

PROTECTION OF PERSONAL INFORMATION BILL, 2016

ARRANGEMENT OF SECTIONS

Section:

CHAPTER 1 - DEFINITIONS AND PURPOSE

1. Definitions
2. Purpose of Act

CHAPTER 2 - APPLICATION PROVISIONS

3. Application of Act
4. Exclusions
5. Saving
6. Act applies to public and private bodies

CHAPTER 3 - CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL
INFORMATION

Part A- Information Protection Principles

Principle 1 - Accountability

7. Responsible party to give effect to principles

Principle 2 - Processing limitation

8. Lawfulness of processing
9. Minimality
10. Consent, justification and objection
11. Collection directly from data subject

Principle 3 - Purpose specification

12. Collection for specific purpose
13. Data subject aware of purpose of collection of information
14. Retention of records

Principle 4 - Further processing limitation

15. Further processing to be compatible with purpose of collection

Principle 5 - Information quality

16. Quality of information

Principle 6 - Openness

17. Notification to Regulator and to data subject

Principle 7 - Security safeguards

18. Security measures on integrity of personal information
19. Information processed by operator or person acting under authority
20. Security measures regarding information processed by operator
21. Notification of security compromises

Principle 8- Data subject participation

22. Access to personal information
23. Correction of personal information
24. Manner of access

Part B - Processing of special personal information

25. Prohibition on processing of special personal information
26. Exemption concerning data subject's religion or philosophical beliefs
27. Exemption concerning data subject's race
28. Exemption concerning data subject's trade union membership
29. Exemption concerning data subject's political persuasion
30. Exemption concerning data subject's health or sexual life
31. Exemption concerning data subject's criminal behaviour
32. General exemption concerning special personal information

CHAPTER 4 - EXEMPTION FROM INFORMATION PROTECTION PRINCIPLES

33. General
34. Regulator may authorise processing of personal information

CHAPTER 5 - SUPERVISION

Part A - Information Protection Regulator

35. Establishment of Information Protection Regulator
36. Constitution and term of office of Regulator
37. Remuneration, allowances, benefits and privileges of members
38. Secretary and staff
39. Committees of Regulator

- 40. Meetings of Regulator
- 41. Funds
- 42. Protection of Regulator
- 43. Powers and duties of Regulator
- 44. Regulator to have regard to certain matters
- 45. Programmes of Regulator
- 46. Reports of Regulator
- 47. Duty of confidentiality

Part B - Information Protection Officer

- 48. Duties and responsibilities of Information Protection Officer
- 49. Designation and delegation of deputy information protection officers

CHAPTER 6 - NOTIFICATION AND PRIOR INVESTIGATION

Part A- Notification

- 50. Notification of processing
- 51. Notification to contain specific particulars
- 52. Exemptions to notification requirements
- 53. Register of information processing
- 54. Failure to notify

Part B - Prior investigation

- 55. Processing subject to prior investigation
- 56. Responsible party to notify Regulator if processing is subject to prior investigation

CHAPTER 7 - CODES OF CONDUCT

- 57. Issuing of codes of conduct
- 58. Proposal for issuing of code of conduct
- 59. Notification, availability and commencement of code
- 60. Amendment and revocation of codes
- 61. Procedure for dealing with complaints
- 62. Guidelines about codes of conduct

- 63. Register of approved codes of conduct
- 64. Review of operation of approved code of conduct
- 65. Effect of failure to comply with code

CHAPTER 8 - RIGHTS OF DATA SUBJECTS REGARDING UNSOLICITED
ELECTRONIC COMMUNICATIONS AND AUTOMATED DECISION MAKING

- 66. Unsolicited electronic communications
- 67. Directories
- 68. Automated decision making

CHAPTER 9 - TRANSBORDER INFORMATION FLOWS

- 69. Transfers of personal information outside Federation

CHAPTER 10 - ENFORCEMENT

- 70. Interference with protection of personal information of data subject
- 71. Complaints
- 72. Mode of complaints to Regulator
- 73. Investigation by Regulator
- 74. Action on receipt of complaint
- 75. Regulator may decide to take no action on complaint
- 76. Referral of complaint to regulatory body
- 77. Pre-investigation proceedings of Regulator
- 78. Settlement of complaints
- 79. Investigation proceedings of Regulator
- 80. Issue of warrants
- 81. Requirements for issuing of warrant
- 82. Execution of warrants
- 83. Matters exempt from search and seizure
- 84. Communication between legal adviser and client exempt
- 85. Objection to search and seizure
- 86. Return of warrants
- 87. Assessment
- 88. Information notice

- 89. Parties to be informed of developments during and result of investigation
- 90. Enforcement notice
- 91. Cancellation of enforcement notice
- 92. Right of appeal
- 93. Consideration of appeal
- 94. Civil remedies

CHAPTER 11 - OFFENCES AND PENALTIES

- 95. Obstruction of Regulator
- 96. Breach of confidentiality
- 97. Obstruction of execution of warrant
- 98. Failure to comply with enforcement or information notices
- 99. Penal sanctions
- 100. Magistrate's Court jurisdiction to impose penalties

CHAPTER 12 - GENERAL PROVISIONS

- 101. Regulations
- 102. Short title

A BILL

FOR

AN ACT TO PROMOTE THE PROTECTION OF PERSONAL INFORMATION PROCESSED BY PUBLIC AND PRIVATE BODIES; TO INTRODUCE INFORMATION PROTECTION PRINCIPLES SO AS TO ESTABLISH MINIMUM REQUIREMENTS FOR THE PROCESSING OF PERSONAL INFORMATION; TO PROVIDE FOR THE ESTABLISHMENT OF AN INFORMATION PROTECTION REGULATOR; TO PROVIDE FOR THE ISSUING OF CODES OF CONDUCT; TO PROVIDE FOR THE RIGHTS OF PERSONS REGARDING UNSOLICITED ELECTRONIC COMMUNICATIONS AND AUTOMATED DECISION MAKING; TO REGULATE THE FLOW OF PERSONAL INFORMATION ACROSS THE BORDERS OF THE FEDERATION; AND FOR OTHER MATTERS CONNECTED THEREWITH

Sponsored by Senator Stella Odua

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 CHAPTER 1 - DEFINITIONS AND PURPOSE

2 **1.** In this Act, unless the context indicates otherwise-

Definitions

3 "automatic calling machine" means a machine that is able to do automated
4 calls without human intervention;

5 "biometric" means a technique of personal identification that is based on
6 physical characteristics, including fingerprinting, DNA analysis, retinal
7 scanning and voice recognition;

8 "child" means a natural person under the age of 18 years;

9 "code of conduct" means a code of conduct issued in terms of Chapter 7;

10 "consent" means any voluntary, specific and informed expression of will in
11 terms of which a data subject agrees to the processing of personal
12 information relating to him or her;

1 "Constitution" means the Constitution of the Federal Republic of Nigeria,
2 1999;
3 "data subject" means the person to whom personal information relates;
4 "de-identify", in relation to personal information of a data subject, means to
5 delete any information that-
6 (a) identifies the data subject;
7 (b) can be used or manipulated by a reasonably foreseeable method to
8 identify the data subject; or
9 (c) can be linked by a reasonably foreseeable method to other
10 information that identifies the data subject;
11 "electronic mail" or "e-mail" means any text, voice, sound or image message
12 sent over a public communications network which can be stored in the network
13 or in the recipient's terminal equipment until it is collected by the recipient;
14 "enforcement notice" means a notice issued in terms of section 90;
15 "filing system" means any structured set of personal information which is
16 accessible according to specific criteria;
17 "head" of, or in relation to, a private body means a head of a body as defined in
18 section 1 of the Promotion of Access to Information Act;
19 "information matching programme" means the comparison, whether manually
20 or by means of any electronic or other device, of any document that contains
21 personal information about 10 or more data subjects with one or more
22 documents that contain personal information of 10 or more data subjects, for
23 the purpose of producing or verifying information that may be used for the
24 purpose of taking any action in regard to an identifiable data subject;
25 "information notice" means a notice issued in terms of section 88;
26 "information protection officer" of, or in relation to, a-
27 (a) public body means an information officer or deputy information
28 officer as contemplated in the Freedom of Information Act; or
29 (b) private body means the head of a private body as contemplated in
30 the Freedom of Information Act;

- 1 "Minister" means the Minister responsible for the administration of justice;
- 2 "operator" means a person who processes personal information for a
- 3 responsible party in terms of a contract or mandate, without coming under
- 4 the direct authority of that party;
- 5 "parent" includes either the parent of a child or the child's legal guardian;
- 6 "parental consent" means any voluntary, specific and informed expression
- 7 of will in terms of which the parent of a child agrees to the processing of
- 8 personal information relating to that child;
- 9 "person" means a natural person or a juristic person;
- 10 "personal information" means information relating to an identifiable, living,
- 11 natural person, and where it is applicable, an identifiable, existing juristic
- 12 person, including, but not limited to-
- 13 (a) information relating to the race, gender, sex, pregnancy, marital
- 14 status, national, ethnic or social origin, colour, sexual orientation, age,
- 15 physical or mental health, well-being, disability, religion, conscience,
- 16 belief, culture, language and birth of the person;
- 17 (b) information relating to the education or the medical, financial,
- 18 criminal or employment history of the person;
- 19 (c) any identifying number, symbol, e-mail address, physical
- 20 address, telephone number or other particular assignment to the person;
- 21 (d) the blood type or any other biometric information of the person;
- 22 (e) the personal opinions, views or preferences of the person;
- 23 (f) correspondence sent by the person that is implicitly or explicitly
- 24 of a private or confidential nature or further correspondence that would
- 25 reveal the contents of the original correspondence;
- 26 (g) the views or opinions of another individual about the person;
- 27 and
- 28 (h) the name of the person if it appears with other personal
- 29 information relating to the person or if the disclosure of the name itself
- 30 would reveal information about the person;

- 1 "prescribed" means prescribed by regulation or by a code of conduct;
- 2 "prior investigation" means an investigation conducted by the Regulator in
- 3 terms of Part B of Chapter 6;
- 4 "private body" means-
- 5 (a) a natural person who carries or has carried on any trade, business
- 6 or profession, but only in such capacity;
- 7 (b) a partnership which carries or has carried on any trade, business or
- 8 profession; or
- 9 (c) any former or existing juristic person, but excludes a public body;
- 10 "processing" means any operation or activity or any set of operations, whether
- 11 or not by automatic means, concerning personal information, including-
- 12 (a) the collection, receipt, recording, organisation, collation, storage,
- 13 updating or modification, retrieval, alteration, consultation or use;
- 14 (b) dissemination by means of transmission, distribution or making
- 15 available in any other form; or
- 16 (c) merging, linking, as well as blocking, degradation, erasure or
- 17 destruction of information;
- 18 "professional legal adviser" means any legally qualified person, whether in
- 19 private practice or not, who lawfully provides a client, at his or her or its
- 20 request, with independent, confidential legal advice
- 21 "public body" means-
- 22 (a) any department of state or administration in the Federal State or
- 23 local government or any municipality in the local sphere of government; or
- 24 (b) any other functionary or institution when-
- 25 (i) exercising a power or performing a duty in terms of the
- 26 Constitution or a provincial constitution; or
- 27 (ii) exercising a public power or performing a public function in terms
- 28 of any legislation;
- 29 "public communications network" means an electronic communications
- 30 network used wholly or mainly for the provision of publicly available

- 1 electronic communications services;
- 2 "public record" means a record that is accessible in the public domain and
- 3 which is in the possession of or under the control of a public body, whether
- 4 or not it was created by that public body;
- 5 "record" means any recorded information-
- 6 (a) regardless of form or medium, including any of the following:
- 7 (i) Writing on any material;
- 8 (ii) information produced, recorded or stored by means of any tape-
- 9 recorder, computer equipment, whether hardware or software or both, or
- 10 other device, and any material subsequently derived from information so
- 11 produced, recorded or stored;
- 12 (iii) label, marking or other writing that identifies or describes
- 13 anything of which it forms part, or to which it is attached by any means;
- 14 (iv) book, map, plan, graph or drawing;
- 15 (v) photograph, film, negative, tape or other device in which one or
- 16 more visual images are embodied so as to be capable, with or without the aid
- 17 of some other equipment, of being reproduced;
- 18 (b) in the possession or under the control of a responsible party;
- 19 (c) whether or not it was created by a responsible party; and
- 20 (d) regardless of when it came into existence;
- 21 "Regulator" means the Information Protection Regulator established in
- 22 terms of section 35;
- 23 "re-identify", in relation to personal information of a data subject, means to
- 24 resurrect any information that has been de-identified, that-
- 25 (a) identifies the data subject;
- 26 (b) can be used or manipulated by a reasonably foreseeable method
- 27 to identify the data subject; or
- 28 (c) can be linked by a reasonably foreseeable method to other
- 29 information that identifies the data subject;
- 30 "responsible party" means a public or private body or any other person

Purpose of Act

1 which, alone or in conjunction with others, determines the purpose of and
2 means for processing personal information;
3 "subscriber" means any person who is party to a contract with the provider of
4 publicly available electronic communications services for the supply of such
5 services; and

6 "this Act" includes any regulation made under this Act.

