

WHEN POPIA DOESN'T APPLY

1. OVERVIEW

When an organisation doing business in South Africa asks 'Does POPIA apply to us?' The answer is yes. Even if an organisation doesn't use personal information to deliver its products or services, it still has the personal information of its customers, employees and suppliers.

But what about when we use personal information in our personal lives? Do we need to worry about POPIA? Well, it depends. In this article, we look at when POPIA does not apply, even when an activity involves the use of personal information.



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2. PERSONAL AND HOUSEHOLD ACTIVITIES



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When you're using personal information to organise a birthday party or arrange a lift club, POPIA doesn't apply. You can take as many pictures of your graduation as you want, as long as it is for your own personal use, and you only share it with family.

But what about those annoying parents or neighbourhood WhatsApp groups? These groups are generally not subject to the rules in POPIA, but they should be managed, and common sense should prevail. For instance, people should be free to leave or block groups. In addition, the participants should be careful not to breach other regulations, such as copyright law or the Cybercrimes Act.

DID YOU KNOW? The Cybercrimes Act criminalises the distribution of data messages which incite violence or damage to property and the distribution of intimate images without consent.

Consider this example: You install a camera system at your family home for the purpose of protecting the property, the health and life of your family who live there. The system makes a video recording of the house and the street outside the home, a public space. The recording is stored on a hard drive. Is this processing for purely personal or household activities? To the extent that the video surveillance covers a public space, it may not be a purely personal or household activity according to European case law.¹ You must comply with all POPIA requirements when recording the street outside your property.

3. DE-IDENTIFIED INFORMATION



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When it is impossible to identify a person from the information available, POPIA does not apply. For purposes of POPIA, de-identification means to delete all information that:

- identifies the data subject;
- can be used or manipulated to identify the data subject; and
- can be linked to other information that identifies the data subject.

There must also not be any reasonably foreseeable method to re-identify the data subject.

4. PUBLIC BODIES



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Certain functions of public bodies fall outside the scope of POPIA. POPIA does not apply when:

- the processing of personal information relates to national security, for instance, the identification of financing used for terrorist activities; or
- the public body is involved in preventing, detecting, investigating or proving offences, prosecuting offenders, executing criminal sentences or providing security measures.

Most activities undertaken by law enforcement would be excluded from the application of POPIA. But this does not mean that these public bodies can do whatever they want. In 2023, the Regulator issued an [enforcement notice](#) against SAPS. Investigating officers shared sensitive personal information of crime victims to numerous WhatsApp groups. The officers were in breach of POPIA because the information was shared on three WhatsApp groups, which contained participants such as SAPS employees and supporting staff, who should not have had access to this information. SAPS also did not have appropriate protocols, policies and procedures in place to govern the distribution of personal information through WhatsApp.

5. THE CABINET AND ITS COMMITTEES OR THE EXECUTIVE COUNCIL OF A PROVINCE

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POPIA does not apply to the processing of personal information by the Cabinet and its committees, nor does it apply to the activities of the Executive Councils of the provinces.

6. THE JUDICIAL FUNCTIONS OF A COURT

POPIA does not apply to the judicial functions of courts.

7. JOURNALISTIC, LITERARY AND ARTISTIC PURPOSES

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POPIA does not apply to personal information that is processed solely for the purpose of journalistic, literary or artistic expression. The exclusion will only apply if it is justified, in the particular instance, to limit the right to privacy in favour of the right to freedom of expression. The exclusion is extended in the case of publications for journalistic purposes if the publication is subject to a code of ethics, as long as the code provides adequate safeguards for the protection of personal information. An example of such a code is the South African Press Council's [Code of Ethics and Conduct for South African Print and Online Media](#).

8. WHAT'S NEXT?

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WHAT'S NEXT?

You can read [Chapter 3](#) 'The application and scope of POPIA' to determine when POPIA applies to your activities.