1.1. **"complainant"** means: Any person who lodges a complaint with the Information Regulator.

1.1.2. **"complaint"** means:

1.1.2.1. A matter that has been reported to the Information Regulator in terms of section 74 (1) and (2) of POPIA;

1.1.2.2. A matter referred to the Information regulator in terms of section 76 (1) (e) and 92 (1) of POPIA; and

1.1.2.3. A matter reported or referred to the Information Regulator in terms of other legislation that relates to the processing of personal information wherein POPIA will apply.

1.1.3. **"Constitution"** means the Constitution of the Republic of South Africa Act 108 of 1996;

1.1.4. **"Day"** means a calendar day, unless the last day of a specified period happens to fall on a Sunday or on any public holiday, in which case the period shall be calculated exclusive of that Sunday or public holiday in accordance with section 4 of the Interpretation Act No. 33 of 1957 as Amended;

- 1.1.5. **"Directions"** means directions issued by the Chairperson of the Enforcement Committee.
- 1.1.6. **"Enforcement Committee"** means a committee, in terms of section 50 of Protection of Personal Information Act No. 4 of 2013,
- 1.1.7. **"Investigating officer"** means a staff member or other suitable person appointed as an investigating officer to undertake a formal investigation of a complaint in terms of section 47(1)(b) of the Act;
- 1.1.8. **Legal Practitioner"** means an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30 of the Legal Practice Act No 28 of 2014, respectively;
- 1.1.9. **"Office hours"—**
- 1.1.9.1 In respect of offices of the Information Regulator, means the hours between 08:00 and 16:00 on Monday to Friday, excluding public holidays; and
- 1.1.9.2 In respect of offices designated by the Information Regulator, means the hours during which the offices are operating;
- 1.1.10. **"Parties to a dispute"** means the data subject and the responsible parties involved in the complaint;
- 1.1.11. **"POPIA"** means the Protection of Personal Information Act No. 4 of 2013;
- 1.1.12. **"Regulator"** means the Information Regulator established in terms of section 39 of the Protection of Personal Information Act 4 of 2013;
- 1.1.13. **"Regulations"** means regulations as made by the Regulator in terms of section 112 (2) of the Protection of Personal Information Act 4 of 2013;
- 1.1.14. **"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.



- 1.1.15. **“Respondent”** means the person against whom a complaint has been lodged.
- 1.1.16. **“Rules”** means these Rules.
- 1.1.17. **“Secretariat”** means the employee of the Regulator responsible for providing secretarial services to the Enforcement Committee

## **CHAPTER 2**

### **2. PURPOSE OF RULES**

2.1 The purpose of these Rules is to:

- 2.1.1 Promote and enhance access to the Information Regulator (“the Regulator”) by complainants who are alleging interference with the protection of their personal information.
- 2.1.2 Provide the procedure for the manner and the form in which a complaint or any other matter may be referred to the Enforcement Committee
- 2.1.3 Clarify role players when a complaint or any other matter is referred to the Enforcement Committee.
- 2.1.4 Provide a procedure on how evidence at the hearing of the Enforcement Committee should be led.
- 2.1.5 Prescribe the procedure to be followed by the Enforcement Committee, including the:
  - 2.1.5.1 manner in which the responsible party and data subject may make submissions to the Enforcement Committee;

- 2.1.5.2 opportunity afforded to the parties who make submissions to the Enforcement Committee to make use of legal or other representation;
- 2.1.5.3 period within which the Enforcement Committee must make a finding and submit its recommendation to the Regulator in respect of the complaint or other matter; and
- 2.1.5.4 manner in which the Enforcement Committee may finalise urgent matters.

## **CHAPTER 3**

### **3. GENERAL POWERS AND DUTIES OF THE SECRETARIAT**

#### **3.1 Filing of documents**

- 3.1.1 The Secretariat may accept a document tendered for lodging through a hand delivery, facsimile or email.
- 3.1.2 The Secretariat may refuse to accept any document tendered for lodging if, in the Secretariat's opinion, it does not comply with these rules: Provided that if proper copies of the rejected documents are submitted within five (5) working days of rejection, such lodging shall not be deemed untimely.
- 3.1.3 Subject to Rule 5.11.3 the Secretariat may not accept documents lodged within ten (10) working days of the hearing.

#### **3.2 Maintaining of Enforcement Committee's records**

- 3.2.1 The Secretariat shall maintain the Enforcement Committee's records and shall not permit any of them to be removed from any storage, except as authorised by the Secretariat.
- 3.2.2 Any document lodged with the Secretariat and made part of the Enforcement Committee's records shall not be removed from the official records of the Enforcement Committee.

### **3.3 Inspection and copying**

- 3.3.1 The Secretariat may not allow inspections of any documents filed for Enforcement Committee purposes, which, on a request for access, may or must be refused in terms of the grounds of refusal as contained in PAIA.
- 3.3.2 The Secretariat may, subject to sub-rule 3.3.1 above, make copies of any document which form part of the Enforcement Committee's records, upon payment of a fee determined by the Regulator.
- 3.3.3 The Secretariat shall, at the request of a party, make a copy of the findings and recommendations, on payment of a fee determined by the Regulator and the Secretariat shall certify that copy to be a true copy of the original.