7 **2. -(1) The purpose of this Act is to-**

8 (a) give effect to the constitutional right to privacy, by safeguarding
9 personal information when processed by a responsible party, subject to
10 justifiable limitations that are aimed at-

11 (i) Balancing the right to privacy against other rights, particularly the
12 right of access to information;

13 (ii) protecting important interests, including the free flow of
14 information within the Republic and across international borders;

15 (b) regulate the manner in which personal information may be
16 processed, by establishing principles, in harmony with international standards,
17 that prescribe the minimum threshold requirements for lawful processing of
18 personal information;

19 (c) provide persons with rights and remedies to protect their personal
20 information from processing that is not in accordance with this Act; and

21 (d) establish voluntary and compulsory measures, including an
22 Information Protection Regulator, to ensure respect for and to promote,
23 enforce and fulfil the rights protected by this Act.

24 (2) This Act must be interpreted in a manner that-

25 (a) gives effect to the purposes of the Act set out in subsection (1); and

26 (b) does not prevent any public or private body from exercising or
27 performing its powers, duties and functions in terms of the law as far as such
28 functions, powers and duties relate to the processing of personal information
29 and such processing is in accordance with this Act or any other legislation that
30 regulates the processing of personal information.

1 CHAPTER 2 - APPLICATION PROVISIONS

2 3. This Act applies to the processing of personal information Application of
3 entered in a record by or for a responsible party- Act

4 (a) domiciled in Nigeria; or

5 (b) which is not domiciled in Nigeria, using automated or non-
6 automated means situated in Nigeria, unless those means are used only for
7 forwarding personal information, provided that when the recorded personal
8 information is processed by non-automated means, it forms part of a filing
9 system or is intended to form part thereof.

10 4. This Act does not apply to the processing of personal Exclusions
11 information-

12 (a) in the course of a purely personal or household activity;

13 (b) that has been de-identified to the extent that it cannot be re-
14 identified again;

15 (c) by or on behalf of the State and-

16 (i) which involves national security, defence or public safety; or

17 (ii) the purpose of which is the prevention, investigation or proof of
18 offences, the prosecution of offenders or the execution of sentences or
19 security measures, to the extent that adequate safeguards have been
20 established in specific legislation for the protection of such personal
21 information;

22 (d) for exclusively journalistic purposes by responsible parties
23 who are subject to, by virtue of office, employment or profession, a code of
24 ethics that provides adequate safeguards for the protection of personal
25 information;

26 (e) by Ministries and its committees, the Executive Council of a
27 State and a Local government Council;

28 (f) relating to the judicial functions of a court ; or

29 (g) that has been exempted from the application of the information
30 protection principles in terms of section 34.

Saving	1	5. -(1) This Act does not affect the operation of any other legislation that regulates the processing of personal information and is capable of operating concurrently with this Act.
	4	(2) If any other legislation provides for safeguards for the protection of personal information that are more extensive than those set out in the information protection principles, the extensive safeguards prevail.
Act applies to public and private bodies	7	6. This Act applies to all public and private bodies.
	8	CHAPTER 3 - CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL
	9	INFORMATION
	10	<i>Part A - Information Protection Principles</i>
	11	<i>Principle 1 - Accountability</i>
Responsible party to give effect to principles	12	7. The responsible party must ensure that the principles set out in this Chapter and all the measures that give effect to the principles are complied with.
	15	<i>Principle 2 - Processing limitation</i>
Lawfulness of processing	16	8. Personal information must be processed-
	17	(a) lawfully; and
	18	(b) in a reasonable manner that does not infringe the privacy of the data subject.
Minimality	20	9. Personal information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.
Consent, justification and objection	22	10. -(1) Personal information may only be processed if-
	23	(a) the data subject consents to the processing;
	24	(b) processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;
	26	(c) processing complies with an obligation imposed by law on the responsible party;
	28	(d) processing protects a legitimate interest of the data subject;
	29	(e) processing is necessary for the proper performance of a public law duty by a public body; or
	30	

1 (f) processing is necessary for pursuing the legitimate interests of
2 the responsible party or of a third party to whom the information is supplied.

3 (2) A data subject may object, at any time, on reasonable grounds
4 relating to his, her or its particular situation, in the prescribed manner, to the
5 processing of personal information in terms of subsection (1)(d) to (f),
6 unless otherwise provided for in national legislation.

7 (3) If a data subject has objected to the processing of personal
8 information in terms of subsection (2), the responsible party may no longer
9 process the personal information.

10 **11.** -(1) Personal information must be collected directly from the
11 data subject, except as otherwise provided for in subsection (2).

Collection directly
from data subject

12 (2) It is not necessary to comply with subsection (1) if-

13 (a) the information is contained in a public record or has
14 deliberately been made public by the data subject;

15 (b) the data subject has consented to the collection of the
16 information from another source;

17 (c) collection of the information from another source would not
18 prejudice a legitimate interest of the data subject;

19 (d) collection of the information from another source is necessary-

20 (i) to avoid prejudice to the maintenance of the law by any public
21 body, including the prevention, detection, investigation, prosecution and
22 punishment of offences;

23 (ii) to enforce a law imposing a pecuniary penalty;

24 (iii) to enforce legislation concerning the collection of revenue as
25 defined in the Federal Inland Revenue Service Act,;

26 (iv) for the conduct of proceedings in any court or tribunal that
27 have commenced or are reasonably contemplated;

28 (v) in the legitimate interests of national security; or

29 (vi) to maintain the legitimate interests of the responsible party or
30 of a third party to whom the information is supplied;

	1	(e) compliance would prejudice a lawful purpose of the collection; or
	2	(f) compliance is not reasonably practicable in the circumstances of
	3	the particular case.
	4	<i>Principle 3 - Purpose specification</i>
Collection for specific purpose	5	12. Personal information must be collected for a specific, explicitly
	6	defined and lawful purpose related to a function or activity of the responsible
	7	party.
Data subject aware of purpose of collection of information	8	13. Steps must be taken in accordance with section 17(2) to ensure
	9	that the data subject is aware of the purpose of the collection of the information
	10	as referred to in section 12.
Retention of records	11	14.-(1) Subject to subsections (2) and (3), records of personal
	12	information must not be retained any longer than is necessary for achieving the
	13	purpose for which the information was collected or subsequently processed,
	14	unless-
	15	(a) retention of the record is required or authorised by law;
	16	(b) the responsible party reasonably requires the record for lawful
	17	purposes related to its functions or activities;
	18	(c) retention of the record is required by a contract between the parties
	19	thereto; or
	20	(d) the data subject has consented to the retention of the record.
	21	(2) Records of personal information may be retained for periods in
	22	excess of those contemplated in subsection (1) for historical, statistical or
	23	research purposes if the responsible party has established appropriate
	24	safeguards against the records being used for any other purposes.
	25	(3) A responsible party that has used a record of personal information
	26	of a data subject to make a decision about the data subject, must-
	27	(a) retain the record for such period as may be required or prescribed
	28	by law or a code of conduct; or
	29	(b) if there is no law or code of conduct prescribing a retention period,
	30	retain the record for a period which will afford the data subject a reasonable

1 opportunity, taking all considerations relating to the use of the personal
2 information into account, to request access to the record.

3 (4) A responsible party must destroy or delete a record of personal
4 information or de-identify it as soon as reasonably practicable after the
5 responsible party is no longer authorised to retain the record in terms of
6 subsection (1) or (2).

7 (5) The destruction or deletion of a record of personal information
8 in terms of subsection (4) must be done in a manner that prevents its
9 reconstruction in an intelligible form.

10 *Principle 4 - Further processing limitation*

11 **15.** -(1) Further processing of personal information must be
12 compatible with the purpose for which it was collected in terms of principle
13 3.

Further processing
to be compatible
with purpose of
collection

14 (2) To assess whether further processing is compatible with the
15 purpose of collection, the responsible party must take account of—

16 (a) the relationship between the purpose of the intended further
17 processing and the purpose for which the information has been collected;

18 (b) the nature of the information concerned;

19 (c) the consequences of the intended further processing for the data
20 subject;

21 (d) the manner in which the information has been collected; and

22 (e) any contractual rights and obligations between the parties.

23 (3) The further processing of personal information is compatible
24 with the purpose of collection if-

25 (a) the data subject has consented to the further processing of the
26 information;

27 (b) the information is available in a public record or has
28 deliberately been made public by the data subject;

29 (c) further processing is necessary-

30 (i) to avoid prejudice to the maintenance of the law by any public

1 body including the prevention, detection, investigation, prosecution and
 2 punishment of offences;
 3 (ii) to enforce a law imposing a pecuniary penalty;
 4 (iii) to enforce legislation concerning the collection of revenue as
 5 defined in section 1 of the Federal Inland Revenue Service Act;
 6 (iv) for the conduct of proceedings in any court or tribunal that have
 7 commenced or are reasonably contemplated; or
 8 (v) in the legitimate interests of national security;
 9 (d) the further processing of the information is necessary to prevent or
 10 mitigate a serious and imminent threat to-
 11 (i) public health or public safety; or
 12 (ii) the life or health of the data subject or another individual;
 13 (e) the information is used for historical, statistical or research
 14 purposes and the responsible party ensures that the further processing is carried
 15 out solely for such purposes and will not be published in an identified form; or
 16 (f) the further processing of the information is in accordance with an
 17 authority granted under section 34.

18 *Principle 5 - Information quality*

Quality of
information

19 **16. -(1)** The responsible party must take reasonably practicable steps
 20 to ensure that the personal information is complete, accurate, not misleading
 21 and updated where necessary.
 22 (2) In taking the steps referred to in subsection (1), the responsible
 23 party must have regard to the purpose for which personal information is
 24 collected or further processed.

25 *Principle 6 - Openness*

Notification to
regulator and
to data subject

26 **17. -(1)** Personal information may only be processed by a responsible
 27 party that has notified the Regulator in terms of Chapter 6.
 28 (2) If personal information is collected, the responsible party must
 29 take reasonably practicable steps to ensure that the data subject is aware of-
 30 (a) the information being collected;

- 1 (b) the name and address of the responsible party;
- 2 (c) the purpose for which the information is being collected;
- 3 (d) whether or not the supply of the information by that data subject
- 4 is voluntary or mandatory;
- 5 (e) the consequences of failure to provide the information;
- 6 (f) any particular law authorising or requiring the collection of the
- 7 information; and
- 8 (g) any further information, such as the-
- 9 (i) recipient or category of recipients of the information;
- 10 (ii) nature or category of the information; and
- 11 (iii) existence of the right of access to and the right to rectify the
- 12 information collected,
- 13 which is necessary, having regard to the specific circumstances in which the
- 14 information is or is not to be processed, to enable processing in respect of the
- 15 data subject to be reasonable.
- 16 (3) The steps referred to in subsection (2) must be taken-
- 17 (a) if the personal information is collected directly from the data
- 18 subject, before the information is collected, unless the data subject is already
- 19 aware of the information referred to in that subsection; or
- 20 (b) in any other case, before the information is collected or as soon
- 21 as reasonably practicable after it has been collected.
- 22 (4) A responsible party that compiles or has compiled a manual and
- 23 made it available in terms of section 14 or 51 of the Freedom of Information
- 24 Act, does not have to comply with subsection (1) if all the particulars
- 25 referred to in section 51 of this Act are contained in the manual.
- 26 (5) A responsible party that has previously taken the steps referred
- 27 to in subsection (2) complies with subsection (2) in relation to the
- 28 subsequent collection from the data subject of the same information or
- 29 information of the same kind if the purpose of collection of the information
- 30 is unchanged.

1 (6) It is not necessary for a responsible party to comply with
2 subsection (2) if-

3 (a) the data subject has provided consent for the non-compliance;

4 (b) non-compliance would not prejudice the legitimate interests of the
5 data subject as set out in terms of this Act;

6 (c) non-compliance is necessary-

7 (i) to avoid prejudice to the maintenance of the law by any public
8 body, including the prevention, detection, investigation, prosecution and
9 punishment of offences;

10 (ii) to enforce a law imposing a pecuniary penalty;

11 (iii) to enforce legislation concerning the collection of revenue as
12 defined in section 1 of the Federal Inland Revenue Service Act;

13 (iv) for the conduct of proceedings in any court or tribunal that have
14 been commenced or are reasonably contemplated; or

15 (v) in the interests of national security;

16 (d) compliance would prejudice a lawful purpose of the collection;

17 (e) compliance is not reasonably practicable in the circumstances of
18 the particular case; or

19 (f) the information will-

20 (i) not be used in a form in which the data subject may be identified; or

21 (ii) be used for historical, statistical or research purposes.

