

POPIA quick reference:
• POPIA took effect on July 1, 2020.
• POPIA enforcement is scheduled to begin July 1, 2021.
• POPIA applies to any company or organization processing personal information in South Africa, who is domiciled in the country, or not domiciled but making use of automated or non-automated means of processing in the country.
• Fines for non-compliance with POPIA can range up to 10 million ZAR (South African Rand).
• Transfers of personal information outside of South Africa is prohibited by POPIA (with exceptions).
• POPIA creates nine actionable rights for South African citizens (data subjects), including but not limited to the right to access, right to correction and right to deletion.
• POPIA also creates eight conditions for lawful data processing, in which the consent of the data subject is central. It is up to websites, companies and organizations (“responsible parties”) to prove that their processing is lawful, e.g. that correct consents have been obtained from users.
• POPIA defines consent as any voluntary, specific and informed expression of will.
• POPIA defines processing as collection, receipt, recording, organization, storage, merging, linking, and more.
• POPIA defines personal information broadly as any information relating to not only a living person, but also a company or legal entity.
• POPIA allows companies and organizations to process data if it is deemed in the user’s “legitimate interest”, creating a point of ambiguity for possible abuse and enforcement difficulties.

PROTECTION OF PERSONAL INFORMATION General Information and FAQs

Brief Overview

What is the purpose of the POPIA?

POPIA aims to give effect to the constitutional right to privacy, whilst balancing this right against competing rights and interests, particularly the right of access to information. The purpose of POPIA is to regulate the processing of personal information in a secure and responsible manner. The spirit of the Act is to ensure that organisations that hold and process personal information do so carefully and with respect for the rights and interests of the people to whom it pertains.

When does POPIA apply?

POPIA applies when the personal information is entered into a record by automated or non-automated means by the University and forms part of or is intended to form part of a filing system.

What is meant by the ‘processing of data’?

The University processes personal information of data subjects.

Processing is defined to include:

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

Who are included as the University’s data subjects?

The University processes personal information of, amongst others, the following data subjects, categorized in accordance with data subjects:

Students

- prospective students
- student applicants
- South African and international students
- exchange students
- post-doctoral fellows
- alumni

Staff

- academic and administrative staff
- employment candidates
- employees

Research

- researchers
- external members of committees
- research participants
- external examiners
- funders

Third party

- authors
- council members
- external committee members
- service providers, suppliers, independent contractors
- partner organisations
- subsidiaries
- donors and funders
- visitors
- members of the public

What personal information may be processed by the University?

Student Data

- Biographical information
- Unique identification information
- Medical records
- Mental health records
- Disability information
- Next of kin information, biography and contact information
- Academic records
- Disciplinary records
- Personal login details
- Video recordings and facial recognition
- Financial statements, bank statements and invoices

Staff Data

- Biographical information
- Unique identification information
- Medical records
- Mental health records
- Disability information
- Next of kin information, biography and contact information
- Biographical information of spouse, children and/beneficiaries of pension/provident fund and/or life insurance
- Academic records
- Disciplinary records
- Personal login details
- Video recordings and facial recognition
- Financial statements, bank statements and invoices
- Salary records
- SARS information
- Marriage status and certificate
- Criminal or criminal clearance records

Third Party Data

- Biographical information
- Company or organisation information
- Company or organisation registration information
- Director(s), members or partners' identity documents (Unique identification information)
- Proof of address
- BBBEE status
- Disability information
- Marital status, if relevant, next of kin information, biography and contact information
- Income, financial statements, bank statements and invoices
- SARS, including VAT registration information
- Criminal or criminal clearance records

For what purpose may personal information be processed?

Personal information may be processed by the University to:

- Conclude a contract or to perform in terms of a contract. For example, student applications and employment contracts;
- comply with an obligation imposed by law;
- protect a legitimate interest of the data subject;
- ensure proper performance of a public law duty of the University;
- ensure the legitimate interest of the responsible party or of a third party.

