

Guidelines and Training Manual

**BREYTENBACH~KEULDER INC
ATTORNEYS & CONVEYANCERS**
Reg. No. 2001/004718/21

THE PROTECTION OF PERSONAL INFORMATION (POPI) ACT

(Compiled by Gerhardt Breytenbach, April 2021)

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PURPOSE OF THIS GUIDE

The purpose of this guide is to assist our Firm and staff to be compliant and to align the Firm's administrative measures with the intent and purpose of *The Protection of Personal Information Act, 2013 (Act No 4 of 2013)* (hereinafter referred to as "the POPI Act") read with the provisions of the *Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)* (hereinafter referred to as "the PAIA Act"). The provisions of both the POPI and PAIA Acts are to give effect to the protection of personal information of client's as enshrined in Section 14 of the Constitution.

Cognisance should however be taken that in terms of our Firm's disciplinary measures, all information of clients are in any event strictly confidential in terms of the common law principle of "Attorney and Client Privilege" which are also governed and protected by the *Legal Practice Act, 2014 (Act No. 28 of 2014)*.

INFORMATION REQUIRED UNDER OF THE PAIA ACT (SECTION 51(1)(a))

BREYTENBACH~KEULDER INC:

Head of Firm: Gerhardt Breytenbach (Sole Director)

Postal Address: P O Box 883
Modimolle
0510
Limpopo Province

Physical Address: 78 Kroep Street
Modimolle
Limpopo Province

Tel No: 014 – 717 4401

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E-mail Address: reception@bkattorney.co.za

**DESCRIPTION OF GUIDE REFERRED TO IN SECTION 10 OF THE PAIA ACT
(SECTION 51(1)(b))**

A guide has been compiled in terms of Section 10 of PAIA by Breytenbach~Keulder Inc. It contains information required by a person wishing to exercise any right, contemplated by PAIA.

This guide is available for inspection, inter alia, at the offices of Breytenbach~Keulder Inc, 78 Kroep Street, Modimolle, Limpopo Province and at the SAHRC.

THE LATEST NOTICE IN TERMS OF SECTION 52(2) (IF ANY)

At this stage no notice(s) has/have been published on the categories of records that are automatically available without a person having to request access in terms of PAIA.

ACTS AND OTHER LEGISLATION HELD AT PHYSICAL ADDRESS

Our Firm practice law wherefore all legislation are readily available at its offices.

SUBJECTS AND CATEGORIES OF RECORDS HELD AT PHYSICAL ADDRESS

- All client files not older than 5 (Five) years
- All bank records, both in respect of business accounts and trust accounts
- Service Level Agreements with ABSA Bank, First Rand Bank and Standard Bank
- All bookkeeping records not older than 5 (Five) years
- Statutory Returns
- Employee Records
- General Correspondence
- Information relating to Health and Safety Regulations
- Personnel Guidelines, Policies and Procedures
- Remuneration Records
- Statutory Records
- Annual Financial Statements
- Tax Records (company and employee)

SUBJECTS AND CATEGORIES OF PERSONAL RECORDS HELD AT PHYSICAL ADDRESS

- Names of clients and Identity Numbers
- Telephone numbers of clients
- E-mail addresses of clients
- Addresses of clients
- Invoices
- Privileged notes and correspondence of clients
- Client records in compliance with the *Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)* (FICA Documents)

CUSTOMER PERSONAL INFORMATION SHARED BY BREYTENBACH~KEULDER INC

- 3rd Party service providers to uphold contract service obligations of clients
- Limited information required to be shared in the execution of legal instructions

EMPLOYEE INFORMATION RECEIVED BY BREYTENBACH~KEULDER INC

- Personal details required for employment
- Banking details for payment of remuneration
- Statutory information required for statutory taxes

IT PRACTISES BY BREYTENBACH~KEULDER INC

- Electronic data and bookkeeping system provided by a third party (AJS)
- Password controls
- Virus & Malware protection
- Software updates
- Disaster recovery & back-up policy