22 *Principle 7 - Security Safeguards*

Security measures
on integrity of
personal
information

23 **18.-(1)** A responsible party must secure the integrity of personal
24 information in its possession or under its control by taking appropriate,
25 reasonable technical and organisational measures to prevent-

26 (a) loss of, damage to or unauthorised destruction of personal
27 information; and

28 (b) unlawful access to or processing of personal information.

29 (2) In order to give effect to subsection (1), the responsible party must
30 take reasonable measures to-

1 (a) identify all reasonably foreseeable internal and external risks to
2 personal information in its possession or under its control;

3 (b) establish and maintain appropriate safeguards against the risks
4 identified;

5 (c) regularly verify that the safeguards are effectively
6 implemented; and

7 (d) ensure that the safeguards are continually updated in response
8 to new risks or deficiencies in previously implemented safeguards.

9 (3) The responsible party must have due regard to generally
10 accepted information security practices and procedures which may apply to
11 it generally or be required in terms of specific industry or professional rules
12 and regulations.

13 **19.** An operator or anyone processing personal information on
14 behalf of a responsible party or an operator, must-

Information
processed by
operator or
person acting
under authority

15 (a) process such information only with the knowledge or
16 authorisation of the responsible party; and

17 (b) treat personal information which comes to their knowledge as
18 confidential and must not disclose it,
19 unless required by law or in the course of the proper performance of their
20 duties.

21 **20.-(1)** A responsible party must ensure that an operator which
22 processes personal information for the responsible party establishes and
23 maintains the security measures referred to in section 18.

Security measures
regarding
information
processed by
operator

24 (2) The processing of personal information for a responsible party
25 by an operator on behalf of the responsible party must be governed by a
26 written contract between the operator and the responsible party, which
27 requires the operator to establish and maintain confidentiality and security
28 measures to ensure the integrity of the personal information.

29 (3) If the operator is not domiciled in the Republic, the responsible
30 party must take reasonably practicable steps to ensure that the operator

Notification of
security
compromises

1 complies with the laws, if any, relating to the protection of personal
2 information of the territory in which the operator is domiciled.

3 **21.-(1)** Where there are reasonable grounds to believe that the
4 personal information of a data subject has been accessed or acquired by any
5 unauthorised person, the responsible party, or any third party processing
6 personal information under the authority of a responsible party, must notify
7 the-

8 (a) Regulator; and

9 (b) data subject, unless the identity of such data subject cannot be
10 established.

11 (2) The notification referred to in subsection (1) must be made as soon
12 as reasonably possible after the discovery of the compromise, taking into
13 account the legitimate needs of law enforcement or any measures reasonably
14 necessary to determine the scope of the compromise and to restore the integrity
15 of the responsible party's information system.

16 (3) The responsible party may only delay notification of the data
17 subject if the Nigeria Police Force, the National Intelligence Agency or the
18 Regulator determines that notification will impede a criminal investigation.

19 (4) The notification to a data subject referred to in subsection (1) must
20 be in writing and communicated to the data subject in at least one of the
21 following ways:

22 (a) Mailed to the data subject's last known physical or postal address;

23 (b) sent by e-mail to the data subject's last known e-mail address;

24 (c) placed in a prominent position on the website of the responsible
25 party;

26 (d) published in the news media; or

27 (e) as may be directed by the Regulator.

28 (5) A notification must provide sufficient information to allow the
29 data subject to take protective measures against the potential consequences of
30 the compromise, including, if known to the responsible party, the identity of the

1 unauthorised person who may have accessed or acquired the personal
2 information.

3 (6) The Regulator may direct a responsible party to publicise, in
4 any manner specified, the fact of any compromise to the integrity or
5 confidentiality of personal information, if the Regulator has reasonable
6 grounds to believe that such publicity would protect a data subject who may
7 be affected by the compromise.

8 *Principle 8 - Data subject participation*

9 **22.-(1)** A data subject, having provided adequate proof of identity, Access to personal
information
10 has the right to-

11 (a) request a responsible party to confirm, free of charge, whether
12 or not the responsible party holds personal information about the data
13 subject; and

14 (b) request from a responsible party a description of the personal
15 information about the data subject held by the responsible party, including
16 information about the identity of all third parties, or categories of third
17 parties, who have, or have had, access to the information-

18 (i) within a reasonable time;

19 (ii) at a prescribed fee, if any, that is not excessive;

20 (iii) in a reasonable manner and format; and

21 (iv) in a form that is generally understandable.

22 (2) If, in accordance with subsection (1)(b), personal information
23 is communicated to a data subject, the data subject must be advised of the
24 right in terms of section 23 to request the correction of information.

25 (3) If a data subject is required by a responsible party to pay a fee
26 for services provided to the data subject in terms of subsection (1)(b) to
27 enable the responsible party to respond to a request, the responsible party-

28 (a) must give the applicant a written estimate of the fee before
29 providing the services; and

Correction of
personal
information

1 (b) may require the applicant to pay a deposit for all or part of the fee.

2 (4) A responsible party may or must refuse, as the case may be, to
3 disclose any information requested in terms of subsection (1) to which the
4 grounds for refusal of access to records set out in the applicable sections of the
5 Freedom of Information Act apply.

6 (5) If a request for access to personal information is made to a
7 responsible party and part of that information may or must be refused in terms
8 of subsection (4), every other part must be disclosed.

9 **23.**-(1) A data subject may request a responsible party to-

10 (a) correct or delete personal information about the data subject in its
11 possession or under its control that is inaccurate, irrelevant, excessive, out of
12 date, incomplete, misleading or obtained unlawfully; or

13 (b) destroy or delete a record of personal information about the data
14 subject that the responsible party is no longer authorised to retain in terms of
15 section 14.

16 (2) On receipt of a request in terms of subsection (1) a responsible
17 party must-

18 (a) correct the information;

19 (b) destroy or delete the information;

20 (c) provide the data subject, to his or her satisfaction, with credible
21 evidence in support of the information; or

22 (d) where agreement cannot be reached between the responsible party
23 and the data subject, and if the data subject so requests, take such steps as are
24 reasonable in the circumstances, to attach to the information in such a manner
25 that it will always be read with the information, an indication that a correction
26 of the information has been requested but has not been made.

27 (3) If the responsible party has taken steps under subsection (2) that
28 result in a change to the information and the changed information has an impact
29 on decisions that have been or will be taken in respect of the data subject in
30 question, the responsible party must, if reasonably practicable, inform each

1 person or body or responsible party to whom the personal information has
2 been disclosed of those steps.

3 (4) The responsible party must notify a data subject, who has made
4 a request in terms of subsection (1), of the action taken as a result of the
5 request.

6 **24.** The Freedom of Information Act apply to requests made in Manner of access
7 terms of sections 22 and 23 of this Act.

8 *Part B -Processing of special personal information*

9 **25.** Unless specifically permitted by this Part, a responsible party
10 may not process personal information concerning a- Prohibition on
processing of
special personal
information

11 (a) child who is subject to parental control in terms of the law; or

12 (b) data subject's religious or philosophical beliefs, race or ethnic
13 origin, trade union membership, political opinions, health, sexual life or
14 criminal behaviour.

15 **26.-(1)** The prohibition on processing personal information
16 concerning a data subject's religious or philosophical beliefs, as referred to
17 in section 25, does not apply if the processing is carried out by- Exemption
concerning data
subject's religious
or philosophical
beliefs

18 (a) spiritual or religious organisations, or independent sections of
19 those organisations: Provided that the information concerns data subjects
20 belonging to those organisations;

21 (b) institutions founded on religious or philosophical principles
22 with respect to their members or employees or other persons belonging to
23 the institution, if it is necessary to achieve their aims and principles; or

24 (c) other institutions: Provided that the processing is necessary to
25 protect the spiritual welfare of the data subjects, unless they have indicated
26 that they object to the processing.

27 (2) In the cases referred to in subsection (1)(a), the prohibition does
28 not apply to processing of personal information concerning the religion or
29 philosophy of life of family members of the data subjects, if—

30 (a) the association concerned maintains regular contact with those

	1	family members in connection with its aims; and
	2	(b) the family members have not objected in writing to the processing.
	3	(3) In the cases referred to in subsections (1) and (2), personal
	4	information concerning a data subject's religious or philosophical beliefs may
	5	not be supplied to third parties without the consent of the data subject.
Exemption concerning data subject's race	6	27. The prohibition on processing personal information concerning a
	7	data subject's race, as referred to in section 25, does not apply if the processing
	8	is carried out to-
	9	(a) identify data subjects and only when this is essential for that
	10	purpose; and
	11	(b) comply with laws and other measures designed to protect or
	12	advance persons,
	13	or categories of persons, disadvantaged by unfair discrimination.
Exemption concerning data subject's trade union membership	14	28. -(1) The prohibition on processing personal information
	15	concerning a data subject's trade union membership, as referred to in section
	16	25, does not apply to the processing by the trade union to which the data subject
	17	belongs or the trade union federation to which that trade union belongs, if such
	18	processing is necessary to achieve the aims of the trade union or trade union
	19	federation.
	20	(2) In the cases referred to under subsection (1), no personal
	21	information may be supplied to third parties without the consent of the data
	22	subject.
Exemption concerning data subject's political persuasion	23	29. -(1) The prohibition on processing personal information
	24	concerning a data subject's political persuasion, as referred to in section 25,
	25	does not apply to processing by an institution founded on political principles,
	26	of the personal information of their members or employees or other persons
	27	belonging to the institution, if such processing is necessary to achieve the aims
	28	or principles of the institutions.
	29	(2) In the cases referred to under subsection (1), no personal

1 information may be supplied to third parties without the consent of the data
2 subject.

3 **30.-(1)** The prohibition on processing personal information
4 concerning a data subject's health or sexual life, as referred to in section 25,
5 does not apply to the processing by-

Exemption
concerning data
subject's health
or sexual life

6 (a) medical professionals, healthcare institutions or facilities or
7 social services, if such processing is necessary for the proper treatment and
8 care of the data subject, or for the administration of the institution or
9 professional practice concerned;

10 (b) insurance companies, medical aid scheme administrators and
11 managed healthcare organisations, if such processing is necessary for-

12 (i) assessing the risk to be insured by the insurance company or
13 covered by the medical aid scheme and the data subject has not objected to
14 the processing;

15 (ii) the performance of an insurance or medical aid agreement;
16 or

17 (iii) the enforcement of any contractual rights and obligations;

18 (c) schools, if such processing is necessary to provide special
19 support for pupils or making special arrangements in connection with their
20 health or sexual life;

21 (d) institutions of probation, child protection or guardianship, if
22 such processing is necessary for the performance of their legal duties;

23 (e) the Minister and the Minister of Interior if such processing is
24 necessary in connection with the implementation of prison sentences or
25 detention measures; or

26 (f) administrative bodies, pension funds, employers or institutions
27 working for them, if such processing is necessary for-

28 (i) the implementation of the provisions of laws, pension
29 regulations or collective agreements which create rights dependent on the
30 health or sexual life of the data subject; or

1 (ii) the reintegration of or support for workers or persons entitled to
2 benefit in connection with sickness or work incapacity.

3 (2) In the cases referred to under subsection (1), the information may
4 only be processed by responsible parties subject to an obligation of
5 confidentiality by virtue of office, employment, profession or legal provision,
6 or established by a written agreement between the responsible party and the
7 data subject.

8 (3) A responsible party that is permitted to process information
9 concerning a data subject's health or sexual life in terms of this section and is
10 not subject to an obligation of confidentiality by virtue of office, profession or
11 legal provision, must treat the information as confidential, unless the
12 responsible party is required by law or in connection with their duties to
13 communicate the information to other parties who are authorised to process
14 such information in accordance with subsection (1).

15 (4) The prohibition on processing any of the categories of personal
16 information referred to in section 25, does not apply if it is necessary to
17 supplement the processing of personal information concerning a data subject's
18 health, as referred to under subsection (1)(a), with a view to the proper
19 treatment or care of the data subject.

20 (5) Personal information concerning inherited characteristics may not
21 be processed in respect of a data subject from whom the information concerned
22 has been obtained, unless-

23 (a) a serious medical interest prevails; or

24 (b) the processing is necessary for the purpose of scientific research or
25 statistics.

26 (6) More detailed rules may be prescribed concerning the application
27 of subsection (1)(b) and (f).