With whom will the University potentially share personal information?

Recipients of personal information processed by the University may include:

- other universities;
- funders;
- researchers;
- government departments;
- once-off requests for access to single records;
- third parties (e.g. service providers).

FREQUENTLY ASKED QUESTIONS

What is the purpose of the POPIA?	The purpose is to regulate the processing of Personal Information. It is aimed to encourage the flow of information in a secure and responsible manner. The spirit of the Act is to ensure that organisations that hold and process personal information do so carefully and with respect for the rights and interests of the people to whom it pertains.
Does POPIA apply retrospectively?	No, it does not. POPIA came into effect on 1 July 2021.
What plans does the University have in place to inform staff about POPIA on a regular basis?	Staff and students need to refer to the inter- and intra-net for any information as it is regularly updated
What is classified as personal information in terms of POPIA?	'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

	<p>origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;</p> <p>(b) information relating to the education or the medical, financial, criminal or employment history of the person;</p> <p>(c) any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person;</p> <p>(d) the biometric information of the person;</p> <p>(e) the personal opinions, views or preferences of the person;</p> <p>(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;</p> <p>(g) the views or opinions of another individual about the person; and</p> <p>(h) 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.</p> <p>‘Special personal information’ means</p> <p>(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</p> <p>(b) the criminal behaviour of a data subject to the extent that such information relates to –</p> <p>(i) the alleged commission by a data subject of any offence; or</p> <p>(ii) any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.</p>
<p>Who needs to comply with POPIA?</p>	<p>Everyone is required to comply with POPIA.</p>
<p>What are my rights in respect of my personal information?</p>	<p>You have the right to:</p> <p>(i) confirmation (free of charge) of whether the institution has their personal information;</p> <p>(ii) request a record or a description of the personal information the institution has; and</p> <p>(iii) know the identity of all third parties, or</p>

	<p>categories of third parties who have, or have had, access to the personal information.</p> <p>You will be given access to their data, subject to the request for information process as set out in the Manual for Access to a Record of the University of the Western Cape in terms of the Promotion of Access to Information Act, no 2 of 2000</p>
<p>Is personal information shared with third parties? If so, for what reason and in what format?</p>	<p>Yes, personal information may be processed to conclude or perform in terms of a contract; to comply with obligations imposed by law; to protect a legitimate interest of a person (such as health and safety of a person); to ensure proper performance of a public law duty by a public body, such as the Department of Higher Education and Training; and to ensure the legitimate interest of the University or a third party to whom it is supplied. The format in which the information is shared will depend on the request.</p>
<p>May I share personal information of a student with a parent or guardian if they claim they cannot contact their child/ward?</p>	<p>Each request must be assessed on a case-by-case basis to determine the reason for the request. The request must be referred to the Deputy Registrar: AA for consideration.</p>
<p>May I share personal information with police officers, detectives or other government agencies?</p>	<p>No, all requests for personal information must be referred to the Registrar's Office.</p>
<p>Are there any instances where my personal information may be shared without my explicit consent?</p>	<p>Yes, personal information may be processed to conclude or perform in terms of a contract; to comply with obligations imposed by law; to protect a legitimate interest of a person (such as health and safety of a person); to ensure proper performance of a public law duty by a public body, such as the Department of Higher Education and Training; and to ensure the legitimate interest of the University or a third party to whom it is supplied.</p>
<p>What are the consequences for non-compliance?</p>	<p>Failure to comply to this act can lead to a variety of implications – these include: A complaint lodged with the Information Regulator; A civil claim for payment of any damages; Criminal prosecution – if convicted there could be a fine of up to R10 million or a prison sentence of up to ten years, or even both. The University may also hold the individual accountable through disciplinary procedures and/or a civil claim.</p>