### **3.4 Summons**

- 3.4.1 The Secretariat shall issue and serve any summons authorised by the Chairperson, in accordance with section 81(a) of POPIA.

## **CHAPTER 4**

### **4. POWERS OF THE ENFORCEMENT COMMITTEE AND THE CHAIRPERSON**

#### **4.1 Powers of the Enforcement Committee-**

The Enforcement Committee has powers to-

- 4.1.1 consider any of the matters specified in Sub-rule 5.2 and referred to it by the Regulator in terms of sections 74 and 92 (1) of POPIA;
- 4.1.2 make a finding in respect of the matter referred to the Committee;
- 4.1.3 make recommendations to the Regulator in respect of the matter referred to the Committee;

4.1.4 consider the complaint or a matter referred to it on papers only; or

4.1.5 refer a matter to a hearing, in terms of sub-rule 5.1.2.

## **4.2 Powers of the Chairperson of the Enforcement Committee**

4.2.1 The Chairperson of the Enforcement Committee has the power to manage the work of and preside at hearings or proceedings of the Enforcement Committee.

4.2.2 The Chairperson of the Enforcement Committee may *mero motu*, on request or on application-

4.2.2.1 extend or reduce any time period prescribed in these rules and may condone non-compliance with these rules;

4.2.2.2 give or issue such directions in any matters of procedure and the disposal of any matters before the Committee, application or interlocutory matter as the Chairperson may consider just and expedient;

4.2.2.3 direct the proceeding of the Enforcement Committee;

4.2.2.4 direct whether or not a witness may be cross-examined;

4.2.2.5 determine if the matter referred to the Enforcement Committee will be determined on papers or through a hearing;

4.2.2.6 authorise a summons.

4.2.2.7 direct any category of persons or any person(s) whose presence is not desirable, not to be present at any proceedings of the Enforcement Committee.

4.2.2.8 direct any person or witness to appear at a hearing and to have his or her evidence taken *in camera*.

4.2.3 The Chairperson of the Enforcement Committee may issue practice directives from time to time in regard to the Enforcement Committee's processes and/or specific proceedings of the Enforcement Committee.

## **CHAPTER 5**

### **5. PROCEEDINGS OF THE ENFORCEMENT COMMITTEE**

#### **5.1 The manner in which the Enforcement Committee should adjudicate a complaint, or any matter referred to it**

5.1.1 Subject to sub-rule 5.11.7 and except in so far as the Chairperson may in special cases otherwise direct, all proceedings of the Enforcement Committee shall be open to the public.

5.1.2 If after assessment of a complaint or any matter referred to it, the Enforcement Committee requires clarity on the complaint or any matter, the Enforcement Committee may refer the complaint or any matter to a hearing for adjudication by the Enforcement Committee.

#### **5.2 Types of matters that may be referred to the Enforcement Committee.**

The following matters may be lodged with the Secretariat of the Enforcement Committee-

5.2.1 A complaint (Investigation Report), in terms of sections 74 and 92(1) of POPIA; and

5.2.2 Any other matter in terms of section 92(1).

#### **5.3 The manner and the form in which a complaint or other matter may be referred to the Enforcement Committee**

- 5.3.1 A Referral Notice to the Enforcement Committee must contain the existing reference number allocated to the matter referred and every subsequent document lodged with the Secretariat in such a matter shall be marked with that reference number by the party lodging it and shall not be accepted by the Secretariat until so marked.
- 5.3.2 The Complainant, the data subject (if not the complainant) and the Responsible Party must be notified about the referral of a complaint to the Enforcement Committee, in writing on a form that corresponds substantially with **Form A** (Referral Notice) to these Rules.
- 5.3.3 In referring a complaint or other matter to the Enforcement Committee, the Regulator must provide the Complainant (or data subject if not the complainant) and the Responsible Party with a copy of the report together with sufficient information necessary to enable him or her or it to make representations before the Enforcement Committee.
- 5.3.4 A Referral Notice, referred to sub-rule 5.3.2, must be served on the Parties in accordance with the preferred manner of correspondence, as specified in sub-rule 5.3.5.
- 5.3.5 A Referral Notice, referred to sub-rule 5.3.2, must be served on the Responsible party, through any of the following means of communication as specified in the responsible party's PAIA Manual-
- 5.3.5.1 Email;
- 5.3.5.2 Fax;
- 5.3.5.3 Post; or
- 5.3.5.4 Hand delivery at the head office of the body.
- 5.3.6 Only the Executive: POPIA or his/her duly delegated official of the Regulator may refer-

5.3.6.1 A complaint or other matter, in writing on a form that corresponds substantially with **Form B** (referral form B) to these Rules.

5.3.7 A referral form must be lodged with the Secretariat of the Enforcement Committee within five (5) working days of notifying the Complainant and the Responsible Party.