Exemption
concerning data
subject's criminal
behaviour

28 **31.-(1)** The prohibition on processing personal information
29 concerning a data subject's criminal behaviour, as referred to in section 25,
30 does not apply if the processing is carried out by bodies charged by law with

1 applying criminal law or by responsible parties who have obtained that
2 information in accordance with the law.

3 (2) The prohibition does not apply to responsible parties who
4 process the information for their own lawful purposes to-

5 (a) assess an application by a data subject in order to take a decision
6 about, or provide a service to, that data subject; or

7 (b) protect their legitimate interests in relation to criminal offences
8 which have been, or can reasonably be expected to be, committed against
9 them or against persons in their service.

10 (3) The processing of information concerning personnel in the
11 service of the responsible party must take place in accordance with the rules
12 established in compliance with labour legislation.

13 (4) The prohibition on processing any of the categories of
14 personnel information referred to in section 26 does not apply if such
15 processing is necessary to supplement the processing of information on
16 criminal behaviour permitted by this section.

17 **32.** Without prejudice to sections 26 to 31, the prohibition on
18 processing personal information, as referred to in section 25, does not apply
19 if-

20 (a) processing is carried out with prior parental consent where the
21 data subject is a child and is subject to parental control in terms of the law;

22 (b) processing is necessary for the establishment, exercise or
23 defence of a right or obligation in law;

24 (c) processing is necessary to comply with an obligation of
25 international public law;

26 (d) the Regulator has granted authority in terms of section 34 for
27 processing in the public interest, and appropriate guarantees have been put
28 in place in law to protect the data subject's privacy; or

29 (e) insofar as section 25(b) is concerned-

General
exemption
concerning
special personal
information

	1	(i) processing is carried out with the consent of the data subject; or
	2	(ii) the information has deliberately been made public by the data
	3	subject.
General	4	CHAPTER 4 - EXEMPTION FROM INFORMATION PROTECTION PRINCIPLES
	5	33. processing of personal information is not in breach of an
	6	information protection principle if the processing is authorised by the
Regulator may authorise processing of personal information	7	Regulator in terms of section 34.
	8	34. -(1) The Regulator may authorise a responsible party to process
	9	personal information, even if that processing is in breach of an information
	10	protection principle if the Regulator is satisfied that, in the circumstances of the
	11	case-
	12	(a) the public interest in the processing outweighs, to a substantial
	13	degree, any interference with the privacy of the data subject that could result
	14	from such processing; or
	15	(b) the processing involves a clear benefit to the data subject or a third
	16	party that outweighs, to a substantial degree, any interference with the privacy
	17	of the data subject or third party that could result from such processing.
	18	(2) The public interest referred to in subsection (1) includes-
	19	(a) the legitimate interests of State security;
	20	(b) the prevention, detection and prosecution of offences;
	21	(c) important economic and financial interests of the State or a public
	22	body;
	23	(d) fostering compliance with legal provisions established in the
	24	interests referred to under paragraphs (b) and (c); or
	25	(e) historical, statistical or research activity.
	26	(3) The Regulator may impose reasonable conditions in respect of any
	27	authorisation granted under subsection (1).
	28	CHAPTER 5 - SUPERVISION
Establishment of Information Protection Regulator	29	<i>Part A - Information Protection Regulator</i>
	30	35. There is hereby established a juristic person to be known as the

1 Information Protection Regulator, which-
2 (a) has jurisdiction throughout the Country;
3 (b) is independent and is subject only to the Constitution and to the
4 law and must be impartial and perform its functions and exercise its powers
5 without fear, favour or prejudice; and
6 (c) must perform its functions and exercise its powers in
7 accordance with this Act and the Promotion of Access to Information Act.

Constitution and
term of office of
Regulator

8 **36.-(1)** (a) The Regulator consists of the following members:

9 (i) A Chairperson; and
10 (ii) four other persons, as ordinary members of the Regulator.
11 (b) Members of the Regulator must be appropriately qualified, fit
12 and proper persons for appointment on account of experience as a practicing
13 advocate or attorney or a professor of law at a university, or on account of
14 any other qualification relating to the objects of the Regulator;

15 (c) The Chairperson of the Regulator must perform his or her
16 functions under the Act and the Promotion of Access to Information Act in a
17 full-time capacity and must not be employed in any other capacity during the
18 period in which he or she holds office as Chairperson;

19 (d) The other members of the Regulator must be appointed in a
20 part-time capacity;

21 (e) The Chairperson must direct the work of the Regulator and the
22 Secretariat;

23 (f) No person will be qualified for appointment as a member of the
24 Regulator if that person-

25 (i) is a member of a legislature;
26 (ii) is a councillor of a local authority;
27 (iii) is an un rehabilitated insolvent; or
28 (iv) has at any time been convicted of any offence involving
29 dishonesty.

30 (2) Members of the Regulator referred to in subsection (1)(a) must

1 be appointed by the President and must be persons approved by Parliament,
2 after considering proposals made by interested parties in terms of subsection
3 (4).

4 (3) The President may appoint one or more additional members if he
5 or she considers it necessary for the investigation of any particular matter or the
6 performance of any duty by the Regulator.

7 (4) Before the members of the Regulator are appointed the Minister
8 must invite interested parties through the media and by notice in the Gazette to
9 propose candidates within 30 days of the publication of such notice, for
10 consideration as contemplated in subsection (2).

11 (5) The members of the Regulator will be appointed for a period of not
12 more than five years and will, at the expiration of such period, be eligible for
13 reappointment.

14 (6) A person appointed as a member of the Regulator may resign from
15 office by writing under his or her hand addressed to the President and will in
16 any case vacate office on attaining the age of 70 years.

17 (7) A member may be removed from office by the President on the
18 request of Parliament only for inability to discharge the functions of the office,
19 whether arising from infirmity of body or mind or any other cause, or for
20 misbehaviour.

Remuneration,
allowances,
benefits and
privileges of
members

21 **37.-(1)** A member of the Regulator will be entitled to such
22 remuneration, allowances, including allowances for reimbursement of
23 travelling and subsistence expenses incurred by him or her in the performance
24 of his or her functions under this Act, benefits and privileges as the Minister in
25 consultation with the Minister of Finance may determine.

26 (2) The remuneration, allowances, benefits or privileges of different
27 members of the Regulator may differ according to the different -

28 (a) offices held by them in the Regulator; or

29 (b) functions performed, whether in a part-time or full-time capacity,
30 by them from time to time.

1 (3) In the application of subsections (1) and (2), the President or the
2 Minister, as the case may be, may determine that any remuneration,
3 allowance, benefit or privilege contemplated in those subsections will be the
4 remuneration, allowance, benefit or privilege determined from time to time
5 by or under any law in respect of any person or category of persons.

Secretary and
staff

6 **38.**-(1) The Secretary of the Regulator and such other officers and
7 employees as are required for the proper performance of the Regulator's
8 functions, will be appointed in terms of public service rules

9 (2) The Regulator may, with the approval of the Minister in
10 consultation with the Minister of Finance, on a temporary basis or for a
11 particular matter which is being investigated by it, employ any person with
12 special knowledge of any matter relating to the work of the Regulator, or
13 obtain the co-operation of any body, to advise or assist the Regulator in the
14 performance of its functions under this Act and the Promotion of Access to
15 Information Act, and fix the remuneration, including reimbursement for
16 travelling, subsistence and other expenses, of such person or body.

Committees of
Regulator

17 **39.**-(1) The Regulator may, if it considers it necessary for the
18 proper performance of its functions, establish-

19 (a) a working committee, which must consist of such members of
20 the Regulator as the Regulator may designate;

21 (b) such other committees as it may deem necessary, and which
22 must consist of-

23 (i) such members of the Regulator as the Regulator may designate;

24 (ii) such members of the Regulator as the Regulator may designate
25 and other persons appointed by the Minister for the period determined by the
26 Minister.

27 (2) The Minister may at any time extend the period of an
28 appointment referred to in subsection (1)(b)(ii) or, if in his or her opinion
29 good reasons exist there for, revoke any such appointment.

30 (3) The Regulator must designate the chairperson and, if the

1 Regulator deems it necessary, the vice-chairperson of a committee established
2 under subsection (1).

3 (4) (a) A committee referred to in subsection (1) must, subject to the
4 directions of the Regulator, perform those functions of the Regulator assigned
5 to it by the Regulator.

6 (b) Any function so performed by the working committee referred to
7 in subsection (1)(a) will be deemed to have been performed by the Regulator.

8 (5) The Regulator may at any time dissolve any committee
9 established by the Regulator.

Meetings of
Regulator

10 (6) The provisions of sections 40 and 45(4) will apply, with the
11 necessary changes, to a committee of the Regulator.

12 **40.**-(1) Meetings of the Regulator must be held at the times and places
13 determined by the Chairperson of the Regulator.

14 (2) The majority of the members of the Regulator will constitute a
15 quorum for a meeting.

Funds

16 (3) The Regulator may regulate the proceedings at meetings as it may
17 think fit and must keep minutes of the proceedings.

18 **41.**-(1) Parliament must appropriate annually, for the use of the
19 Regulator, such sums of money as may be necessary for the proper exercise,
20 performance and discharge, by the Regulator, of its powers, duties and
21 functions under this Act and the Promotion of Access to Information Act.

22 (2) The financial year of the Regulator is the period from 1 April in
23 any year to 31 March in the following year, except that the first financial year of
24 the Regulator begins on the date that this Act comes into operation, and ends on
25 31 March next following that date.

26 (3) The Chairperson of the Regulator is the accounting authority of
27 the Regulator for purposes of the and must execute his or her duties in
28 accordance with that Act.

29 (4) Within six months after the end of each financial year, the
30 Regulator must prepare financial statements in accordance with established

1 accounting practice, principles and procedures, comprising=

2 (a) a statement reflecting, with suitable and sufficient particulars,
3 the income and expenditure of the Regulator during the preceding financial
4 year; and

5 (b) a balance sheet showing the state of its assets, liabilities and
6 financial position as at the end of that financial year.

7 (5) The Auditor-General must audit the Regulator's financial
8 records each year.

Protection of
Regulator

9 **42.** The Regulator, or any person acting on behalf or under the
10 direction of the Regulator, is not civilly or criminally liable for anything
11 done in good faith in the exercise or performance or purported exercise or
12 performance of any power, duty or function of the Regulator in terms of this
13 Act or the Promotion of Access to Information Act.

Powers and duties
of Regulator

14 **43.-(1)** The powers and duties of the Regulator in terms of this Act
15 are-

16 (a) to promote, by education and publicity, an understanding and
17 acceptance of the information protection principles and of the objects of
18 those principles;

19 (b) for the purpose of promoting the protection of personal
20 information, to under take educational programmes on the Regulator's own
21 behalf or in co-operation with other persons or authorities acting on behalf
22 of the Regulator;

23 (c) to make public statements in relation to any matter affecting the
24 protection of the personal information of a data subject or of any class of data
25 subjects;

26 (d) to monitor and enforce compliance by public and private bodies
27 of the provisions of this Act;

28 (e) to undertake research into, and to monitor developments in,
29 information processing and computer technology to ensure that any adverse
30 effects of such developments on the protection of the personal information

1 of data subjects are minimised, and to report to the Minister the results of such
2 research and monitoring;

3 (f) to examine any proposed legislation, including subordinate
4 legislation, or proposed policy of the Government that the Regulator considers
5 may affect the protection of the personal information of data subjects, and to
6 report to the Minister the results of that examination;

7 (g) to report, with or without request, to the National Assembly from
8 time to time on any matter affecting the protection of the personal information
9 of a data subject, including the need for, or desirability of, taking legislative,
10 administrative or other action to give protection or better protection to the
11 personal information of a data subject;

12 (h) when requested to do so by a public or private body, to conduct an
13 audit of personal information maintained by that body for the purpose of
14 ascertaining whether or not the information is maintained according to the
15 information protection principles;

16 (i) to monitor the use of unique identifiers of data subjects, and to
17 report to Parliament from time to time on the results of that monitoring,
18 including any recommendation relating to the need of, or desirability of taking,
19 legislative, administrative or other action to give protection, or better
20 protection, to the personal information of a data subject;

21 (j) to maintain, and to publish, make available and provide copies of
22 such registers as are prescribed in terms of this Act;

23 (k) to examine any proposed legislation that makes provision for the-

24 (i) collection of personal information by any public or private body;

25 (ii) disclosure of personal information by one public or private body
26 to any other public or private body, or both, to have particular regard, in the
27 course of that examination, to the matters set out in section 44(3) of this Act, in
28 any case where the Regulator considers that the information might be used for
29 the purposes of an information matching programme, and to report to the
30 Minister and Parliament the results of that examination;

