

POPIA Plain Language Guide

Find out what your important rights are under POPIA.

Know whether you must disclose your information to the community scheme.

Understand what the community scheme's key obligations are.

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About

Title	POPIA Plain Language Guide
Summary	This guide is for owners, tenants and visitors in community schemes. It summarises the key aspects of the Protection of Personal Information Act (POPIA) that relate to community schemes and owners, tenants and visitors.
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Purchase from	Michalsons
Related reading	https://www.michalsons.com/focus-areas/privacy-and-data-protection/data-protection-for-community-schemes-2 https://www.michalsons.com/focus-areas/privacy-and-data-protection/protection-of-personal-information-act-popia/popia-faq-your-questions-answered https://www.michalsons.com/about-michalsons/thank-you/download-our-popia-plain-language-guide-infographic https://www.michalsons.com/focus-areas/privacy-and-data-protection/protection-of-personal-information-act-popia
Related services	https://www.michalsons.com/focus-areas/privacy-and-data-protection

Introduction

This guide will give you a brief introduction to the Protection of Personal Information Act (POPIA). POPIA sets the conditions that a person must follow to lawfully process personal information. POPIA aims to protect the personal information of people and businesses. It is a law that also applies to your community scheme and the processing of your personal information by that community scheme. Be sure to have a look at the FAQs further below. You can also read the Michalsons POPIA Infographic: <https://www.michalsons.com/about-michalsons/thank-you/download-our-popia-plain-language-guide-infographic>.

Data protection has become the common term to use.

Why is POPIA important?

Everyone's personal information is very important and needs protection. A community scheme needs to respect that and understand that if they fail to protect it, you could suffer serious harm. You could lose money, suffer physical, emotional or other types of harm.

What is personal information?

Information that identifies a living person or an existing juristic person is personal information. Examples are: age, race, gender, education, medical, financial, criminal or employment history of a person. Contact details like an email address, telephone number or location information are also personal information.

What is special personal information?

Special personal information is also personal information, but it's more sensitive than normal personal information. Examples are race, ethnic origin, trade union membership, health, biometric information (such as fingerprints), and criminal behaviour. This is the kind of information that someone can use to unfairly discriminate against a data subject (like the Apartheid government did in the past).

POPIA says that a community scheme cannot process special personal information unless they're authorised to do so. First, there is a general authorisation that applies to all the types of special personal information, and then there are further specific authorisations that relate to each type of special personal information.

Consent is one of the authorisations, but there are others. For example, they do not need consent from person X, if they need that person's information in order to protect the rights of others.

Who are the role players?

A **data subject** is the person that personal information relates to or identifies (like the owners, tenants and visitors in a community scheme).

A **community scheme** is the party that decides to process personal information (your community scheme) – why and how personal information is being processed.

An **operator** is the person that processes personal information for somebody else (like a Managing Agent or a security company). This person does not determine the purpose and usually also not the means for processing.

What does “process” mean?

Processing personal information is not just about a community scheme opening a file, reading a document, or emailing information to someone. It includes the community scheme saving documents on a USB, transferring them from one computer to another, or even deleting some, and editing others. Basically, processing covers all the different ways a community scheme handles your personal information.

Is consent necessary to process personal information?

No. Your consent isn't necessary to process your personal information. POPIA allows community schemes to have different reasons why they are processing the personal information.

Does POPIA only apply to electronic information?

No, POPIA applies to all personal information regardless of what form it is in. This includes personal information found on paper documents and electronic data such as audio and video recordings. POPIA can, in other words, even apply to WhatsApp voice notes and voicemail messages (such as the messages you send and receive in your community scheme's WhatsApp group).

What are the 8 conditions for lawful processing?

There are 8 conditions that community schemes need to comply with for their processing to be lawful. A community scheme must, for example, ensure that there is a purpose or reason why they process your personal information. Another example of the conditions is that the information must be of a good quality, accurate and complete.

The conditions are:

- **Accountability:** This means that the community scheme must take the lead in ensuring compliance with POPIA. They must do their best and not hide behind excuses for their non-compliance.
- **Processing limitation:** They must have a good reason for processing your personal information. Having your consent is one of the good reasons that they can have. They must also try as much as they can to collect the personal information directly from you.
- **Purpose specification:** You must know about the purpose for which the community scheme is processing the personal information.
- **Further processing limitation:** The community scheme must ensure that if they will process that personal information again, it must be for the original purpose that they informed you about, unless there's legal justification for the further processing (like consent).
- **Information quality:** The community scheme must ensure that the personal information they process is accurate and complete.
- **Openness:** The community scheme must not process the personal information in such a way that you have no way of knowing what is happening to your personal information.
- **Security safeguards:** The community scheme must provide appropriate and reasonable security measures against any risks that the personal information is exposed to.
- **Data subject participation:** The community scheme must communicate with you about the processing, and give you the opportunity to correct or update the personal information the community scheme is processing.

Can a community scheme transfer your personal information out of South Africa?

Yes, but only if the community scheme has your consent or one of the other justifications that POPIA mentions.

How long can a community scheme keep personal information?

