

POPIA@UCT QUESTIONS & ANSWERS

A JOURNEY TO COMPLIANCE

7 JUNE
2021

Project: **UCT POPIA COMPLIANCE PROJECT**
Client: **UCT**
Prepared by: **ELIZABETH DE STADLER**



WHAT'S NEW WITH POPIA.

(THE POPIA LIMBO IS OVER. OR IS IT?)

A 'DOOMSDAY' CLOCK?



THE INFORMATION REGULATOR (SOUTH AFRICA) IS AN INDEPENDENT BODY ESTABLISHED IN TERMS OF SECTION 39 OF THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013. IT IS SUBJECT ONLY TO THE LAW AND THE CONSTITUTION AND IT IS ACCOUNTABLE TO THE NATIONAL ASSEMBLY.

REGISTRATION OF INFORMATION OFFICERS PORTAL

Please note we are experiencing a high volume of registrations on the portal which is causing some delays and technical issues. Our technicians are working on it. We apologise for the inconvenience caused.

Days left to become POPIA compliant.

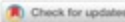
24D 13H 50M 40S

The 24th of March 2021 will mark 100 days to 1st July 2021 where public and private bodies need to be POPIA compliant.


THE USAF GUIDELINE



A RESEARCH CODE IS COMING...

**Check for updates**

AUTHORS:
Rachel Adams¹
Susan Veldman²
Michelle Ramsay³
Hinia Soodyal⁴



AFFILIATIONS:
¹Human Sciences Research Council, Pretoria, South Africa
²Academy of Science of South Africa, Pretoria, South Africa
³Sydney Brenner Institute for Molecular Bioscience, University of the Witwatersrand, Johannesburg, South Africa

CORRESPONDENCE TO:
Susan Veldman

EMAIL:
susan@assaf.org.za

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ARTICLE INCLUDES:
☐ Peer review
☐ Supplementary material

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Discussions on POPIA

Drafting a Code of Conduct for Research under the *Protection of Personal Information Act No. 4 of 2013*

On 22 June 2020, President Ramaphosa announced that the *Protection of Personal Information Act No. 4 of 2013* (POPIA) would come into effect on 1 July 2020. A one-year grace period was provided to give organisations time to comply with the provisions of the Act. It will therefore be mandatory as of 1 July 2021, for all sectors in South Africa to comply with POPIA.

POPIA gives effect to the constitutional right to privacy. In so doing, it balances the right to privacy with other rights and interests, including the free flow of information within South Africa and across its borders. POPIA adopts a principle-based approach to the processing of personal information. It sets out eight conditions for the lawful processing of personal information: accountability, processing limitation, purpose specification, further processing limitation, information quality, openness, security safeguards, and data subject participation. These principles apply equally to all sectors that process personal information.

Chapter 7 of POPIA makes provision for the development of Codes of Conduct to provide guidance on the interpretation of POPIA in relation to a particular sector or industry, or class of information. Codes of conduct are particularly important in providing prior authorisation in terms of Section 57 of POPIA for the sector to which the Code applies. Prior authorisation is required for the processing of unique identifiers, such as ID numbers, for any purpose other than that for which they were originally collected, and for use within an information matching programme. In addition, prior authorisation is required for transferring special personal information and the personal information of children to a country outside South Africa that does not have an adequate level of data protection regulation. Further guidance on Chapter 7 of POPIA and the development of Codes of conduct was published by the Information Regulator in February 2021.¹ Once a code is approved by the Information Regulator and comes into force, it is legally binding.

The Academy of Science of South Africa (ASSAf) has begun a process to facilitate the development of a Code of Conduct for Research. In addition to providing prior authorisations for research, as set out above, the Code of Conduct is needed to provide guidance to researchers on how to rationalise the provisions of POPIA in relation to existing laws and standards regulating research. The general norm, in this instance, is that whichever law provides a greater level of protection of rights, and particularly the right to privacy, takes precedence.