- 1 (l) to receive and invite representations from members of the
2 public on any matter affecting the personal information of a data subject;
- 3 (m) to consult and co-operate with other persons and bodies
4 concerned with the protection of personal information principles;
- 5 (n) to act as mediator between opposing parties on any matter that
6 concerns the need for, or the desirability of, action by a responsible party in
7 the interests of the protection of the personal information of a data subject;
- 8 (o) to provide advice, with or without a request, to a Minister or a
9 public or private body on their obligations under the provisions, and
10 generally on any matter relevant to the operation, of this Act;
- 11 (p) to receive and investigate complaints about alleged violations
12 of the protection of personal information of data subjects and in respect
13 thereof make reports to complainants;
- 14 (q) to gather such information as in the Regulator's opinion will
15 assist the Regulator in discharging the duties and carrying out the
16 Regulator's functions under this Act;
- 17 (r) to attempt to resolve complaints by means of dispute resolution
18 mechanisms such as mediation and conciliation;
- 19 (s) to serve any notices in terms of this Act and further promote the
20 resolution of disputes in accordance with the prescripts of this Act;
- 21 (t) to report to Parliament from time to time on the desirability of
22 the acceptance, by South Africa, of any international instrument relating to
23 the protection of the personal information of a data subject;
- 24 (u) to report to Parliament on any other matter relating to protection
25 of personal information that, in the Regulator's opinion, should be drawn to
26 Parliament's attention;
- 27 (v) to issue, from time to time, codes of conduct, amendment of
28 codes and revocation of codes of conduct;
- 29 (w) to make guidelines to assist bodies to develop codes of conduct

- 1 or to apply codes of conduct;
- 2 (x) to review an adjudicator's decision under approved codes of
- 3 conduct;
- 4 (y) to do anything incidental or conducive to the performance of any
- 5 of the preceding functions;
- 6 (z) to exercise and perform such other functions, powers and duties as
- 7 are conferred or imposed on the Regulator by or under this Act or any other
- 8 enactment;
- 9 (aa) to require the responsible party to disclose to any person affected
- 10 by a compromise to the confidentiality or integrity of personal information,
- 11 this fact in accordance with section 21 of this Act; and
- 12 (bb) to exercise the powers conferred upon the Regulator by this Act
- 13 in matters relating to the access of information as provided by the Freedom of
- 14 Information Act.
- 15 (2) The Regulator may, from time to time, in the public interest or in
- 16 the legitimate interests of any person or body of persons, publish reports
- 17 relating generally to the exercise of the Regulator's functions under this Act or
- 18 to any case or cases investigated by the Regulator, whether or not the matters to
- 19 be dealt with in any such report have been the subject of a report to the Minister.
- 20 **44.-(1)** The Regulator is independent in the performance of its
- 21 functions as set out in section 35(b).
- 22 (2) In the performance of its functions and the exercise of its powers
- 23 under this Act, the Regulator must-
- 24 (a) have due regard to the protection of personal information as set out
- 25 in the information protection principles;
- 26 (b) have due regard for the protection of all human rights and social
- 27 interests that compete with privacy, including the general desirability of a free
- 28 flow of information and the recognition of the legitimate interests of
- 29 government and business in achieving their objectives in an efficient way;
- 30 (c) take account of international obligations accepted by South

Regulator to have
regard to certain
matters

1 Africa, including those concerning the international technology of
2 communications; and

3 (d) consider any developing general international guidelines
4 relevant to the better protection of individual privacy.

5 (3) In performing its functions in terms of section 43(1)(k) with
6 regard to information matching programmes, the Regulator must have
7 particular regard to whether or not the-

8 (a) objective of the programme relates to a matter of significant
9 public importance;

10 (b) use of the programme to achieve that objective will result in
11 monetary savings that are both significant and quantifiable or in other
12 comparable benefits to society;

13 (c) use of an alternative means of achieving that objective would
14 give either of the results referred to in paragraph (b);

15 (d) public interest in allowing the programme to proceed
16 outweighs the public interest in adhering to the information protection
17 principles that the programme would otherwise contravene; and

18 (e) programme involves information matching on a scale that is
19 excessive, having regard to-

20 (i) the number of responsible parties or operators that will be
21 involved in the programme; and

22 (ii) the amount of detail about a data subject that will be matched
23 under the programme.

24 **45.-(1)** In order to achieve its objects in terms of this Act the
25 Regulator must from time to time draw up programmes in which the various
26 matters which in its opinion require consideration are included in order of
27 preference, and must table such programmes in Parliament for information.

28 (2) The Regulator may include in any programme any suggestion
29 relating to its objects received from any person or body.

Programmes of
Regulator

Reports of Regulator	<p>1 (3) The Regulator may consult any person or body, whether by the</p> <p>2 submission of study documents prepared by the Regulator or in any other</p> <p>3 manner</p>
	<p>4 46.-(1) The Regulator must prepare a full report in regard to any</p> <p>5 matter investigated by it in terms of this Act and must submit such report to the</p> <p>6 National Assembly for information.</p>
	<p>7 (2) The Regulator must within five months of the end of a financial</p> <p>8 year submit to the Minister a report on all its activities in terms of this Act</p> <p>9 during that financial year.</p>
	<p>10 (3) The report referred to in subsection (2) must be laid in the National</p> <p>11 Assembly within 14 days after it was submitted to the Minister, if the National</p> <p>12 Assembly is then in session, or, if the National Assembly is not in session,</p> <p>13 within 14 days after the commencement of its next ensuing session.</p>
	<p>14 47. A person acting on behalf or under the direction of the Regulator,</p> <p>15 must treat as confidential the personal information which comes to his or her</p> <p>16 knowledge, except if the communication of such information is required by</p> <p>17 law or in the proper performance of his or her duties.</p>
	<p>18 <i>Part B - Information Protection Officer</i></p>
Duties and responsibilities of Information Protection Officer	<p>19 48. -(1) An information protection officer's responsibilities include-</p>
	<p>20 (a) the encouragement of compliance, by the body, with the</p> <p>21 information protection principles;</p>
	<p>22 (b) dealing with requests made to the body pursuant to this Act;</p>
	<p>23 (c) working with the Regulator in relation to investigations conducted</p> <p>24 pursuant to Chapter 6 in relation to the body; and</p>
	<p>25 (d) otherwise ensuring compliance by the body with the provisions of</p> <p>26 this Act.</p>
	<p>27 (2) Officers must take up their duties in terms of this Act only after the</p> <p>28 responsible party has registered them with the Regulator.</p>
Designation and delegation of deputy information protection officers	<p>29 49. Each public and private body must make provision, in the manner</p> <p>30 prescribed in the Freedom of Information Act, with the necessary changes, for</p>

1 the designation of-

2 (a) such a number of persons, if any, as deputy information
3 protection officers as is necessary to perform the duties and responsibilities
4 as set out in section 48(1) of this Act; and

5 (b) any power or duty conferred or imposed on an information
6 protection officer by this Act to a deputy information protection officer of
7 that public or private body.

8 CHAPTER 6 - NOTIFICATION AND PRIOR INVESTIGATION

9 *Part A - Notification*

Notification of
processing

10 **50.**-(1) A responsible party must notify the Regulator before
11 commencing the-

12 (a) fully or partly automated processing of personal information or
13 categories of personal information intended to serve a single purpose or
14 different related purposes; and

15 (b) non-automated processing of personal information intended to
16 serve a single purpose or different related purposes, must be notified if this is
17 subject to a prior investigation.

18 (2) The notification referred to in subsection (1) must be noted in a
19 register kept by the Regulator for this purpose.

Notification to
contain specific
particulars

20 **51.**-(1) The notification must contain the following particulars:

21 (a) The name and address of the responsible party;

22 (b) the purpose of the processing;

23 (c) a description of the categories of data subjects and of the
24 information or categories of information relating thereto;

25 (d) the recipients or categories of recipients to whom the personal
26 information may be supplied;

27 (e) planned trans border flows of personal information; and

28 (f) a general description allowing a preliminary assessment of the
29 suitability of the information security measures to be implemented by the
30 responsible party to ensure the confidentiality, integrity and availability of

1 the information which is to be processed.

2 (2) Subject to subsection (3) a responsible party will only have to give
3 notice once, and not each time personal information is received or processed.

4 (3) Changes in the name or address of the responsible party must be
5 notified within one week and changes to the notification which concern
6 subsection (1)(b) to (f) must be notified in each case within one year of the
7 previous notification, if they are of more than incidental importance.

8 (4) Any processing which departs from that which has been notified in
9 accordance with the provisions of subsection (1)(b) to (f) must be recorded and
10 kept for at least three years.

11 (5) More detailed rules may be prescribed concerning the procedure
12 for submitting notifications.

Exemptions to
notification
requirements

13 **52.**-(1) The Regulator may by notice exempt certain categories of
14 information processing which are unlikely to infringe the legitimate interests
15 of a data subject from the notification requirement referred to in section 50.

16 (2) If processing of personal information is necessary in order to
17 detect offences in a particular case, it may be prescribed that certain categories
18 of processing by responsible parties who are vested with investigating powers
19 by law, are exempt from notification.

20 (3) The notification requirement does not apply to public registers set
21 up by law or to information supplied to a public body pursuant to a legal
22 obligation.

23 (4) Any exemption granted to a responsible party from the provision
24 of the Freedom of Information Act will also apply as an exemption of the
25 notification requirements set out in terms of this Act.

Register of
information
processing

26 **53.**-(1) The Regulator must maintain an up-to-date register of the
27 information processing notified to it, which register must contain, as a
28 minimum, the information provided in accordance with section 51(1).

29 (2) The register may be consulted by any person free of charge.

30 (3) The responsible party must provide any person who requests

1 information referred to in section 50(1) with the information so requested.

2 (4) The provisions of subsection (3) do not apply to-

3 (a) information processing which is covered by an exemption
4 under Chapter 4; and

5 (b) public registers set up by law.

Failure to notify

6 **54.**-(1) If section 50(1) is contravened, the responsible party is
7 guilty of an offence and liable to a penalty as set out in section 99.

8 (2) Any responsible party who fails to comply with the duty
9 imposed by notification regulations made by virtue of section 102 is guilty
10 of an offence and liable to a penalty as set out in section 99.

11 *Part B - Prior investigation*

Processing
subjects to prior
investigation

12 **55.**-(1) The Regulator must initiate an investigation prior to any
13 processing if a responsible party plans to-

14 (a) process a number identifying data subjects for a purpose other
15 than the one for which the number is specifically intended with the aim of
16 linking the information together with information processed by other
17 responsible parties, unless the number is used for the cases defined in
18 Chapter 4;

19 (b) process information on criminal behaviour or on unlawful or
20 objectionable conduct on behalf of third parties;

21 (c) process information for the purposes of credit reporting; and

22 (d) transfer special personal information, as referred to in section
23 26, to foreign countries without adequate information protection laws.

24 (2) The provisions of subsection (1) may be applied by the
25 Regulator to other types of information processing by law or regulation if
26 such processing carries a particular risk for the legitimate interests of the
27 data subject.

28 (3) Part B of Chapter 6 will not be applicable if a code of conduct
29 has been issued and has come into force in terms of Chapter 7 in a specific

Responsible party
to notify Regulator
if processing is
subject to prior
investigation

1 sector or sectors of society.
2 **56.-(1)** Information processing under a code of conduct as
3 contemplated in section 55 (3) must be notified as such by the responsible party
4 to the Regulator.

5 (2) Responsible parties may not carry out information processing that
6 has been notified to the Regulator in terms of subsection (1) until the Regulator
7 has completed its investigation or until they have received notice that a more
8 detailed investigation will not be conducted.

9 (3) In the case of the notification of information processing to which
10 section 55(1) is applicable, the Regulator must inform the responsible party in
11 writing within four weeks of the notification as to whether or not it will conduct
12 a more detailed investigation.

13 (4) In the event that the Regulator decides to conduct a more detailed
14 investigation, it must indicate the period within which it plans to conduct this
15 investigation, which period must not exceed 13 weeks.

16 (5) On conclusion of the more detailed investigation referred to in
17 subsection (4) the Regulator must issue a statement concerning the lawfulness
18 of the information processing.

19 (6) A statement by the Regulator in terms of subsection (5) is deemed
20 to be an enforcement notice served in terms of section 90 of this Act.

21 (7) A responsible party that has suspended its processing as required
22 by subsection (2), and which has not received the Regulator's decision within
23 the time limits specified in subsections (3) and (4), may presume a decision in
24 its favour and continue with its processing.

Issuing of codes
of conduct

25 CHAPTER 7 - CODES OF CONDUCT

26 **57.-(1)** The Regulator may from time to time issue a code of conduct.