#### **5.4 Notification to the Parties**

5.4.1 The Secretariat of the Enforcement Committee must, as soon as is reasonably practicable, but within five (5) working days of receipt of the referral form, acknowledge receipt of the referral form.

5.4.2 The Responsible party, must within five (5) working days of receipt of the referral, notify the Secretariat of his/her/its intention to oppose the matter before the Enforcement Committee, alternatively, to file a notice to abide, on a form that corresponds substantially with **Form C** to these Rules.

5.4.3 The Responsible party may, within ten (10) working days of notifying the Secretariat of the Enforcement Committee of his/her or its intention to oppose the preliminary findings/recommendations in the report, deliver his or her answering affidavit, if any, together with any relevant documents.

5.4.4 The Regulator may file a replying affidavit within ten (10) working days of receipt of the answering affidavit.

5.4.5 The Secretariat of the Enforcement Committee must, as soon as is reasonably practicable, but within ten (10) working days of receipt of submission from the parties, inform the parties of the date in which the matter will be considered by the Committee, in writing on a form that corresponds substantially with **Form D** (Notice of set down).

#### **5.5 The manner in which the responsible party and data subject may make submissions to the Enforcement Committee.**

5.5.1 If a complaint or any other matter is referred to the Enforcement Committee in terms of section 92 (1) of POPIA, the Responsible Party and the Data Subject may make submissions to the Enforcement Committee in one of the following manners:

5.5.1.1 In writing, as may be directed by the Enforcement Committee, within ten (10) days of being required to make such submissions by the Chairperson of the Enforcement Committee.

5.5.1.2 By representation before the Enforcement Committee, in person, or through video link.

## **5.6 Evidence presented to the Enforcement Committee**

5.6.1 The Enforcement Committee may receive any evidence that is relevant to the matter referred to it, including evidence that might otherwise be inadmissible in a Court of law. The rules of evidence applicable in a Court of law need not be strictly applied to the determination of the admissibility of evidence before the Enforcement Committee.

5.6.2 Anyone who has knowledge of the matter referred to the Enforcement Committee and with sufficient interest in the matter, may deliver to the Secretariat of the Enforcement Committee an affidavit setting out any evidence relevant to the matter in question and the Secretariat will hand it over to the Chairperson of Enforcement Committee for consideration by the Committee.

5.6.3 Affidavits that are submitted to the Enforcement Committee should:

5.6.3.1 be formatted in numbered paragraphs,

5.6.3.2 include an index and subject matter headings if the affidavit is more than five pages in length, and

5.6.3.3 be properly paginated.

5.6.4 Where a person seeks to provide expert evidence to the Enforcement Committee, his or her evidence must include a summary of relevant qualifications and experience, a



summary of the expert's opinion, as well as an explanation of the relevance of the expert's testimony to the matter before the Enforcement Committee.

- 5.6.5 Expert evidence must be served on all the parties and filed with the Secretariat at least ten (10) working days before the hearing of the matter.

## **5.7 Oral evidence at the hearing of the Enforcement Committee**

- 5.7.1 If a complaint or any matter has been referred to a hearing, in terms of subrule 4.2.2.5, witnesses may be called to give oral evidence before the Enforcement Committee at the discretion of the Chairperson of the Enforcement Committee.

- 5.7.2 Any person or a witness appearing or making submission to the Enforcement Committee may be represented by a legal practitioner, on application to the Chairperson of the Enforcement Committee, in accordance with sub-rule 5.13.1.

- 5.7.3 The Chairperson of the Enforcement Committee or another person who is generally or specifically authorised by the Chairperson to do so, shall administer the oath or affirmation to a witness before that person may commence giving evidence.

- 5.7.4 If a matter has been scheduled for a hearing, the time for argument shall be determined by the Chairperson, having regard to the circumstances of the matter before the Committee.

## **5.8 Joinder and substitution of parties before the Enforcement Committee**

- 5.8.1 The Enforcement Committee may on application or on its own accord join any number of persons, if their rights and relief depend on the determination of substantially the same questions of law or fact.

5.8.2 A party to the proceedings, may by notice apply to the Chairperson of the Enforcement Committee to substitute a person for a current party on application.

**5.9 The period within which the Enforcement Committee must make a finding and submit its recommendation to the Regulator in respect of the complaint or other matter.**

5.9.1 The process of adjudicating a complaint or any matter referred to the Enforcement Committee must be completed within ninety (90) calendar days of referral.

5.9.2 Should a complaint referred for adjudication to the Enforcement Committee not be finalised within ninety (90) calendar days as per 5.9.1 above, the period may be extended on good cause shown. The Chairperson of the Enforcement Committee may then extend the period as he/she deem is a reasonable extension in the circumstances.

5.9.3 The Complaint or any matter referred to the Enforcement Committee must be set down for adjudication or hearing within forty five (45) calendar days of referral - unless the Enforcement Committee decides otherwise.