This process began in 2020 following a call from South African scientists to consider the development of a POPIA Code of Conduct specifically to guide the use of personal information in research. Two public fora were held in 2020 to discuss: during Open Access Week on 21 October 2020 and at the Science Forum South Africa on 10 December 2020. Two committees – a Steering Committee and a Drafting Committee – were subsequently established by ASSAf to lead the process of developing the Code of Conduct for Research (Table 1).

1. [INFORMATION REGULATOR: THE INFORMATION REGULATOR'S GUIDANCE ON CHAPTER 7 OF POPIA](https://www.informationregulator.co.za/wp-content/uploads/2021/02/Information-Regulator-Guidance-Chapter-7-POPIA-2021.pdf) – WERE SUBSEQUENTLY ESTABLISHED BY ASSAf TO LEAD THE PROCESS OF DEVELOPING THE CODE OF CONDUCT FOR RESEARCH (Table 1).

QUICK RECAP

(WHAT IS POPIA ABOUT?)

WHAT IS PERSONAL INFORMATION?

- Identifiers
- Demographic information
- Contact details
- Financial information
- Background or historical information

Information relating to an identifiable, living, natural person or an existing organisation.

- Usernames and social media handles
- Biometric information
- Health information
- Preferences and opinions
- Behavioural information
- Correspondence

MEET YOUR DATA SUBJECTS

- **Students:** Prospective students, student applicants, students (South African or international), exchange students and alumni
- **Employees and functionaries:** Academic and administrative staff, employment candidates, external members of committees, student employees (e.g. research assistants, tutors), the SRC and council members
- **Research:** Researchers and research participants
- **Affiliated organisations:** Donors, funders, 'subsidiaries' (e.g. units and centers, companies in which the University is a shareholder), partners (e.g. exchange programmes), service providers, suppliers, independent contractors
- **Other individuals:** Family members of students and employees, sureties, emergency contacts visitors and members of the public

WHAT IS PROCESSING?

Processing activities lie at the heart of POPIA. A processing activity is a collection of interrelated work tasks that achieve a specific result during which personal information is created, collected, used, shared, transformed, stored or destroyed. **Can you think of any?**



POLICIES ARE REQUIRED



- **Data Privacy Policy:** In draft pending finalization of roles and responsibilities
- **Information Security Policy:** Approved by Council in May 2020. The POPIA Programme will aid in its implementation.
- **Records Management Policy:** Under review
- **Research Policies:** Will be reviewed against draft ASSAf Code and POPIA

LET'S BREAK IT DOWN

(SOME RULES OF THUMB. AND BUSTING SOME
MYTHS.)