27 (2) A code of conduct must-

28 (a) incorporate all the information protection principles or set out
29 obligations that provide a functional equivalent of all the obligations set out in
30 those principles; and

1 (b) prescribe how the information protection principles are to be
2 applied, or are to be complied with, given the particular features of the sector
3 or sectors of society in which the relevant responsible parties are operating.

4 (3) A code of conduct may apply in relation to any one or more of
5 the following:

6 (a) Any specified information or class of information;

7 (b) any specified body or class of bodies;

8 (c) any specified activity or class of activities;

9 (d) any specified industry, profession, or calling or class of
10 industries, professions or callings.

11 (4) A code of conduct must also-

12 (a) in relation to anybody that is not a public body, provide for
13 controls in relation to the comparison, whether manually or by means of any
14 electronic or other device, of personal information with other personal
15 information for the purpose of producing or verifying information about an
16 identifiable data subject;

17 (b) provide for the review of the code by the Regulator; and

18 (c) provide for the expiry of the code.

19 **58.-(1)** The Regulator may issue a code of conduct under section 57
20 of this Act-

21 (a) on the Regulator's own initiative but in consultation with
22 affected stakeholders or a body representing such stakeholders; or

23 (b) on the application of any person as provided in subsection (3).

24 (2) Without limiting subsection (1), but subject to subsection (3),
25 any person may apply to the Regulator for the issuing of a code of conduct in
26 the prescribed form submitted by the applicant.

27 (3) An application may be made pursuant to subsection (2) only-

28 (a) by a body which is, in the opinion of the Regulator, sufficiently
29 representative of any class of bodies, or of any industry, profession or calling
30 as defined in the code; and

Proposal for
issuing of code
of conduct

1 (b) if the code of conduct sought by the applicant is intended to apply
2 in respect of the class of body, or the industry, profession or calling, that the
3 applicant represents,
4 in respect of such class of body or of any such industry, profession or calling.

5 (4) If an application is made to the Regulator pursuant to subsection
6 (2), or if the Regulator intends to issue a code on its own initiative, the
7 Regulator must give notice in the Gazette that the issuing of a code of conduct
8 is being considered, which notice must contain a statement that-

9 (a) the details of the code of conduct being considered, including a
10 draft of the proposed code, may be obtained from the Regulator; and

11 (b) submissions on the proposed code may be made in writing to the
12 Regulator within such period as is specified in the notice.

13 (5) The Regulator must not issue a code of conduct unless it has
14 considered the submissions made to the Regulator in terms of subsection (4), if
15 any, and is satisfied that all persons affected by the proposed code have had a
16 reasonable opportunity to be heard.

17 (6) The decision as to whether an application for the issuing of a code
18 has been successful must be made within a reasonable period which must not
19 exceed 13 weeks.

Notification,
availability and
commencement
of code

20 **59.-(1)** If a code of conduct is issued under section 57-

21 (a) the Regulator must ensure that there is published in the Gazette, as
22 soon as reasonably practicable after the code is issued, a notice indicating-

23 (i) that the code has been issued; and

24 (ii) where copies of the code are available for inspection free of charge
25 and for purchase; and

26 (b) the Regulator must ensure that as long as the code remains in
27 force, copies of it are available-

28 (i) on the Regulator's website;

29 (ii) for inspection by members of the public free of charge at the
30 Regulator's offices; and

1 (iii) for purchase or copying by members of the public at a
2 reasonable price at the Regulator's offices.

3 (2) A code of conduct issued under section 57 comes into force on
4 the 28th day after the date of its notification in the Gazette or on such later
5 date as may be specified in the code and is binding on every class or classes
6 of body, industry, profession or calling referred to therein.

Amendment and
revocation of codes

7 **60.**-(1) The Regulator may amend or revoke a code of conduct
8 issued under section 57.

9 (2) The provisions of sections 57, 58, 59 and 61 apply in respect of
10 any amendment or revocation of a code of conduct.

Procedure for
dealing with
complaints

11 **61.**-(1) A code of conduct may prescribe procedures for making
12 and dealing with complaints alleging a breach of the code, but no such
13 provision may limit or restrict any provision of Chapter 8.

14 (2) If the code sets out procedures for making and dealing with
15 complaints, the Regulator must be satisfied that-

16 (a) the procedures meet the-

17 (i) prescribed standards; and

18 (ii) guidelines issued by the Regulator in terms of section
19 62, relating to the making of and dealing with complaints;

20 (b) the code provides for the appointment of an independent
21 adjudicator to whom complaints may be made;

22 (c) the code provides that, in performing his or her functions and
23 exercising his or her powers under the code, an adjudicator for the code must
24 have due regard to the matters listed in section 44(2);

25 (d) the code requires the adjudicator to prepare and submit a report,
26 in a form satisfactory to the Regulator, to the Regulator within five months
27 of the end of a financial year of the Department of Justice and Constitutional
28 Development on the operation of the code during that financial year; and

29 (e) the code requires the report prepared for each year to specify the
30 number and nature of complaints made to an adjudicator under the code

1 during the relevant financial year.

2 (3) A data subject who is aggrieved by a determination, including any
3 declaration, order or direction that is included in the determination made by an
4 adjudicator, other than the Regulator, after investigating a complaint relating to
5 the protection of personal information under an approved code of conduct, may
6 lodge a complaint with the Regulator against the determination on payment of
7 a prescribed fee.

8 (4) The adjudicator's determination continues to have effect unless
9 and until the Regulator makes a determination under Chapter 10 relating to the
10 complaint.

Guidelines about
codes of conduct

11 **62.** (1) The Regulator may provide written guidelines-

12 (a) to assist bodies to develop codes of conduct or to apply approved
13 codes of conduct;

14 (b) relating to making and dealing with complaints under approved
15 codes of conduct; and

16 (c) about matters the Regulator may consider in deciding whether to
17 approve a code of conduct or a variation of an approved code of conduct.

18 (2) Before providing guidelines for the purposes of subsection (1)(b),
19 the Regulator must give everyone the Regulator considers has a real and
20 substantial legitimate interest in the matters covered by the proposed
21 guidelines an opportunity to comment on them.

22 (3) The Regulator must publish guidelines provided under subsection
23 (1) in the Gazette.

Register of
approved codes
of conduct

24 **63.**-(1) The Regulator must keep a register of approved codes of
25 conduct.

26 (2) The Regulator may decide the form of the register and how it is to
27 be kept.

28 (3) The Regulator must make the register available to the public in the
29 way that the Regulator determines.

30 (4) The Regulator may charge reasonable fees for-

- 1 (a) making the register available to the public; or
- 2 (b) providing copies of, or extracts from, the register.
- 3 **64.**-(1) The Regulator may, on its own initiative, review the
 4 operation of an approved code of conduct.
- 5 (2) The Regulator may do one or more of the following for the
 6 purposes of the review-
- 7 (a) Consider the process under the code for making and dealing
 8 with complaints;
- 9 (b) inspect the records of an adjudicator for the code;
- 10 (c) consider the outcome of complaints dealt with under the code;
- 11 (d) interview an adjudicator for the code; and
- 12 (e) appoint experts to review those provisions of the code that the
 13 Regulator believes require expert evaluation.
- 14 (3) The review may inform a decision by the Regulator under
 15 section 60 to revoke the approved code of conduct with immediate effect or
 16 at a future date to be determined by the Regulator.
- 17 **65.** If a code issued under section 57 of this Act is in force, failure
 18 to comply with the code is deemed to be a breach of an information
 19 protection principle.
- 20 CHAPTER 8 - RIGHTS OF DATA SUBJECTS REGARDING UNSOLICITED
 21 ELECTRONIC COMMUNICATIONS AND AUTOMATED DECISION MAKING
- 22 **66.**-(1) The processing of personal information of a data subject for
 23 the purpose of direct marketing by means of automatic calling machines,
 24 facsimile machines, SMSs or electronic mail is prohibited unless the data
 25 subject-
- 26 (a) has given his, her or its consent to the processing; or
- 27 (b) is, subject to subsection (2), a customer of the responsible party.
- 28 (2) A responsible party may only process the personal information
 29 of a data subject who is a customer of the responsible party in terms of
 30 subsection (1)(b)-

Review of
operation of
approved code of
conduct

Effect of failure
to comply with
code

Unsolicited
electronic
communications

1 (a) if the responsible party has obtained the contact details of the data
2 subject in the context of the sale of a product or service;

3 (b) for the purpose of direct marketing of the responsible party's own
4 similar products or services; and

5 (c) if the data subject has been given a reasonable opportunity to
6 object, free of charge and in a manner free of unnecessary formality, to such use
7 of his, her or its electronic details-

8 (i) at the time when the information was collected; and

9 (ii) on the occasion of each communication with the data subject for
10 the purpose of marketing if the data subject has not initially refused such use.

11 (3) Any communication for the purpose of direct marketing must
12 contain-

13 (a) details of the identity of the sender or the person on whose behalf
14 the communication has been sent; and

15 (b) an address or other contact details to which the recipient may send
16 a request that such communications cease.

Directories

17 **67.-(1)** A data subject who is a subscriber to a printed or electronic
18 directory of subscribers available to the public or obtainable through directory
19 enquiry services, in which his, her or its personal information is included, must
20 be informed, free of charge and before the information is included in the
21 directory-

22 (a) about the purpose of the directory; and

23 (b) about any further uses to which the directory may possibly be put,
24 based on search functions embedded in electronic versions of the directory.

25 (2) A data subject must be given a reasonable opportunity to object,
26 free of charge and in a manner free of unnecessary formality, to such use of his,
27 her or its personal information or to request verification, confirmation or
28 withdrawal of such information if the data subject has not initially refused such
29 use.

30 (3) Subsections (1) and (2) do not apply to editions of directories that

1 were produced in printed or off-line electronic form prior to the
2 commencement of this section.

3 (4) If the personal information of data subjects who are subscribers
4 to fixed or mobile public voice telephony services have been included in a
5 public subscriber directory in conformity with the information protection
6 principles prior to the commencement of this section, the personal
7 information of such subscribers may remain included in this public
8 directory in its printed or electronic versions, after having received the
9 information required by subsection (1).

Automated
decision making

10 **68.**-(1) Subject to subsection (2), no one may be subject to a
11 decision to which are attached legal consequences for him or her, or which
12 affects him or her to a substantial degree, that has been taken solely on the
13 basis of the automated processing of personal information intended to
14 provide a profile of certain aspects of his or her personality or personal
15 habits.

16 (2) The provisions of subsection (1) do not apply if the decision-

17 (a) has been taken in connection with the conclusion or execution
18 of a contract, and-

19 (i) the request of the data subject in terms of the contract has been
20 met; or

21 (ii) appropriate measures have been taken to protect the data
22 subject's legitimate interests; or

23 (b) is governed by a law or code in which appropriate measures are
24 specified for protecting the legitimate interests of data subjects.

25 (3) The appropriate measures, referred to in subsection (2)(a)(ii),
26 must-

27 (a) provide an opportunity for a data subject to make
28 representations about a decision referred to in subsection (1); and

29 (b) require a responsible party to provide a data subject with
30 sufficient information about the underlying logic of the automated

Transfers of
personal
information
outside Nigeria

1 processing of the information relating to him or her to enable him or her to
2 make representations in terms of paragraph (a).

3 CHAPTER 9 - TRANSBORDER INFORMATION FLOWS

4 **69.** A responsible party in the Republic may not transfer personal
5 information about a data subject to a third party who is in a foreign country
6 unless-

7 (a) the recipient of the information is subject to a law, binding code of
8 conduct or contract which-

9 (i) effectively upholds principles for reasonable processing of the
10 information that are substantially similar to the information protection
11 principles; and

12 (ii) includes provisions, that are substantially similar to this section,
13 relating to the further transfer of personal information from the recipient to
14 third parties who are in a foreign country;

15 (b) the data subject consents to the transfer;

16 (c) the transfer is necessary for the performance of a contract between
17 the data subject and the responsible party, or for the implementation of pre-
18 contractual measures taken in response to the data subject's request;

19 (d) the transfer is necessary for the conclusion or performance of a
20 contract concluded in the interest of the data subject between the responsible
21 party and a third party; or

22 (e) the transfer is for the benefit of the data subject, and-

23 (i) it is not reasonably practicable to obtain the consent of the data
24 subject to that transfer; and

25 (ii) if it were reasonably practicable to obtain such consent, the data
26 subject would be likely to give it.

Interference with
protection of
personal
information of
data subject

27 CHAPTER 10 - ENFORCEMENT

28 **70.** For the purposes of this Chapter, interference with the protection
29 of the personal information of a data subject consists, in relation to that data

1 subject, of-

2 (a) any breach of the information protection principles set out in

3 Chapter 3;

4 (b) non-compliance with section 21, 47, 66, 67, 68 or 69; or

5 (c) a breach of the provisions of a code of conduct issued in terms of

6 section 57.