Is there personal liability for non-compliance of POPIA?	Yes, the non-compliance will be assessed on a case to case basis.
Whom should I contact if there's been a data breach?	An email must be sent to popia@uwc.ac.za
How would I know if I have breached the POPIA OR PAIA Act?	You will be contacted by the Deputy Information Officers.
What measures are in place to ensure that confidential information is stored in a secure manner?	The University takes reasonable steps to ensure that confidential information is stored securely, including secure IT systems for the storage of information electronically and the storage of physical documents in vaults and secured premises. The University's Information Security Policy may be consulted.
Is any information shared regarding the wellness counselling services?	No, only statistical data would be shared due to the confidential nature of the service. Personal information may only be shared with the express consent of the person receiving the services or to protect the legitimate interest of the person.
Can information about my medical condition be shared?	No, consent is required. Information will only be shared in accordance with the consent granted.
How does POPIA impact employers?	<p>POPIA regulates the processing of personal information of data subjects by responsible parties. These terms are quite technical, but in the employment context, essentially what this means is that anything that an employer can do with personal information that belongs to an employee (be it collecting information, storing or disseminating that information) – that must be done in accordance with the Act.</p> <p>That information can be anything that can be linked back to an employee and contained in a record, for example, employees' personal details, their disciplinary records, medical information etc. It would also extend to information about applicants for employment, when the employer asks for a copy of the applicant's CV, for example, or makes enquiries about their previous employment history.</p> <p>The Act sets out a number of conditions that must be met in order for information to be processed lawfully. For example, the Act says that they need to ensure that employees are aware of the personal information that the employer holds, what that information is used for,</p>

	<p>and that there are appropriate security measures in place to prevent loss or unauthorised access to the information.</p> <p>Because all employers collect the personal information of their employees, the Act applies to every employer in the country, no matter the size.</p>
<p>Does the Act require an employer to get an employee's consent to process all of their personal information?</p>	<p>No, not necessarily. Consent is one of the justifiable grounds upon which an employer can process personal information, but this is not the only ground. Processing banking information of an employee, for example, is necessary for complying with the employer's contractual obligation to pay the employee's salary, and for this the employer does not require consent. Having said this, there are certain types of information that would require the employee's consent to processing, such as trade union membership.</p>
<p>How should we get consent?</p>	<p>A person must have a choice whether to consent or not (it must be voluntary)</p> <p>The consent must relate to a specific purpose and you must specify your purpose.</p> <p>You must notify the data subject of various things as set out in section 18 of the POPIA.</p> <p>You must inform the person sufficiently to enable them to make a decision.</p> <p>The person must express their will in some form.</p>
<p>How long is Personal Information retained?</p>	<p>The Records Retention Policy will define how long personal information and other confidential information for all data subjects is retained. The general rule is that personal information must only be stored for as long as it is required to fulfil the intended purpose for which the information was collected or processed. Other legislative requirements may also impact on the period of retention.</p>
<p>What is the difference between POPIA and PAIA?</p>	<p>POPIA gives effect to the right to privacy. POPIA regulates the processing, collection, storage and disclosure of confidential information with justifiable limitations.</p> <p>PAIA gives effect to the constitutional right of access to – any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights,</p>

	subject to justifiable limitations.
What is the difference between POPIA and GDPR?	POPIA is the South African laws that governs information protection; whereas the GDPR is the European Union's laws for information protection. They are very similar and the same in many ways, such as both set out the law for processing and storage of personal information but they also have some with some key differences. A helpful resource on the similarities and differences is available at https://www.michalsons.com/blog/gdpr-mean-popi-act/19959
How long will HR keep your staff information after termination?	As per the per the Tax Administration Act 28 of 2011 as amended, section 29, sub-section 3 a & b, (https://www.sars.gov.za/legal-counsel/tax-administration/) HR will retain staff records for at least 5 years from date of termination
How long will HR keep your information after application?	HR will insert a section on the HR Smart job application system asking applicants if we may keep their information, if consent is given, the applicant profile information will be retained indefinitely. If not, it will be deleted immediately after the conclusion of the recruitment process.