5.9.4 The Enforcement Committee must submit its findings and recommendations to the Regulator within thirty (30) calendar days of concluding the hearing (if any) or adjudicating the matter unless the Enforcement Committee decides otherwise.

5.9.5 The Enforcement Committee may issue practice directives.

**5.10 The manner in which the Enforcement Committee may finalise urgent matters**

5.10.1 If the Regulator is of the view that a complaint or any matter must be dealt with as a matter of urgency, an urgent referral notice, **Form E** to these Rules, must be delivered to the Enforcement Committee on notice to all the affected parties, supported by an affidavit which explains why the matter is urgent and the reasons why it cannot be dealt with in accordance within normal time frames prescribed in these Rules.

5.10.2 The Urgent Referral Form must state that-

- 5.10.2.1 the title of the matter;
  - 5.10.2.2 the reference number assigned to the matter by the Regulator;
  - 5.10.2.3 the urgent relief sought;
  - 5.10.2.4 any party that intends to make any written submission may do so within the specified period in the urgent referral notice;
  - 5.10.2.5 the matter may be heard in the absence of a party who fails to appear on the specified date; and
  - 5.10.2.6 a schedule is included listing the documents that are material and relevant to the matter.
- 5.10.3 Proof of service, in accordance with sub-rules 5.3.4 and 5.3.5, of the Urgent Referral Form on the Complainant and the Respondent shall be a prerequisite for the acceptance of the urgent referral notice by the Enforcement Committee.
- 5.10.4 The Enforcement Committee must, before hearing or considering the merits of the complaint or any matter referred to it determine if the matter is urgent.
- 5.10.5 The Enforcement Committee may, if not satisfied that the matter is urgent, dismiss the urgent referral and direct that the matter be enrolled in the normal course.
- 5.10.6 If the Enforcement Committee is satisfied that the matter is urgent, the Chairperson must determine and issue a directive regarding –
- 5.12.6.1 the date on which the parties may file documents;
  - 5.12.6.2 whether the Committee will accept oral or written submissions;
  - 5.12.6.3 in general decide on how the matter will proceed.
- 5.10.7 The decision regarding the urgency of the referral matter must be taken and communicated to the parties as soon as it is reasonably possible to do so.

## **5.11 The opportunity afforded to the parties who make submissions to the Enforcement Committee, to make use of legal or other representation**

- 5.11.1 Any party to a dispute may, under exceptional circumstances and on application showing on good cause to the Chairperson, be represented by a legal practitioner.
- 5.11.2 A legal practitioner may be entitled, subject to sub-rule 5.11.3 below, and through the Chairperson of the Enforcement Committee, to question other witnesses, who have appeared before the Enforcement Committee.
- 5.11.3 The Chairperson of the Enforcement Committee may, in his/her discretion, direct the cross-examination of a witness by an affected person or his or her or its legal practitioner to take place after the Investigating Officer and the Enforcement Committee have exhausted their respective questions to the witness.
- 5.11.4 Subject to sub-rule 5.11.3, there is no right to cross-examine a witness before the Enforcement Committee, but the Chairperson of the Enforcement Committee may permit cross-examination should he or she deem it necessary and in the best interests of the work of the Enforcement Committee to do so.
- 5.11.5 The Chairperson of the Enforcement Committee may direct any person or persons whose presence is not desirable, not to be present at any proceedings of the Enforcement Committee.
- 5.11.6 If any party considers that a particular witness should be called to give oral evidence, a written request to this effect should be made to the Chairperson of the Enforcement Committee and shall include the reasons for the request and the likely value of the evidence of such witness. Such witness may be subpoenaed at the discretion of the Chairperson of the Enforcement Committee.
- 5.11.7 A witness may apply to the Chairperson of the Enforcement Committee, at least five (5) working days before he or she is scheduled to appear at a hearing, to have his or her evidence taken *in camera*. Such application must be made in writing and must give

reasons why such an order should be made. The Chairperson of the Enforcement Committee will decide such application in his/her discretion. Factors to be considered in determining the *in-camera* appearance may include, but not be limited to the safety and security of the witness.

- 5.11.8 Any party appearing before the Enforcement Committee or his/her legal practitioner assisting during the examination, may be entitled to peruse such documents or relevant evidence, except for the records that are subject to a dispute, in possession of the Investigating Officer obtained during an investigation or assessment as are reasonably necessary.

## **5.12 Rights of the parties before the Enforcement Committee**

At an enquiry conducted under this rule, a party -

- 5.12.1 May be present at the hearing of the proceedings, provided that if the Respondent is not so present, the hearing may proceed in his or her or its absence, if the Committee is satisfied that the notice of the enquiry has been received by the Respondent;
- 5.12.2 may, subject to sub-rule 5.11.1, be assisted or legally represented by another person or legal practitioner in conducting his or her defence;
- 5.12.3 has the right to be heard;
- 5.12.4 may call witnesses;
- 5.12.5 may, subject to sub-rule 5.11.3, cross-examine any person called as a witness.