COUNTRIES OF OPERATION

- Republic of South Africa

**DETAIL ON HOW TO MAKE A REQUEST FOR ACCESS TO INFORMATION –
SECTION 51(e)**

- The requester must complete Form B and submit this form together with a request fee, to the Director of the Firm.
- The form must be submitted to the Director at the Firm's address, fax number or e-mail address.
- The form must:
 - provide sufficient particulars to enable the Director to identify the record/s requested and to identify the requester.
 - indicate which form of access is required
 - specify a postal address or fax number of the request in the Republic
 - identify the right that the requester is seeking to exercise or protect
 - provide an explanation of why the requested record is required for the exercise of protection of that right
 - in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that the manner and the necessary particulars to be informed in the other manner, if the request is made on behalf of another person, to submit proof of capacity in which the requester is making the request, to the reasonable satisfaction of the Director.

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POPI COMPLIANCE OFFICER – TRAINING OVERVIEW

Who are the role players / parties involved?

- Data Subject: the person to whom the information relates.
- Responsible Party: Breytenbach ~ Keulder Inc, a private body or any other person which, alone or in conjunction with others, determine the purpose of and means for processing personal information;
- Operator: every person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of the responsible party.
- Regulator: The information Protection Regulator established by the POPI Act.

What is meant by “Personal Information”?

“**Personal Information**”, means information relating to an identifiable, living, natural person and, where it is applicable, an identifiable, existing juristic person, and may include the following:

- Information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, color, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person.
- Information relating to the education or the medical, financial, criminal or employment history of the person.
- Any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment tot the person.
- The biometric information of the person. **(Biometric information includes a technique of personal identification that is based on physical, physiological or behavioral characterization including blood typing, fingerprinting, DNA analysis, retinal scanning and voice recognition.*
- The personal opinions, views or preferences of the person.
- Correspondence send by the person that is implicitly or explicitly of a private or confidential correspondence.
- The views or opinions of another individual about the person.
- The name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

Both INDIVIDUALS and COMPANIES are included in the ambit of “personal information”.

What is “Processing”?

- Processing is ANY activity concerning persona information, e.g.
 - The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 - Dissemination by means of transmission, distribution or making available in any other form;
 - Merging, linking, blocking, degradation, erasure or destruction of information.

Not covered:

- Purely household activity.
- Information that has been de-identified, (*cannot identify a person*).

It is not “personal information” if the information is already in the public domain or is not used or intended to be used, in trade or commerce.

The designated POPI COMPLIANCE OFFICER in the Firm is to form a view and take steps in order to:

- Clearly understand the data processing activities that the Firm engages in;
- Training of relevant staff should be conducted on a continuous basis to ensure that staff are trained to understand the impact of POPI on their particular area of focus within the organisation;
- Consider whether appropriate written contracts are in place with *third parties* for whom personal data is processed, or to whom the processing of personal data is outsourced;
- Obtain the written consent duly signed by a third party, from the interviewer in the opening and registering of a file for every new instruction. The written consent must be uploaded on the electronic record system on each new file.
- Evaluate the security measures in place to keep personal data secure at all times;
- Consider and review internal procedures ensuring continued compliance with POPI and the effective and efficient handling of enquiries and complaints by individuals.

The Compliance Officer needs to ensure that:

- legitimate grounds exist for collecting and using personal data collected in order to ensure that such data is not used in ways that have unjustified adverse effects on the individuals concerned;

- The lawful purpose for which data are being collected to ensure that the data shall not be further processed in any manner that is contrary to that purpose or the purposes for which the data were collected;
- The extent of information that is required for the purpose as intended and to ensure that they collect adequate and relevant information and prevent any excessive information collection;
- The information retention periods and requirements applicable together with destruction processes and procedures;
- The rights of individuals, i.e. data subjects, in terms of POPI.

Other issues the Compliance Officer needs to deal with:

- Security measures required to prevent the unauthorized or unlawful processing of personal data/access to personal data, including accidental loss or destruction or damage to personal data;
- If you transfer data outside the country, to understand the roles, duties and responsibilities of all parties involved; and
- What processes and procedures should be in place to ensure that data is kept up to date and current and accurate at all times.

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BREYTENBACH~KEULDER INC**POPI COMPLIANCE****Protection Principles for Responsible Parties****1. Accountability**

The **Responsible Party (the Firm)** must ensure compliance. The Responsible Party is required to **audit the processes used to collect, record, store, disseminate and destroy personal information** and in particular, ensure the integrity and safekeeping of personal information in your possession or under the control of the Compliance Officer.