POPIA IS ABOUT BALANCE

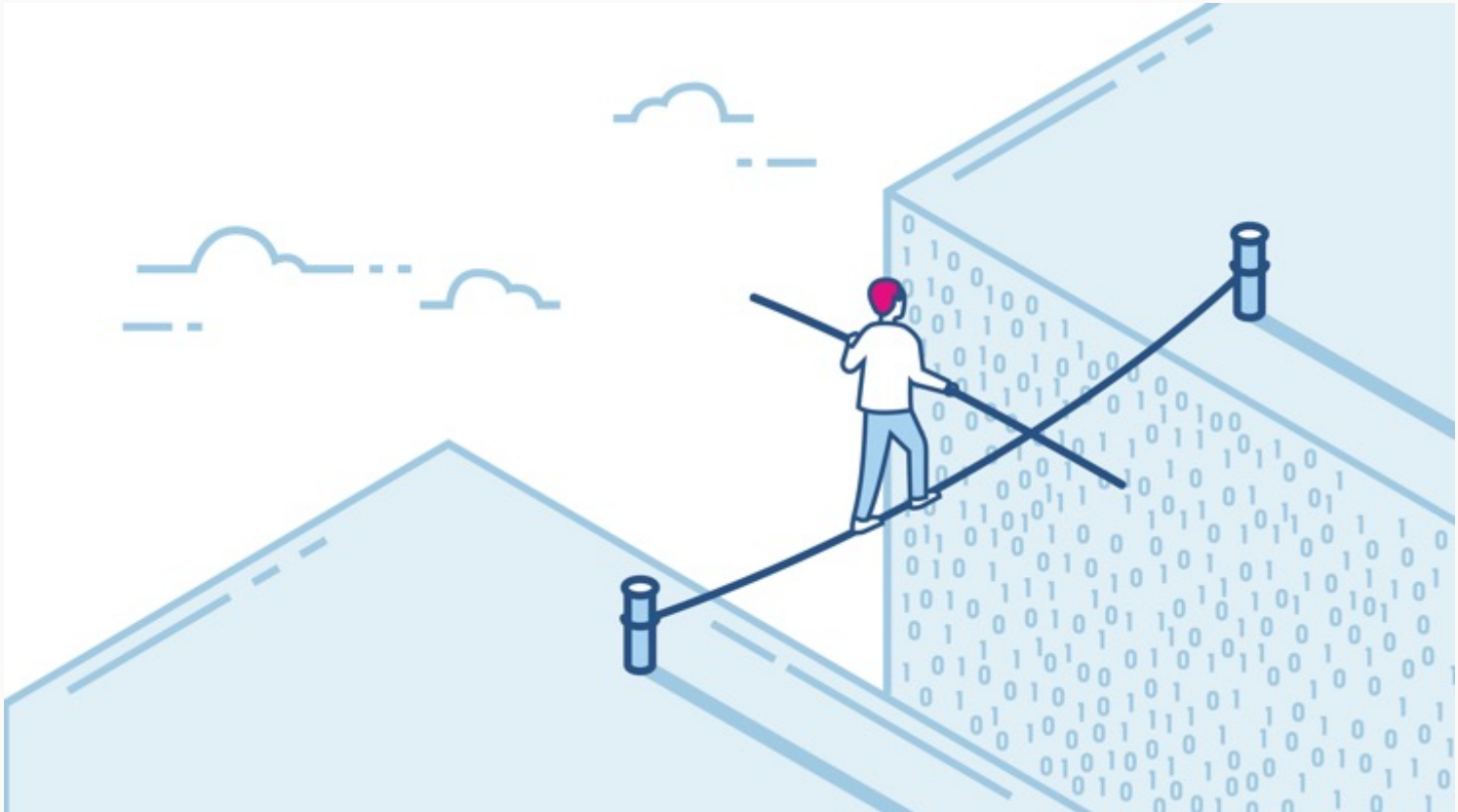
PRIVACY

Protect the constitutional right to privacy including the unlawful collection, retention, dissemination and use of personal information (the preamble)

BUSINESS

But, the Regulator must take into account the interests of public and private bodies in achieving their objectives (yes, even the commercial ones) in an efficient way (section 44(1)(b))

POPIA IS ABOUT BALANCE



RULES OF THUMB

- Less is more
- No surprises
- Don't share without protection
- Check yourself before you wreck yourself
- Use it or lose it
- Destroy it, don't spread it
- Above all, keep it safe!



