



Province of the Eastern Cape
REPUBLIC OF SOUTH AFRICA

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TO ALL HEADS OF DEPARTMENT

COMPLIANCE WITH PAIA AND POPIA

INTRODUCTION

- 1.1. The Promotion of Access to Information Act 2 of 2000 (PAIA) and the Protection of Personal Information Act 4 of 2013 (POPIA) are pieces of legislation used to protect the basic human rights of access to information (PAIA) and privacy (POPIA).
- 1.2. In many respects, PAIA and POPIA are applied together and compliance with one requires in many respects, compliance with the other.
- 1.3. As Provincial Departments it is important that these laws are complied with.
- 1.4. The task of compliance with these laws is very big, but it is achievable through systematic work and interaction and guidance from the Office of the Chief State Law Advisor and other initiatives.
- 1.5. The hard work towards completing documents and making submissions, which was undertaken by all the Provincial Departments during 2022 has laid the foundation on which the Eastern Cape Provincial Government can build. It is upon this foundation already established during 2022 that all Departments are requested to continue the work towards complete procedural and substantive compliance with PAIA and POPIA.
- 1.6. In addition, we have been informed of the likelihood of an audit by the Information Regulator during the 2023 calendar year and that various compliance aspects of either PAIA or POPIA or both will be checked.

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- 1.7. Needless to say, it is important that the Eastern Cape Provincial Government makes every effort to be found to be 100% compliant by the Information Regulator in all respects.
- 1.8. To follow are some of the requirements

PAIA MANUAL

- 1.9. Section 14 of PAIA requires Provincial Departments to each have a Manual which is reviewed at least annually.
- 1.10. The Manual must contain in general a description of its structure and functions; the postal and street address, phone and fax number and, if available, email address of the information officer of the Department and of every deputy information officer of the Department, a description of all remedies available in respect of an act or a failure to act by the Department; and such other information as may be prescribed.
- 1.11. The Manual must also contain:
 - 1.11.1. a description of the Information Regulator's guide on PAIA and how to obtain access to it;
 - 1.11.2. sufficient detail to facilitate a request for access to a record of the Department, a description of the subjects on which the Department holds records and the categories of records held on each subject;
 - 1.11.3. information regarding the categories of records of the Department which are available without a person having to request access to such records;
 - 1.11.4. a description of the services available to members of the public from the Department and how to gain access to those services; and
 - 1.11.5. a description of any arrangement or provision for a person by consultation, making representations or otherwise, to participate in or influence in the formulation of policy; or the exercise of powers or performance of duties, by the provincial department.
- 1.12. Provisions of POPIA are also incorporated into the Manual which include a description of the categories of data subjects and of the information or categories of information relating thereto; the recipients or categories of recipients to whom the personal information may be supplied; planned transborder flows of personal

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- information; and a general description allowing a preliminary assessment of the suitability of the information security measures to be implemented by the responsible party to ensure the confidentiality, integrity and availability of the information which is to be processed.
- 1.13. A template Manual for public bodies was created and disseminated by the Information Regulator to assist in compiling their manuals.
 - 1.14. The signed PAIA Manuals for each Department must be available:
 - 1.14.1. On each Department's website, where a website is available,
 - 1.14.2. At the head office for public inspection during normal business hours;
 - 1.14.3. To any person upon request and upon the payment of a reasonable prescribed fee; and
 - 1.14.4. To the Information Regulator upon request.
 - 1.15. These PAIA Manuals also need to be translated into 3 official languages and all translations must be available on the website, and elsewhere.
 - 1.16. During discussions with the Information Regulator, it was mentioned that the following items will be checked for compliance:
 - 1.16.1. The **content** of the PAIA Manuals will be checked for compliance of all the subsections and requirements in section 14 of PAIA,
 - 1.16.2. Whether the Manuals are **translated** in 3 official languages;
 - 1.16.3. Whether the Manuals are **available** in the front entrance/reception where the public enter a Provincial Department's building;
 - 1.16.4. Whether the Manuals are available on the **websites**.
 - 1.17. **Provincial Departments are required to conduct a review of their existing PAIA Manuals, to update any information, and to ensure that the contents comply with the various requirements in PAIA. In addition, Departments must ensure the required availability as set out in paragraph 1.16 above, and ensure that the Manuals are translated into 3 official languages.**
 - 1.18. **This must be done by 15 June 2023, and a copy of the signed reviewed PAIA Manual submitted to OCSLA.**