A community scheme may only keep personal information for as long as is necessary, unless they have a contract, for example, with you that allows them to retain the personal information. Your continued stay at the community scheme is, for example, a good justification for them retaining your personal information. They may also keep the personal information if there is a law that requires them to keep it.

A community scheme must delete or destroy personal information when they no longer have a lawful reason for keeping it.

How must a community scheme protect personal information?

POPIA says only appropriate and reasonable security measures can protect personal information. These usually include:

- shredding physical documents containing personal information,
- not leaving USBs containing personal information lying around, and
- encrypting computers and external hard-drives.

It also includes not disclosing data subject's personal information unless they have consented to it.

What happens if there is a data breach?

POPIA requires the community scheme to inform a data subject (and the Information Regulator) if they reasonably suspect that there has been a data breach. This means that even before a data breach is confirmed, if they have a reasonable suspicion that some has, for example, stolen your personal information, they must tell you. More importantly, the community scheme must have a plan for how they're going to mitigate losses or address the breach.

Who is the Information Regulator?

The Information Regulator is the institution or authority responsible for enforcing POPIA. The regulator will issue fines and other penalties to community schemes for failing to protect personal information. Importantly, the regulator will also give advice to any community scheme that asks for it.

Are there penalties for non-compliance?

If a community scheme fails to protect account numbers, they may have to pay a fine of up to R10 million. If a Director or Trustee stole account numbers, for example, that person could face imprisonment of up to 10 years.

There are also other penalties including claims for damages that can be brought by data subjects whose personal information a community scheme has failed to protect. A community scheme can also lose owners and tenants and face reputational and brand damage.

Other Frequently Asked Questions (FAQs)

Before reading these FAQs, you might find it useful to also read the FAQs on the Michalsons website: <https://www.michalsons.com/focus-areas/privacy-and-data-protection/protection-of-personal-information-act-popia/popia-faqs-your-questions-answered>

What personal information will a community scheme process?

A community scheme will typically process your contact details, your images as captured by CCTV footage, and your account number (when you pay your levies). The specific list of personal information processed by each community scheme varies. For a more detailed look at the personal information that your community scheme processes, have a look at its Privacy Policy or speak to its Directors or Trustees or the Managing Agent.

Can a community scheme use your contact details to email or message you?

Yes, your community scheme can contact you about the good or services related to your stay at the community scheme since you're essentially the community scheme's "customer". The community scheme must, however, always give you the option to object or opt-out even if the community scheme is legally entitled to disregard that objection. One of the things the community scheme (or its Managing Agent, for example) isn't allowed to do is to repeatedly contact you to provide you other goods or services like furniture or internet services, unless you consent to it.

Can you object to the processing of your personal information by the community scheme?

Yes, you can object, but it doesn't mean that the community scheme has to stop processing it. If it's personal information that the community scheme needs to achieve a lawful purpose (like delivering services to you as an owner or tenant, or securing the premises), the community scheme is entitled to process the personal information. Laws like the Section Titles Schemes Management Act can also entitle a community scheme to process some of your personal information.

Does a community scheme need to comply with POPIA and protect personal information?

Yes, POPIA requires all community schemes (even ones with just 20 units, for example) to comply as long as they process personal information. Any community scheme processing your personal information must, therefore, protect it.

Does a community scheme need to appoint an Information Officer?

POPIA gives all organisations (including community schemes) Information Officers (Officer) by default. This person is the head of the organisation (like the Chairperson of the Board of Directors or Trustees). Community schemes can then either continue with this Default Officer or appoint some other senior person like one of the Trustees.

How much will it cost to appoint the Officer and to comply with POPIA?

POPIA does not require organisations to exceed what they can afford. They do not have to go beyond what is reasonably necessary and use resources that they simply do not have. But they do still have to make a concerted effort. Your community scheme will likely be able to afford to take at least some key compliance actions. Depending on how your community scheme is managed, you likely do not have to worry about paying any special levies to ensure that your community scheme can afford some of the costs that inevitably come with compliance.

Will the Officers be in contact with you for data protection issues?

Yes, you will be able to approach the Officer about data protection issues relating to you and the community scheme. The Officer has a responsibility to address such issues and to help you.

Who does the Officer report to?

The Officer reports to the Directors or Trustees. POPIA requires the Directors or Trustees to make time for the Officer.

What are the Officer's other responsibilities?

The most important duty of the Officer is to ensure that a community scheme is complying with POPIA and any other relevant data protection law. The Officer must also maintain confidentiality in the performance of their tasks. There are other duties that come from the various steps that the Officer has to take to ensure that the organisation complies with POPIA. This includes providing guidance to a community scheme on the risks inherent in its processing activities, and how to possibly avert those risks. The Officer must also play an active role in the creation of data protection policies and guides.

To provide you with some context, we briefly illustrate some of the key responsibilities of the Officer below.



Data portability

The right to data portability is one of the many important rights contained in POPIA (not explicitly), which might have a direct bearing on the responsibilities of the Officer. This right allows you to transfer your personal information from one community scheme to another when you move, for example. The community scheme from which you are transferring your personal information must give you all the information relating to you. The information must be organised in an accessible manner and saved on an easy-to-use storage device like a USB.

For a more detailed discussion on the right to data portability see <https://www.michalsons.com/blog/data-portability-under-the-gdpr/23437>.

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