## **5.13 Application to the Enforcement Committee**

- 5.13.1 The following applications may be made to the Enforcement Committee-
- 5.13.1.1 Condonation application;
- 5.13.1.2 Application to cross-examine witnesses

- 5.13.1.3 Application for *in camera*;
  - 5.13.1.4 Application for postponement;
  - 5.13.1.5 Interlocutory application;
  - 5.13.1.6 Application for legal representation; and
  - 5.13.1.7 any other application which, at the discretion of the Chairperson, is relevant to the proceedings.
- 5.13.2 In every matter where a party seeks certain relief from the Enforcement Committee, the application must, unless directed otherwise by the Chairperson of the Committee, be in writing and lodged with the Secretariat, prior to the date of the hearing.
- 5.13.3 The other party to the proceeding may file an answering affidavit. Every affidavit in answer to any application shall be served on the respondent and filed (together with proof of service) with the Secretariat within five (5) working days after service of the application or as directed by the Chairperson.
- 5.13.4 The applicant may lodge a replying affidavit, if any, with the Secretariat within five (5) working days of receipt of the answering affidavit, or as directed by the Chairperson.
- 5.13.5 Every application, answering affidavit or replying affidavit shall-
- (a) be clear, succinct and to the point;
  - (b) furnish all such information as may be necessary to enable the Enforcement Committee to decide the application; and
  - (c) deal with the merits of the case only in so far as is necessary for the purpose of explaining and supporting the particular grounds upon which the application is sought or opposed.

5.13.6 The Chairperson of the Enforcement Committee may issue any directives required in his / her discretion, to facilitate the hearing or consideration of such application, including the directives for submissions of -

- (a) further affidavits;
- (b) the record or part of it; and
- (c) additional copies of the application,

and the party concerned shall lodge with the Secretariat the required documents within the period prescribed by the Chairperson.

5.13.7 If the applicant for the application referred to sub-rule 5.13.1 fails to comply with a directive by the Chairperson or to complete the application within the period prescribed, the application shall lapse.

## **CHAPTER 6**

### **6.1 ADMISSION OF AMICUS CURIAE TO THE ENFORCEMENT COMMITTEE**

6.1.1 An application to be admitted as an amicus curiae shall-

6.1.1.1 briefly describe the nature of the interest in the proceedings;

6.1.1.2 briefly identify the position to be adopted by the applicant in the proceedings; and

6.1.1.3 set out the submissions to be advanced by the applicant, their relevance to the proceedings and his or her or its reasons for believing that the submissions will be useful to the Enforcement Committee and different from those of the other parties.

6.1.2 An amicus curiae of the Committee shall have the right to lodge written submission, provided that such written argument does not repeat any matter set forth in the argument of the other parties and raises new information which may be useful to the Enforcement Committee.

- 6.1.3 Directing submission by an amicus curiae shall not exceed five (5) pages unless the Chairperson otherwise directs.
- 6.1.4 The amicus curiae shall be limited to the subject matter referred of the hearing and may not add thereto and, unless otherwise directed by the Chairperson, shall not present oral argument.
- 6.1.5 A directive granting leave to be admitted as an amicus curiae of the Committee shall specify the date of lodging the written submissions or any other matter incidental to the matter before the Committee.

## **CHAPTER 7**

### **7. ENFORCEMENT COMMITTEE'S FINDINGS AND RECOMMENDATIONS**

- 7.1 The Enforcement Committee must, as soon as reasonably possible, but in any event within the period prescribed in sub-rule 5.9.4, submit its findings and recommendation to the Regulator on any matter referred to the Committee.
- 7.2 The findings, reasons for findings, and recommendations, if any, of the Enforcement Committee must be submitted in a format that corresponds substantially with **Form F**.

## **CHAPTER 8**

### **8. DECISION OF THE INFORMATION REGULATOR**

- 8.1 Members of the Information Regulator (excluding Member(s) of the Regulator referred to in subsection 50(1)(a) of POPIA) must, consider the findings and recommendations of the Enforcement Committee within a reasonable period, which period shall not exceed fifteen (15) working days of receipt of the recommendations of the Enforcement Committee.



- 8.2 Members of the Regulator referred to in subrule 8.1 may, after having considered the recommendations of the Enforcement Committee, serve the Responsible Party with an Enforcement Notice, which corresponds substantially with **Form 15** to the Regulations relating to the Protection of Personal Information, 2018, and in terms of section 95 of POPIA.

## **CHAPTER 9**

### **9. GENERAL PROVISIONS**

#### **9.1 General**

- 9.1.1 Any party wishing to make any application to the Enforcement Committee which is not otherwise provided for in these Rules must do so on at least seven (7) working days' notice in writing to the Enforcement Committee, as referred to in 5.13.1.
- 9.1.2 The Chairperson may condone non-compliance with, or extend, any timeframe provided for in these Rules on good cause shown or when it is in the interests of the work of the Enforcement Committee to do so.
- 9.1.3 Wherever these Rules make provision for any person to apply to the Enforcement Committee or to the Chairperson, the application must be a substantive application on affidavit with a notice of application. The affidavit must, among other things, reflect the relevant facts, the relief sought, and the grounds relied upon to seek such relief.
- 9.1.4 The application must be lodged with the Secretariat of the Enforcement Committee who will ensure that a copy thereof is delivered to the Chairperson and to the members of the Enforcement Committee. The applicant in that application must cite every other person whose rights may be adversely affected by the relief sought and serve a copy thereof on him, her, or it.
- 9.1.5 As soon as possible after the Chairperson of the Enforcement Committee has become aware of such an application, he/she must issue such directive as to how the matter may proceed as he/she may consider appropriate.