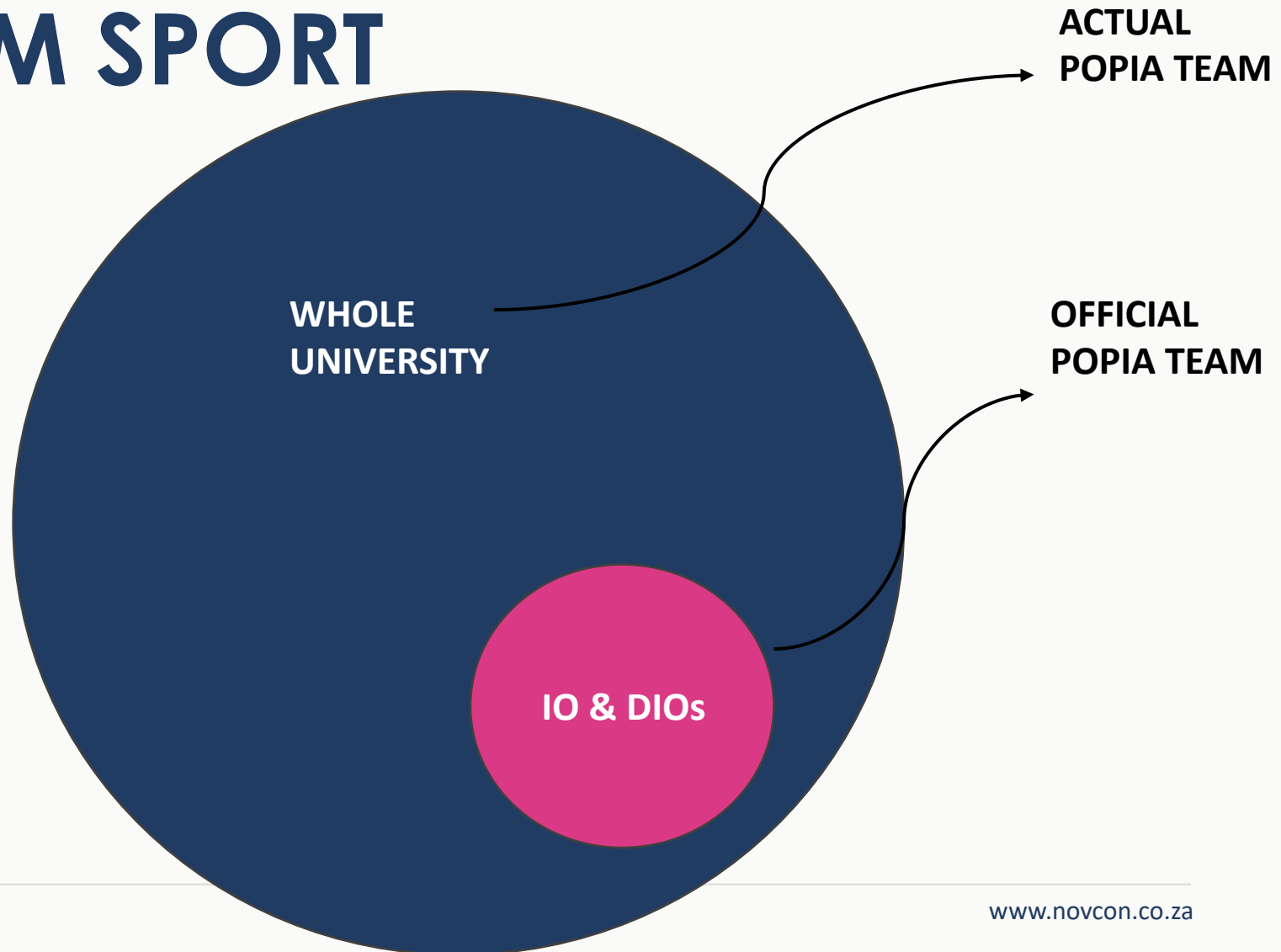
WHAT LAWYERS ARE GETTING WRONG

- **Public info is still personal:** POPIA also protects information that is already public – no, Experian, 'the information is already public' or 'on the internet' is not a defence
- **Consent won't save you:** This one is so important, it has its own slide
- **If you have a breach, you will get fined:** Nope, if you behave unreasonably you will get fined.
- **POPIA only applies to information collected after 1 July 2021:** It applies to all processing activities after 1 July 2021 – doesn't matter if you have had the information for 100 years.
- **There is no POPIA compliance certificate:** It just doesn't exist.

POPIA IS A TEAM SPORT

(ROLES AND RESPONSIBILITIES.)

POPIA IS A TEAM SPORT



ROLES AND RESPONSIBILITIES

- **Information Officer:** The Vice-Chancellor.
 - It doesn't look like this can change.
 - The Information Officer *ensures* that POPIA responsibilities are discharged
 - Accountable (sometimes directly) to the Information Regulator
 - Must be registered with the IR
- **Deputy Information Officer(s):** Registrar and another TBC
 - *Performs* the responsibilities of the Information Officer
 - It is a formal appointment which must be registered with the IR
 - Supported by a team of POPIA/PAIA compliance officers

ROLES AND RESPONSIBILITIES

- **Deans & directors:** The first line of defence & responsible for implementing policies in their areas.
- **Employees and students:**
 - Spread the word.
 - Ask for advice if you are uncertain about the personal information you are handling.
 - Report incidents immediately.
 - Participate in training when asked.

THANK YOU!

popia@uct.ac.za