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AVAILABILITY OF REGULATOR'S GUIDE

- 1.19. Section 10 (4) of PAIA indicates that the Information Regulator Guide must be available as prescribed.
- 1.20. The August 2021 PAIA Regulations requires that an information officer must have a copy of the guide, in at least two of the official languages, at his or her registered head office, for public inspection during normal office hours.
- 1.21. In addition, an information officer must make available, upon the written request of any person, on a form which corresponds substantially with Form 1 of Annexure A to the Regulations, the number of copies of the guide in the official languages, as requested. An information officer may not charge a fee for a copy of the guide made available, and must make available a copy of the guide at the office of the information officer for inspection if so required.
- 1.22. The Information Regulator Guides in the official languages are available on the Information Regulator's website at <https://inforegulator.org.za/paia-guidelines/>.
- 1.23. **At least 2 of these Guides must be downloaded, printed out; and available for inspection at the registered head office in the front entrance/reception where the public enter a Provincial Department's building. At least 2 Guides must be available on each Department's website.**
- 1.24. **This must be done by 15 June 2023.**

SECTION 15 NOTICES

- 1.25. Section 15 of PAIA provides that a description must be made available of the categories of records of a Department that are automatically available without a person having to request access in terms of this Act.
- 1.26. The 2021 PAIA Regulations require that **Departments must compile and keep a description of the categories of automatically available records and that the description must be updated as soon as practically possible after an amendment of a description occurs.**
- 1.27. **The description must be available:**
 - 1.27.1. **To the Information Regulator. (We have been informed that the Information Regulator is planning to build a portal for the submission of these descriptions, but that it is not yet available.)**

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- 1.27.2. **On the Department's website; and**
- 1.27.3. **For inspection, at the Department's head office, at the front entrance/reception where the public enter a Provincial Department's building.**
- 1.28. Please take note that during 2022 it was accepted that the table with the automatically available records reflected in the PAIA Manuals of Departments, was sufficient for compliance purposes. However, the Information Regulator, requires a separate notice to be available and published as required.
- 1.29. **The signed section 15 Notice must be forwarded to OCSLA by 15 June 2023.**

REGISTRATION OF DEPUTY INFORMATION OFFICERS

- 1.30. In terms of section 17 of PAIA, and section 56 of POPIA Deputy Information Officers (DIO's) must be delegated and all DIO's so delegated must be registered with the Information Regulator.
- 1.31. **The Office of the Chief State Law Advisor registered all Deputy Information Officers during 2022. Where there are any changes to the information of the Deputy Information Officers, or where delegations must be withdrawn and new delegations issued, the Office of the Chief State Law Advisor must be contacted by 25 May 2023 to make the necessary arrangements. Only Deputy Information Officers so delegated by the Director-General: Office of the Premier (as Information Officer of the Eastern Cape Provincial Government); and registered with the Information Regulator; are to function as such.**
- 1.32. Where no communication is received from Departments, it will be accepted that the current registered DIO's are still correct.

SECTION 32 REPORTS

- 1.33. Section 32 reports must be submitted to the Information Regulator annually.
- 1.34. Due to the fact that OCSLA registered all Deputy Information Officers for all 13 Departments with the Information Regulator in 2022, and subsequently also submitted all the section 32 reports for all 13 Departments, it is recommended that this centralized approach to submissions again be followed.

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- 1.35. **All section 32 reports must be submitted manually to OCSLA by 31 May 2023.**

CORPORATE GOVERNANCE OFFICERS

- 1.36. A POPIA Corporate Governance Officer must be appointed in each Department to facilitate the incorporation of POPIA into the operations of each respective Department.
- 1.37. It is essential to appoint someone else who is suitably qualified and senior considering the extent and importance of the task of overseeing, coordinating and facilitating the implementation of POPIA in the various business units of each Department.
- 1.38. It is recommended that a POPIA Corporate Governance Committee be established, comprising of all the relevant units within the Department which are affected by POPIA, and that the Corporate Governance Committee facilitates and coordinates the practical implementation of POPIA under the chairpersonship of the Corporate Governance Officer.
- 1.39. **The names of the Corporate Governance Officers must be forwarded to OCSLA by 31 May 2023.**