2. Purpose Specification

- The Responsible Party must **define the purpose of the information gathering and processing**. Personal information must be collected for a specific, explicitly defined and lawful purpose that is related to a function or activity of the company concerned.
- Every staff member interviewing a client for the purposes of taking instructions, must inform the client of the Responsible Party's duty to protect the client's personal information and obtain a duly signed written consent from the client as per Annexure A hereto.

3. Processing Limitation

The Responsible Party must ensure **processing is lawful** and:

- Is done in a reasonable manner that does not infringe the privacy of the data subject.
- Must be adequate, relevant and not excessive given the purpose.
- Must have obtained consent or necessity, if consent, it must be *Voluntary, Specific, Informed*.
- Data subject consent is required but not if such consent would prejudice any lawful purpose, or if the information is contained in public record.

4. "Special Personal Information" relates to:

- Religious or political beliefs
- Race or ethnic origin
- Trade union membership

- Political opinions
- Health, sexual life
- Criminal behavior

5. Take steps to notify the “data subject

The individual whose information is being processed has the right to know what information is being processed and why.

The data subject must be informed:

- the name and address of the company processing their information, and
- he or she must be informed as to whether the provision of the information is voluntary or mandatory.

6. Further Processing limitation – (limit the processing parameters)

To assess whether further processing is permitted, the following should be asked and considered:

- Is there a valid relationship between the purposes?
- What is the nature of information?
- What are the consequences for data subject?
- The manner in which information was collected?
- Are there any contractual rights between the parties?

7. To check the rationale for any further processing – ask the following:

- If information is received via a third party for further processing, this further processing must be compatible with the purpose for which the data was *initially* collected.

8. Information quality

The Responsible Party must take reasonably practicable steps to ensure that the information is:

- Complete
- Accurate
- Not misleading; and
- Updated where necessary.

9. Notify the information *Protection Regulator*:

Once POPI is FULLY enacted and a Regulator established, organisation processing personal information will have to notify the Regulator about their actions.

AND

The Responsible Party must take reasonable steps to notify the data subject of:

- Information being collected
- Purpose for which information is collected
- Whether the supply of information is voluntary or mandatory
- The consequences of failure to provide information
- Any particular law that applies

You will only need to notify once, not each instance of processing, but if processing is different than initially notified, you are required to notify within 1 year.

10. Accommodating data subject request

The POPI Act does allow data subjects to make certain requests, *free of charge*, to an organisation holding their personal information. For instance, the data subject has the right to know the identity of all third parties that have had access to their information. A data subject can also ask for a record of the information concerned.

11. Security

The Responsible Party is required to *secure the integrity of personal information* by taking appropriate, reasonable technical and organizational measures to prevent;

- Loss, damage or unauthorized access
- Unlawful access to or processing of personal information

12. The Responsible Party must take all reasonable measures to:

- Identify all reasonably foreseeable internal en external risks
- Establish and maintain appropriate safeguards against the risks
- Regularly verify that the safeguards are adequately implemented
- Ensure the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards

13. The Responsible Party must oversee all Operators who process data on its behalf.

Responsible Party must be aware that:

- The Operators must treat information confidentially
- The Responsible Party must ensure that the Operators establish and maintain appropriate security safeguards
- ALL processing by Operators must be governed by a written contract
- In the event of security breaches, the Responsible Party must notify the Regulator and the data subject.

14. Retaining of records for required periods

Save for the provisions of *The Legal Practice Act, 2014* prescribing the minimum periods for the destruction of records –

- Personal information must be destroyed, deleted or 'de-identified' as soon as the purpose for collecting the information has been achieved.
- However, a record of the information must be retained if an organisation has used it to make a decision about the data subject. The record must be kept for a period long enough for the data subject to request access to it.

15. Cross Border Data Transfer

There are restrictions on the sending of personal information out of South Africa as well as on the transfer of personal information back into South Africa. The applicable restrictions will depend on the laws of the country to whom the data is transferred or from where the data is returned, as the case may be. Written protocols will be issued to the Compliance Officer on an *ad hoc* basis to each such new instruction from a client concerned.