Complaints

7 **71.** Any person may submit a complaint to the Regulator in the
8 prescribed manner and form-

9 (a) alleging interference with the protection of the personal
10 information of a data subject; or

11 (b) in terms of section 61(3) if the data subject is aggrieved by the
12 determination of an adjudicator.

Mode of
complaints to
Regulator

13 **72.**-(1) A complaint to the Regulator may be made either orally or
14 in writing.

15 (2) A complaint made orally must be put in writing as soon as
16 reasonably practicable.

17 (3) The Regulator must give such reasonable assistance as is
18 necessary in the circumstances to enable a person, who wishes to make a
19 complaint to the Regulator, to put the complaint in writing.

Investigation by
Regulator

20 **73.**-(1) The Regulator, after receipt of a complaint made in terms of
21 section 71, must-

22 (a) investigate any alleged interference with the protection of the
23 personal information of a data subject in the prescribed manner;

24 (b) act, where appropriate, as conciliator in relation to any such
25 interference in the prescribed manner; and

26 (c) take such further action as is contemplated by this Chapter.

27 (2) The Regulator may, on its own initiative, commence an
28 investigation under subsection (1).

Action on receipt
of complaint

29 **74.**-(1) On receiving a complaint in terms of section 71, the
30 Regulator may-

Regulator may
decide to take
no action on
complaint

- 1 (a) investigate the complaint; or
- 2 (b) decide, in accordance with section 75, to take no action on the
- 3 complaint.
- 4 (2) The Regulator must, as soon as is reasonably practicable, advise
- 5 the complainant and the responsible party to whom the complaint relates of the
- 6 course of action that the Regulator proposes to adopt under subsection (1).
- 7 **75.**-(1) The Regulator, after investigating a complaint received in
- 8 terms of section 71, may decide to take no action or, as the case may be, require
- 9 no further action in respect of the complaint if, in the Regulator's opinion-
- 10 (a) the length of time that has elapsed between the date when the
- 11 subject matter of the complaint arose and the date when the complaint was
- 12 made is such that an investigation of the complaint is no longer practicable or
- 13 desirable;
- 14 (b) the subject matter of the complaint is trivial;
- 15 (c) the complaint is frivolous or vexatious or is not made in good faith;
- 16 (d) the complainant does not desire that action be taken or, as the case
- 17 may be, continued;
- 18 (e) the complainant does not have a sufficient personal interest in the
- 19 subject matter of the complaint; or
- 20 (f) in cases where the complaint relates to a matter in respect of which
- 21 a code of conduct is in force and the code of conduct makes provision for a
- 22 complaints procedure, the complainant has failed to pursue, or to pursue fully,
- 23 an avenue of redress available under that complaints procedure that it would be
- 24 reasonable for the complainant to pursue.
- 25 (2) Notwithstanding anything in subsection (1), the Regulator may in
- 26 its discretion decide not to take any further action on a complaint if, in the
- 27 course of the investigation of the complaint, it appears to the Regulator that,
- 28 having regard to all the circumstances of the case, any further action is
- 29 unnecessary or inappropriate.
- 30 (3) In any case where the Regulator decides to take no action, or no

1 further action, on a complaint, the Regulator must inform the complainant of
2 that decision and the reasons for it.

Referral of
complaint to
regulatory body

3 **76.**-(1) If, on receiving a complaint in terms of section 71, the
4 Regulator considers that the complaint relates, in whole or in part, to a
5 matter that is more properly within the jurisdiction of another regulatory
6 body, the Regulator must forthwith determine whether the complaint should
7 be dealt with, in whole or in part, under this Act after consultation with the
8 body concerned.

9 (2) If the Regulator determines that the complaint should be dealt
10 with by another body, the Regulator must forthwith refer the complaint to
11 that body to be dealt with accordingly and must notify the complainant of the
12 referral.

Pre-investigation
proceedings of
Regulator

13 **77.** Before proceeding to investigate any matter in terms of this
14 Chapter, the Regulator must, in the prescribed manner, inform-

15 (a) the complainant, the data subject to whom the investigation
16 relates (if not the complainant) and any person alleged to be aggrieved (if not
17 the complainant), of the Regulator's intention to conduct the investigation;
18 and

19 (b) the responsible party to whom the investigation relates of the-

20 (i) details of the complaint or, as the case may be, the subject matter
21 of the investigation; and

22 (ii) right of that responsible party to submit to the Regulator, within
23 a reasonable period, a written response in relation to the complaint or, as the
24 case may be, the subject matter of the investigation.

Settlement of
complaints

25 **78.** If it appears from a complaint, or any written response made in
26 relation to a complaint under section 77(b)(ii), that it may be possible to
27 secure-

28 (a) a settlement between any of the parties concerned; and

29 (b) if appropriate, a satisfactory assurance against the repetition of
30 any action that is the subject matter of the complaint or the doing of further

Investigation
proceedings of
Regulator

1 actions of a similar kind by the person concerned, the Regulator may, without
2 investigating the complaint or, as the case may be, investigating the complaint
3 further, in the prescribed manner, use its best endeavours to secure such a
4 settlement and assurance.

5 **79.** For the purposes of the investigation of a complaint the Regulator
6 may-

7 (a) summon and enforce the appearance of persons before the
8 Regulator and compel them to give oral or written evidence on oath and to
9 produce any records and things that the Regulator considers necessary to
10 investigate the complaint, in the same manner and to the same extent as the
11 High Court;

12 (b) administer oaths;

13 (c) receive and accept any evidence and other information, whether
14 on oath, by affidavit or otherwise, that the Regulator sees fit, whether or not it is
15 or would be admissible in a court of law;

16 (d) at any reasonable time, subject to section 80, enter and search any
17 premises occupied by a responsible party;

18 (e) converse in private with any person in any premises entered under
19 section 82subject to section 80; and

20 (f) otherwise carry out in those premises any inquiries that the
21 Regulator sees fit in terms of section 80.

Issues of warrants

22 **80.-(1)** A judge of the High Court, a regional magistrate or a
23 magistrate, if satisfied by information on oath supplied by the Regulator that
24 there are reasonable grounds for suspecting that-

25 (a) a responsible party is interfering with the protection of the
26 personal information of a data subject; or

27 (b) an offence under this Act has been or is being committed, and that
28 evidence of the contravention or of the commission of the offence is to be found
29 on any premises specified in the information, that are within the jurisdiction of
30 that judge or magistrate, may, subject to subsection (2), grant a warrant to enter

1 and search such premises.

2 (2) A warrant issued under subsection (1) authorises the Regulator
3 or any of its officers or staff, subject to section 82, at any time within seven
4 days of the date of the warrant to enter the premises as identified in the
5 warrant, to search them, to inspect, examine, operate and test any equipment
6 found there which is used or intended to be used for the processing of
7 personal information and to inspect and seize any record, other material or
8 equipment found there which may be such evidence as is mentioned in that
9 subsection.

Requirements for
issuing of warrant

10 **81.**-(1) A judge or magistrate must not issue a warrant under
11 section 80 unless satisfied that-

12 (a) the Regulator has given seven days' notice in writing to the
13 occupier of the premises in question demanding access to the premises;

14 (b) either-

15 (i) access was demanded at a reasonable hour and was
16 unreasonably refused; or

17 (ii) although entry to the premises was granted, the occupier
18 unreasonably refused to comply with a request by any of the Regulator's
19 members or officers or staff to permit the members or the officer or member
20 of staff to do any of the things referred to in section 80(2); and

21 (c) that the occupier, has, after the refusal, been notified by the
22 Regulator of the application for the warrant and has had an opportunity of
23 being heard on the question whether the warrant should be issued.

24 (2) Subsection (1) does not apply if the judge or magistrate is
25 satisfied that the case is one of urgency or that compliance with that
26 subsection would defeat the object of the entry.

27 (3) A judge or magistrate who issues a warrant under section 80
28 must also issue two copies of it and certify them clearly as copies.

Execution of
warrants

29 **82.**-(1) A police officer who is assisting a person authorised to
30 conduct an entry and search in terms of a warrant issued under section 80

1 may overcome resistance to the entry and search by using such force as is
2 reasonably necessary.

3 (2) A warrant issued under this section must be executed at a
4 reasonable hour unless it appears to the person executing it that there are
5 reasonable grounds for suspecting that the evidence in question would not be
6 found if it were so executed.

7 (3) If the person who occupies the premises in respect of which a
8 warrant is issued under section 80 is present when the warrant is executed, he or
9 she must be shown the warrant and supplied with a copy of it, and if that person
10 is not present a copy of the warrant must be left in a prominent place on the
11 premises.

12 (4) A person seizing anything in pursuance of a warrant under section
13 80 must give a receipt to the occupier or leave the receipt on the premises.

14 (5) Anything so seized may be retained for as long as is necessary in
15 all circumstances but the person in occupation of the premises in question must
16 be given a copy of any documentation that is seized if he or she so requests and
17 the person executing the warrant considers that it can be done without undue
18 delay.

19 (6) A person authorised to conduct an entry and search in terms of
20 section 80 must be accompanied and assisted by a police officer.

21 (7) A person who enters and searches any premises under this section
22 must conduct the entry and search with strict regard for decency and order, and
23 with regard to each person's right to dignity, freedom, security and privacy.

24 (8) A person who enters and searches premises under this section must
25 before questioning any person-

26 (a) advise that person of the right to be assisted at the time by an
27 advocate or attorney; and

28 (b) allow that person to exercise that right.

29 (9) No self-incriminating answer given or statement made to a person
30 who conducts a search in terms of a warrant issued under section 80 is

1 admissible as evidence against the person who gave the answer or made the
2 statement in criminal proceedings, except in criminal proceedings for
3 perjury or in which that person is tried for an offence contemplated in section
4 97 and then only to the extent that the answer or statement is relevant to
5 prove the offence charged.

Matters exempt
from search and
seizure

6 **83.** If the Regulator has authorised the processing of personal
7 information in terms of section 34, that information is not subject to search
8 and seizure empowered by a warrant issued under section 80.

Communication
between legal
adviser and client
exempt

9 **84.**-(1) Subject to the provisions of this section, the powers of
10 search and seizure conferred by a warrant issued under section 80 must not
11 be exercised in respect of-

12 (a) any communication between a professional legal adviser and
13 his or her client in connection with the giving of legal advice to the client
14 with respect to his or her obligations, liabilities or rights; or

15 (b) any communication between a professional legal adviser and
16 his or her client, or between such an adviser or his or her client and any other
17 person, made in connection with or in contemplation of proceedings under
18 or arising out of this Act, including proceedings before a court, and for the
19 purposes of such proceedings.

20 (2) Subsection (1) applies also to-

21 (a) any copy or other record of any such communication as is
22 mentioned therein; and

23 (b) any document or article enclosed with or referred to in any such
24 communication if made in connection with the giving of any advice or, as
25 the case may be, in connection with or in contemplation of and for the
26 purposes of such proceedings as are mentioned therein.

Objection to
search and seizure

27 **85.** If the person in occupation of any premises in respect of which
28 a warrant is issued under this Act objects to the inspection or seizure under
29 the warrant of any material on the ground that it-

30 (a) contains privileged information and refuses the inspection or

	1	removal of such article or document, the person executing the warrant or search
	2	must, if he or she is of the opinion that the article or document contains
	3	information that has a bearing on the investigation and that such information is
	4	necessary for the investigation, request the Registrar of the High Court which
	5	has jurisdiction or his or her delegate to attach and remove that article or
	6	document for safe custody until a court of law has made a ruling on the question
	7	whether the information concerned is privileged or not; or
	8	(b) consists partly of matters in respect of which those powers are not
	9	exercised, he or she must, if the person executing the warrant so requests,
	10	furnish that person with a copy of so much of the material as is not exempt from
Return of warrants	11	those powers.
	12	86. A warrant issued under section 80 must be returned to the court
	13	from which it was issued-
	14	(a) after being executed; or
	15	(b) if not executed within the time authorised for its execution,
	16	and the person who has executed the warrant must make an endorsement on it
Assessment	17	stating what powers have been exercised by him or her under the warrant.
	18	87.-(1) The Regulator, on its own initiative, or at the request by or on
	19	behalf of the responsible party, data subject or any other person must make an
	20	assessment in the manner prescribed of whether an instance of processing of
	21	personal information complies with the provisions of this Act.
	22	(2) The Regulator must make the assessment if it appears to be
	23	appropriate, unless, where the assessment is made on request, the Regulator
	24	has not been supplied with such information as it may reasonably require in
	25	order to-
	26	(a) satisfy itself as to the identity of the person making the request; and
	27	(b) enable it to identify the action in question.
	28	(3) The matters to which the Regulator may have regard in
	29	determining whether it is appropriate to make an assessment include the extent
	30	to which the request appears to it to raise a matter of substance, and if the

1 assessment is made on request-

2 (a) any undue delay in making the request; and

3 (b) whether or not the person making the request is entitled to make
4 an application,

5 under Principle 8 in respect of the personal information in question.