COMPLIANCE FRAMEWORK

- 1.40. The 2018 POPIA Regulations require that each public body establishes a Compliance Framework.
- 1.41. During 2022 all provincial departments finalised and submitted Compliance Frameworks in compliance with the requirement. However, it is requested that Departments now work to improve their Compliance Frameworks to meet the substantive requirements of POPIA.
- 1.42. According to information received from the Information Regulator during a training webinar in 2022, a compliance framework will likely cover the following:
- 1.42.1. Establishing a governance framework;
 - 1.42.2. Risk Assessment;
 - 1.42.3. Internal policy on the protection of personal information;
 - 1.42.4. Undertake a personal information impact assessment;
 - 1.42.5. Records Management;

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- 1.42.6. Appropriate technical and organisational measures;
- 1.42.7. Development of an Information Security Policy;
- 1.42.8. Policy on accessing information; and
- 1.42.9. Review Mechanism.

- 1.43. **Provincial departments are to review, update and submit their Compliance Frameworks to OCSLA by 15 June 2023.**

PERSONAL INFORMATION IMPACT ASSESSMENT

- 1.44. The 2018 POPIA Regulations require that each public body conducts Personal Information Impact Assessments (PIIA).
- 1.45. According to training conducted by the Information Regulator, the identification, assessment and management of privacy risks is a fundamental component of accountability in POPIA. Understanding the risks in which personal information is processed is central to an appropriate and proportionate privacy management framework.
- 1.46. A PIIA is therefore an important risk management tool used to enable the identification and recording of personal information and protecting and minimizing the risks.
- 1.47. According to the Information Regulator, PIIA's include the following:
- 1.47.1. List of the nature, scope, context and purposes of the processing;
 - 1.47.2. Assessment of the necessity, proportionality and compliance measures;
 - 1.47.3. Identification and assessment of risks to data subjects; and
 - 1.47.4. Identification of any additional measures to mitigate those risks.
- 1.48. According to the Information Regulator, a PIIA should identify the flow of personal information between responsible parties, operators and data subjects and systems; and must identify procedures that eliminate, mitigate or reduce high risks.
- 1.49. **Provincial departments are to review, update and submit their Personal Information Impact Assessments to OCSLA by 15 June 2023.**

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INFORMATION REGULATOR

- 1.50. The Information Regulator is the oversight body responsible, *inter alia*, for the monitoring and enforcement of compliance of both PAIA and POPIA.
- 1.51. As such, the Information Regulator has been provided with wide ranging legislative powers to, *inter alia*, receive complaints, investigate, consult and issue enforcement notices as required.
- 1.52. Communications with the Information Regulator must be sufficiently formal. It is recommended that senior and authorised officials attend meetings with the Information Regulator when meetings are required; and that where undertakings are made to the Information Regulator on behalf of a Department, such undertakings are honoured with the necessary gravity.
- 1.53. Where the Information Officer interacts with Departments, it is requested that OCSLA be copied into the communications.
- 1.54. Departments must provide a monthly report to OCSLA, due by the last working day of every month, with:
 - 1.54.1. the number of complaints received from the Information Regulator; and
 - 1.54.2. how many complaints were settled.
- 1.55. **Provincial departments are also to ensure that internal measures together with adequate systems to process requests for information or access thereto are put into place.**
- 1.56. **Provincial departments are also requested to conduct internal awareness sessions regarding the provisions of POPIA.**
- 1.57. **OTP has procured a service provider to provide training on PAIA and POPIA to all 13 Departments on 25 and 26 May 2023 in East London. Regrettably, due to the limited space available, only 2 (two) officials per Department can attend. Names of the nominated officials must be forwarded to OCSLA by 19 May 2023.**

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- 1.58. All submissions must be made to OCSLA's Legal Compliance Directorate to megan.puchert@ecotp.gov.za. Should support or clarification be required, Adv. Megan Puchert can also be contacted for assistance.

Yours faithfully



MBULELO SOGONI (MR.)
INFORMATION OFFICER
EASTERN CAPE PROVINCIAL GOVERNMENT