- 9.1.6 The Secretariat shall, subject to the directions of the Chairperson of the Enforcement Committee, notify each party, in writing, of the date of hearing or date of submission of written submissions.
- 9.1.7 A letter or notice forwarded to a party's last-known address and/or email and/or fax shall be deemed to be sufficient notice of the date of the hearing or date of submission of written submissions.
- 9.1.8 If any party fails, without good cause, to appear or submit its submission on the specified date, the Enforcement Committee may proceed with its consideration of the matter in absentia.

## **9.2 Recording of proceedings of the Enforcement Committee**

- 9.2.1 Any proceedings of the Enforcement Committee shall be recorded by the Regulator in any manner deemed appropriate.
- 9.2.2 The Chairperson of the Enforcement Committee shall, before the commencement of any recording, inform the persons present of the fact that a recording will be made and of the manner of such recording.
- 9.2.3 A person appointed or designated to record the proceedings before the Enforcement Committee, must at the outset take an oath or make an affirmation in the following form:

*"I, AB, declare under oath or affirm that-*

*I shall faithfully and to the best of my ability record the proceedings and related matters by using the method determined by the Regulator, and*

*In accordance with section 54 of the POPIA, I shall treat as confidential the personal information which comes to my knowledge in the course of the performance of my official duties, except if the communication of such information is required by law or in the proper performance of my duties"*

9.2.4 A person appointed or designated to transcribe the record of proceedings of the Enforcement Committee referred to sub-rule 9.2.1, must upon completion of the transcription, certify as follows-

*"I, AB, certify that I have fully and to the best of my ability transcribed the whole of the record of the proceedings of the Enforcement Committee handed to me in this matter and hereby certify that the attached documents are true, accurate and complete transcripts of the proceedings of the Enforcement Committee held on (specify dates)."*

9.2.5 The Secretariat of the Enforcement Committee must keep a record of its functions including the following:

9.2.5.1 Investigation reports of all complaints or other matters referred to the Enforcement Committee, in terms of section 92 of POPIA;

9.2.5.2 findings and recommendations on each matter referred to the Members of the Regulator;

9.2.5.3 recording of all proceedings of the Enforcement Committee.

### **9.3 Language used during the proceedings of the Enforcement Committee**

9.3.1 The official language of record of the proceedings of the Enforcement Committee shall be in English.

9.3.2 A party who requires the services of an interpreter during any stage of the proceedings of the Enforcement Committee shall give thirty (30) days notice to the Secretariat of Enforcement Committee, who may make the necessary reasonable arrangements for an interpreter, at the cost of the Regulator, subject to availability of financial resources.

9.3.3 The arrangement by the Secretariat for an interpreter shall be limited to the official South African languages, including sign language.

### **9.4 Contact particulars of the Regulator**

The Secretariate of the Enforcement Committee can be contacted at the following contact details-

- 9.1.1 **Email:** [enforcement@infoRegulator.org.za](mailto:enforcement@infoRegulator.org.za);
- 9.1.2 **Telephone Number:** (010) 023 5200;
- 9.1.3 **Physical address:** JD House, 27 Stiemens Street, Braamfontein, Johannesburg, 2001;
- 9.1.4 **Postal address:** P.O Box 31533, Braamfontein, Johannesburg, 2017.

## **10. SHORT TITLE AND COMMENCEMENT**

These Rules are called the “*Rules of procedure for the Enforcement Committee, 2023*” and shall come into operation on ..... 2023.



## FORM A

(Sub-rule 5.3.2)

### REFERRAL NOTICE

<b>REF NO:</b>	
--------------------	--

TO: (Insert the name of an Information Officer of a public body or a Head of a private body  
(Name of a public body or private body)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Address)

E-mail: \_\_\_\_\_

Dear Sir/Madam

#### NOTICE OF REFERRAL OF INVESTIGATION REPORT OR COMPLAINT OR OTHER MATTER IN TERMS OF SECTION 92 of POPIA, TO THE ENFORCEMENT COMMITTEE

<b>NAME OF COMPLAINANT</b>	
<b>NAME OF THE RESPONDENT (BODY)</b>	

Please be advised that the investigation in the above-mentioned matter having been completed or Settlement/Conciliation Certificate not been complied with, the investigation report will be referred to the Enforcement Committee within the next five (5) working days from the date of this notice. A copy of the final report is attached hereto for ease of reference.

Kindly indicate on the below form, if the preliminary findings and/or recommendations contained in the above-mentioned report are accepted or rejected.