6 (4) If the Regulator has received a request under this section it must
7 notify the requester-

8 (a) whether it has made an assessment as a result of the request; and

9 (b) to the extent that it considers appropriate, having regard in
10 particular to any exemption from Principle 8 applying in relation to the
11 personal information concerned, of any view formed or action taken as a
12 result of the request.

Information notice

13 **88.-(1)** If the Regulator-

14 (a) has received a request under section 87 in respect of any
15 processing of personal information; or

16 (b) reasonably requires any information for the purpose of
17 determining whether the responsible party has interfered or is interfering
18 with the personal information of a data subject, the Regulator may serve the
19 responsible party with an information notice requiring the responsible party
20 to furnish the Regulator, within a specified period, in a form specified in the
21 notice, with an independent auditor's report indicating that the processing is
22 taking place in compliance with the provisions of the Act, or with such
23 information relating to the request or to compliance with the Act as is so
24 specified.

25 (2) An information notice must contain particulars of the right of
26 appeal conferred by section 92, and-

27 (a) in a case falling within subsection (1)(a), a statement that the
28 Regulator has received a request under section 87 in relation to the specified
29 processing; or

30 (b) in a case falling within subsection (1)(b), a statement that the

1 Regulator regards the specified information as relevant for the purpose of
2 determining whether the responsible party has complied, or is complying, with
3 the information protection principles and the reasons for regarding it as
4 relevant for that purpose.

5 (3) Subject to subsection (5), the period specified in an information
6 notice must not expire before the end of the period within which an appeal can
7 be brought against the notice and, if such an appeal is brought, the information
8 need not be furnished pending the determination or withdrawal of the appeal.

9 (4) If the Regulator considers that the information is required as a
10 matter of urgency, it may include in the notice a statement to that effect and a
11 statement of its reasons for reaching that conclusion, and in that event
12 subsection (3) does not apply.

13 (5) A notice in terms of subsection (4) may not require the information
14 to be furnished before the end of a period of three days beginning with the day
15 on which the notice is served.

16 (6) An information notice may not require a responsible party to
17 furnish the Regulator with any communication between a-

18 (a) professional legal adviser and his or her client in connection with
19 the giving of legal advice on the client's obligations, liabilities or rights under
20 this Act; or

21 (b) professional legal adviser and his or her client, or between such an
22 adviser or his or her client and any other person, made in connection with or in
23 contemplation of proceedings under or arising out of this Act (including
24 proceedings before a court) and for the purposes of such proceedings.

25 (7) In subsection (6) references to the client of a professional legal
26 adviser include any person representing such a client.

27 (8) An information notice may not require a responsible party to
28 furnish the Regulator with information that would, by revealing evidence of
29 the commission of any offence other than an offence under this Act, expose the
30 responsible party to criminal proceedings.

1 (9) The Regulator may cancel an information notice by written
2 notice to the responsible party on whom it was served.

3 (10) After completing the assessment referred to in section 87 the
4 Regulator:

5 (a) must report to the responsible party the results of the assessment
6 and any recommendations that the Regulator considers appropriate; and

7 (b) may, in appropriate cases, require the responsible party, within
8 a specified time, to inform the Regulator of any action taken or proposed to
9 be taken to implement the recommendations contained in the report or
10 reasons why no such action has been or is proposed to be taken.

11 (11) The Regulator may make public any information relating to
12 the personal information management practices of a responsible party that
13 has been the subject of an assessment under this section if the Regulator
14 considers it in the public interest to do so.

15 (12) A report made by the Regulator under subsection (10) is
16 deemed to be the equivalent of an enforcement notice in terms of section 90.

17 **89.** If an investigation is made following a complaint, and-

18 (a) the Regulator believes that no interference with the protection
19 of the personal information of a data subject has taken place and therefore
20 does not serve an enforcement notice;

21 (b) an enforcement notice is served in terms of section 90;

22 (c) a served enforcement notice is cancelled in terms of section 91;

23 (d) an appeal is lodged against the enforcement notice for
24 cancellation or variation of the notice in terms of section 92; or

25 (e) an appeal against an enforcement notice is allowed, the notice is
26 substituted or the appeal is dismissed in terms of section 93,
27 the Regulator must inform the complainant and the responsible party, as
28 soon as reasonably practicable, in the manner prescribed of any
29 development mentioned in paragraphs (a) to (e) and the result of the

Parties to be
informed of
development
during and result
of investigation

Enforcement
notice

1 investigation.

2 **90.**-(1) If the Regulator is satisfied that a responsible party has
3 interfered or is interfering with the protection of the personal information of a
4 data subject, the Regulator may serve the responsible party with an
5 enforcement notice requiring the responsible party to do either or both of the
6 following:

7 (a) To take specified steps within a period specified in the notice, or to
8 refrain from taking such steps; or

9 (b) to stop processing personal information specified in the notice, or
10 to stop processing personal information for a purpose or in a manner specified
11 in the notice within a period specified in the notice.

12 (2) An enforcement notice must contain-

13 (a) a statement indicating the nature of the interference with the
14 protection of the personal information of the data subject and the reasons for
15 reaching that conclusion; and

16 (b) particulars of the rights of appeal conferred by section 92.

17 (3) Subject to subsection (4), an enforcement notice may not require
18 any of the provisions of the notice to be complied with before the end of the
19 period within which an appeal may be brought against the notice and, if such an
20 appeal is brought, the notice need not be complied with pending the
21 determination or withdrawal of the appeal.

22 (4) If the Regulator considers that an enforcement notice should be
23 complied with as a matter of urgency it may include in the notice a statement to
24 that effect and a statement of its reasons for reaching that conclusion, and in
25 that event subsection (3) does not apply.

26 (5) A notice in terms of subsection (4) may not require any of the
27 provisions of the notice to be complied with before the end of a period of three
28 days beginning with the day on which the notice is served.

Cancellation of
enforcement
notice

29 **91.**-(1) A responsible party on whom an enforcement notice has been
30 served may, at any time after the expiry of the period during which an appeal

1 may be brought against that notice, apply in writing to the Regulator for the
2 cancellation or variation of that notice on the ground that, by reason of a
3 change of circumstances, all or any of the provisions of that notice need not
4 be complied with in order to ensure compliance with the information
5 protection principles.

6 (2) If the Regulator considers that all or any of the provisions of an
7 enforcement notice need not be complied with in order to ensure compliance
8 with the information protection principle or principles to which it relates, it
9 may cancel or vary the notice by written notice to the responsible party on
10 whom it was served.

Right of appeal

11 **92.**-(1) A responsible party on whom an information or
12 enforcement notice has been served may, within 30 days of receiving the
13 notice, appeal to the High Court having jurisdiction for the setting aside or
14 variation of the notice.

15 (2) A complainant, who has been informed of the result of the
16 investigation in terms of section 75(3) or 91, may, within 30 days of
17 receiving the result, appeal to the High Court having jurisdiction against the
18 result.

Consideration of
appeal

19 **93.**-(1) If in an appeal under section 92 the court considers-

20 (a) that the notice against which the appeal is brought is not in
21 accordance with the law; or

22 (b) that the notice involved an exercise of discretion by the
23 Regulator that ought to have been exercised differently,
24 the court must allow the appeal and may set aside the notice or substitute
25 such other notice or decision as should have been served or made by the
26 Regulator.

27 (2) In such an appeal, the court may review any determination of
28 fact on which the notice in question was based.

Civil remedies

29 **94.**-(1) A data subject or, at the request of the data subject, the
30 Regulator, may institute a civil action for damages in a court having

1 jurisdiction against a responsible party for breach of any provision of this Act
2 referred to in section 70, whether or not there is intent or negligence on the part
3 of the responsible party.

4 (2) In the event of a breach the responsible party may raise any of the
5 following defences against an action for damages:

6 (a) Vis maior;

7 (b) consent of the plaintiff;

8 (c) fault on the part of the plaintiff;

9 (d) compliance was not reasonably practicable in the circumstances
10 of the particular case; or

11 (e) the Regulator authorised the breach in terms of section 34.

12 (3) A court hearing proceedings in terms of subsection (1) may award
13 an amount that is just and equitable, including-

14 (a) payment of damages as compensation for patrimonial and non-
15 patrimonial loss suffered by a data subject as a result of breach of the provisions
16 of this Act;

17 (b) aggravated damages, in a sum determined in the discretion of the
18 Court;

19 (c) interest; and

20 (d) costs of suit on such scale as may be determined by the Court.

21 (4) Any amount awarded to the Regulator in terms of subsection (3)
22 must be dealt within the following manner:

23 (a) The full amount must be deposited into a specifically designated
24 trust account established by the Regulator with an appropriate financial
25 institution;

26 (b) as a first charge against the amount, the Regulator may recover all
27 reasonable expenses incurred in bringing proceedings at the request of a data
28 subject in terms of subsection (1) and in administering the distributions made
29 to the data subject in terms of subsection (5); and

30 (c) the balance, if any (in this section referred to as the “distributable

1 balance”), must be distributed by the Regulator to the data subject at whose
2 request the proceedings were brought.

3 (5) Any amount not distributed within three years from the date of
4 the first distribution of payments in terms of subsection (2), accrue to the
5 Regulator in the Regulator's official capacity.

6 (6) The distributable balance must be distributed on a pro rata basis
7 to the data subject referred to in subsection (1).

8 (7) A Court issuing any order under this section must order it to be
9 published in the Gazette and by such other appropriate public media
10 announcement as the Court considers appropriate.

11 (8) Any civil action instituted under this section may be withdrawn,
12 abandoned or compromised, but any agreement or compromise must be
13 made an order of Court.

14 (9) If civil action has not been instituted, any agreement or
15 settlement, if any, may, on application to the Court by the Regulator after due
16 notice to the other party, be made an order of Court and must be published in
17 the Gazette and by such other public media announcement as the Court
18 considers appropriate.

19 CHAPTER 11 - OFFENCES AND PENALTIES

20 **95.** Any person who hinders, obstructs or unlawfully influences
21 the Regulator or any person acting on behalf of or under the direction of the
22 Regulator in the performance of the Regulator's duties and functions under
23 this Act, is guilty of an offence.

Obstruction of
Regulator

24 **96.** Any person who contravenes the provisions of section 47 is
25 guilty of an offence.

Breach of
confidentiality

26 **97.** Any person who-

Obstruction of
execution of
warrant

27 (a) intentionally obstructs a person in the execution of a warrant
28 issued under section 80; or

29 (b) fails without reasonable excuse to give any person executing
30 such a warrant such assistance as he or she may reasonably require for the

Failure to comply with enforcement or information notices	1	execution of the warrant, is guilty of an offence.
	2	98. -(1) A responsible party which fails to comply with an
	3	enforcement notice served in terms of section 90, is guilty of an offence.
	4	(2) A responsible party which, in purported compliance with an
	5	information notice-
Penal sanctions	6	(a) makes a statement knowing it to be false; or
	7	(b) Recklessly makes a statement which is false, in a material respect,
	8	is guilty of an offence.
	9	99. Any person convicted of an offence in terms of this Act, is liable-
	10	(a) in the case of a contravention of section 95, to a fine or to
Magistrate's Court jurisdiction to impose penalties	11	imprisonment for a period not exceeding 10 years, or to both a fine and
	12	imprisonment; or
	13	(b) in any other case, to a fine or to imprisonment for a period not
	14	exceeding 12 months, or to both a fine and imprisonment.
	15	100. Despite anything to the contrary contained in any other law, a
Regulations	16	Magistrate's Court has jurisdiction to impose any penalty provided for in
	17	section 99.
	18	CHAPTER 12 - GENERAL PROVISIONS
	19	101. The Minister may make regulations on-
	20	(a) any matter which this Act requires or permits to be prescribed;
Short title	21	(b) the monitoring of this Act and the establishment of the Regulator;
	22	and
	23	(c) any other matter which may be necessary for the application of this
	24	Act.
	25	102. This Bill may be cited as the Protection of Personal Information

Bill, 2016.

EXPLANATORY MEMORANDUM

The Bill aims to give effect to the right to privacy, by introducing measures to ensure that the personal information of an individual (data subject) is safeguarded when it is processed by responsible parties.

The Bill also aims to balance the right to privacy against other rights, particularly the right of access to information, and to generally protect important interests, including the free flow of information within and across the borders of Nigeria.