Please note that the Secretariate of the enforcement committee will issue directives, within ten (10) working days of this letter, on how the Committee will proceed with the matter.

Yours sincerely

\_\_\_\_\_  
Investigating Officer

.....  
**ACCEPTANCE OR REJECTION OF THE PRELIMINARY FINDINGS AND /OR RECOMMENDATIONS**

I, the undersigned,

Name:

Position

hereby accept or reject (delete) the preliminary findings  and/or accept or reject (delete) the recommendations

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NB: if preliminary findings and/or recommendations are rejected, please submit your written substantiated reasons for rejection to the Secretariate within five (5) days of receipt of this letter to: [enforcement@infoRegulator.org.za](mailto:enforcement@infoRegulator.org.za) or Physical address: **JD House, 27 Stiemens Street, Braamfontein, Johannesburg, 2001** or **Postal address: P.O Box 31533, Braamfontein, Johannesburg, 2017****



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*

## FORM B

(Sub-rule 5.3.6.1)

(Investigation)

### REFERRAL NOTICE TO THE ENFORCEMENT COMMITTEE

		<b>REF NO:</b>		
<b>Nature of referral</b>	<b>Complaint</b>		<b>Other matter</b>	
<b>DETAILS OF THE REQUESTER, IF ANY</b>				
<b>Name and Surname</b>				
<b>Contact Numbers</b>				
<b>E-mail Address</b>				
<b>Addresses</b>				
<b>Complaint Date</b>				
<b>Nature of the Complaint</b>				
<b>DETAILS OF THE BODY</b>				
<b>Nature of the Body</b>	<b>Public Body</b>		<b>Private Body</b>	

Name of the Body	
Contact Numbers	
Email Address	
Physical Address	

**DETAILS OF THE INFORMATION OFFICER OR THE HEAD OF A PRIVATE BODY**

Name & Surname	
Names of delegated DOE, if any	
Contact Numbers	
E-mail Address	
Work Physical Address	

**PARTICULARS OF INFORMATION ASSESSED**

--	--

**BRIEF SUMMARY OF THE REASON WHY AN INVESTIGATION WAS NECESSARY OR APPROPRIATE**

(Please attach Form 14 notification)

--	--



**INVESTIGATION REPORT**

(Regulator's Preliminary Findings and Recommendations. An Investigation Report must be attached)

**Preliminary Findings**

**Preliminary Recommendations**

*(Please specify the conduct to be refrained from or action to be taken by the information officer or head of the private body)*

.....  
**Executive: POPIA**

**Name:** .....

**Date:**.....



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## FORM C

(Sub-rule 5.4.2)

### NOTICE OF INTENTION TO OPPOSE OR ABIDE

REF NO:

**TO: THE SECRETARIAT**  
Per email: [enforcement@infoRegulator.org.za](mailto:enforcement@infoRegulator.org.za)

**AND TO: THE COMPLAINANT**  
(address)

### NOTICE OF INTENTION TO OPPOSE OR ABIDE

<b>NAME OF COMPLAINANT</b>	
<b>NAME OF THE RESPONDENT</b> (Responsible party)	

Please be advised that the Respondent -

Intend to oppose the preliminary findings and/or preliminary recommendations of the investigation report

Abide the preliminary findings and/or preliminary recommendations of the

investigation report

Signed at.....on this the .....day of .....2023

\_\_\_\_\_  
Name of the Respondent

\_\_\_\_\_  
Signature

NB: if preliminary findings and/or recommendations are rejected, please submit your written substantiated reasons for rejection to the Secretariat within five (5) days of receipt of this letter to: [enforcement@infoRegulator.org.za](mailto:enforcement@infoRegulator.org.za) or Physical address : JD House, 27 Stiemens Street, Braamfontein, Johannesburg, 2001 or Postal address: PO Box 31533, Braamfontein, Johannesburg, 2017.



## FORM D

(Sub-rule 5.4.5)

### NOTICE OF SET DOWN

REF NO:

TO: (Insert the name of an Information Officer of a public body or a Head of a private body and the complainant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Address)

E-mail: \_\_\_\_\_

Dear Sir/Madam

### NOTICE OF SET DOWN

<b>NAME OF COMPLAINANT</b>	
<b>NAME OF THE RESPONSIBLE PARTY</b>	

Please be advised that the Enforcement Committee has determined that this matter shall be considered-

on papers only

through a hearing.

As a result, the above matter has been set down for consideration by the Enforcement Committee as follows-

Date:

Time:

Place:

Yours sincerely

---

The Secretariat

**ENFORCEMENT COMMITTEE**



## FORM E

(Sub-rule: 5.10.1)

### URGENT REFERRAL NOTICE FORM

[Complaint or Any Matter]

		Reference Number	
<b>Name of Complainant</b>			
<b>Name of the Respondent (Body)</b>			
<b>Date of the hearing</b>			
<b>Place</b>			
<b>Time</b>			
<b>DESCRIPTION OF THE COMPLAINT</b>			
(Please provide a summary of the nature of the complaint or any matter being referred to the Enforcement Committee on an urgent basis)			

<b>URGENT RELIEF SOUGHT</b> (Please specify the urgent relief sought)
<b>REASONS WHY THE MATTER IS URGENT</b> (Please provide reasons why the complaint or any matter is urgent)

**KINDLY TAKE NOTICE** that-

- a) any party that intends to make any written submission may do so within five (5) days of receipt of this notice;
- b) the matter may be heard in the absence of a party who fails to appear on the specified date and time; and
- c) the attached documents that are material and relevant for adjudication of this matter.

**DATED** at **JOHANNESBURG** on this the \_\_\_\_\_ day of \_\_\_\_\_ **2023**

\_\_\_\_\_  
**Name:** .....  
**EXECUTIVE: POPIA**

**NB:** Proof of service of this notice must be attached to this cover, failing which the application shall not be considered by the Enforcement Committee.



## FORM F

(Sub-rule 7.2)

# FINDINGS AND RECOMMENDATIONS OF THE ENFORCEMENT COMMITTEE

[Complaint or Any Matter]

		REF NO:			
Nature of the matter	Complaint		Investigation		Settlement / Conciliation
Date for the Committee's Meeting					
Name of the Complainant or Requester					
Name of the Body					
Name of the Information Officer or Head of Private Body					
<p><b>FINDINGS</b></p> <p>(Referral Notice and Investigation Report or Settlement / Conciliation Certificate must be attached)</p>					
<p>Having considered the matter tabled before the Enforcement Committee on the date specified above, the Committee has made the following findings: -</p>					



a)

**REASONS FOR FINDINGS**

**RECOMMENDATIONS**

**Based on the above-mentioned findings, the committee recommends the following actions to be taken–**

a)

\_\_\_\_\_  
**For and on behalf of the Enforcement Committee**

**Name of the Secretariat:** .....

**Date:** .....



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*

**FORM 15**

**ENFORCEMENT NOTICE IN TERMS OF SECTION 95  
OF THE PROTECTION OF PERSONAL INFORMATION  
ACT 4 OF 2013)**

**REGULATIONS RELATING TO THE PROTECTION OF  
PERSONAL INFORMATION, 2018**

[Regulation 12(2)(c)]

Reference number: \_\_\_\_\_

A	DETAILS OF DATA SUBJECT
Name(s) and surname/ registered name of data subject/complainant/aggrieved party:	
Unique Identifier/ Identity Number	
Residential, postal or business address:	
	Code (    )
Contact number(s):	
Fax number/ E-mail address:	
B	DETAILS OF RESPONSIBLE PARTY
Name(s) and surname/ Registered name of responsible party:	
Residential, postal or business	

address:	
	Code (    )
Contact number(s):	
Fax number/ E-mail address:	
<b>Complaint received from:</b>	
_____	
(Full name(s) and surname)	
Date received:	
_____	
Responsible party:	
_____	
(Full names)	
<b>A. The Enforcement Committee has concluded that the protection of personal information of the data subject has been interfered with as follows:</b>	

- A breach of the conditions for the lawful processing of personal information.
- Non-compliance with the duty to notify security compromises (section 22 of the Protection of Personal Information Act 4 of 2013)
- Non-compliance with the duty of confidentiality (section 54 of the Protection of Personal Information Act 4 of 2013)
- Non-compliance with obligations for direct marketing by means of unsolicited electronic communications (section 69 of the Protection of Personal Information Act 4 of 2013)
- Non-compliance with obligations regarding the inclusion of personal information in directories (section 70 of Protection of Personal Information Act 4 of 2013)
- Non-compliance with obligations regarding automated decision making (section 71 of the Protection of personal Information Act 4 of 2013)
- Non-compliance with obligations regarding personal information outside the (section 72 of the Protection of Personal Information Act 4 of 2013)
- Breach of the provision of a code of conduct issued in terms of section 60: Code of Conduct .....of (Reference..... )

**B. The reasons for reaching this conclusion are:**

.....  
.....  
.....  
.....

**C. The responsible party is hereby ordered to:**

.....  
.....  
.....

Take the following specified steps:

.....  
.....  
.....

To refrain from taking the following specified steps:

.....  
.....  
.....

To stop the processing, the following specified personal information:

.....  
.....  
.....

To stop processing of personal information for the following purpose:

.....  
.....  
.....

To stop the processing of personal information in the following manner:

.....  
.....  
.....

**D. Urgency**

The Regulator directs that this notice should be complied with a matter of urgency for the following reasons:

.....  
.....  
.....

**E. Time periods**

The responsible party must comply with this Enforcement Notice and the directives under C after 30 (thirty) working days from receiving this notice.

The responsible party must comply with this Enforcement Notice and the directives under C after 4 (four) working days from receiving this notice.

**F. Right of Appeal**

The responsible party may appeal against this Enforcement Notice within 30 (thirty) working days of receiving this notice.

.....  
Regulator (Represented by)