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BREYTENBACH~KEULDER INC

Roles and Responsibilities of an OPERATOR

1. Duties of an Operator

All Information processed by an operator must be treated in the following manner:

- The Responsible party (The Firm) must be aware if the Operators processing.
- The Operator must treat information confidentially.
- The Responsible party must ensure that the Operator establishes and maintains appropriate security safeguards.
- In the event of security breaches, the Operator via the Responsible party must notify the Regulator and the data subject.
- The processing by an operator must be governed by a written contract between the Responsible party and the Operator.

2. Contents of the Contract

The Contract between Operator and Responsible Party must detail at least the following:

- The legitimate grounds for collecting and using personal data collected,
 - The **lawful purpose** for which data are being collected,
 - The **limit of processing** and prohibiting of further processing,
 - The extent of **information that is required** to prevent any excessive information collection.
 - The information **retention periods** and requirements applicable together with destruction processes and procedures,
 - The **right of individuals to request** such information and query to use thereof,
 - The **security measures** required to prevent the unauthorized or unlawful processing of personal data or access to personal data, including accidental loss or destruction or damage to personal data.

DEALING WITH SPECIAL PERSONAL INFORMATION

1. Religious or Philosophical Beliefs

Processing may take place by:

- Spiritual or religious organisation & institutions, provided that the information concerns data subjects belonging to such organisation; if it is necessary to achieve their aims and principles; or
- To protect the spiritual welfare of the data subjects.

Unless they have objected to the processing. *This information may not be supplied to 3rd parties without the data subject's consent.*

2. Race

Processing may be carried out to:


- Identify data subjects when this is essential.
- Comply with laws or measures designed to protect or advance persons disadvantaged by unfair discrimination.

3. Health or Sexual Life

Processing may take place by:

- Medical practitioners, healthcare institutions
- Insurance companies, medical aid scheme providers
- Schools
- Institutions of probation, child protection or guardianship
 - Pension funds and employers if processing is necessary for implementation of laws/pension regulations

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	<p>BREYTENBACH~KEULDER Ing / Inc PROKUREURS & TRANSPORTBESORERS ATTORNEYS & CONVEYANCERS</p>
<p>Reg. No. 2001/004718/21 Kroepstr 78 Kroep Str - Posbus / P O Box 883 - Docex 7 Nylstroom/ Modimolle - 0510 Tel:(014) 717 4401 - Faks/Fax:(014) 717 1243</p>	

CONSENT BY CLIENT FOR PROCESSING PERSONAL INFORMATION
 THE PROTECTION OF PERSONAL INFORMATION (POPI) ACT, 20134
 (ACT NO. 4 OF 2013)

Name of Client:

ID / Reg No:

Address:

Contact No:

E-mail:

I/We, the undersigned hereby acknowledge that –

- I/We have instructed BREYTENBACH~KEULDER INC to attend to the under-mentioned matter on my/our behalf:

2. I am / We are aware that BREYTENBACH~KEULDER INC has to obtain and process some of my / our personal information reasonably necessary in order to execute the above mandate.
3. The staff and finance department of BREYTENBACH~KEULDER INC will have access to my/our personal details which have been furnished to them for the purposes of attending to the said matter and matters ancillary thereto.
4. BREYTENBACH~KEULDER INC is authorised to release my/our personal information to the South African Revenue Services and 3rd parties, solely for the purposes of the execution of this mandate.
5. Breytenbach - Keulder Inc will in addition to its POPI compliance policy, store my/our details, as provided for and specified by the Legal Practice Council from time to time.
6. Breytenbach - Keulder Inc, as firm of attorneys has the privilege of confidentiality under the law pertaining to its clients.
7. I/We have been informed of our rights to file a complaint at the Information Regulator in the event of any unlawful interference with the protection of my/our personal information as contemplated in Section 74 of the POPI Act.

DATE

(signed)

(signed)

PERSON TAKING INSTRUCTIONS

POPI COMPLIANCE OFFICER

FORM B

REQUEST FOR ACCESS OF PRIVATE BODY

(Section 53(1) of the Promotion of Access to information Act. 2000

(Act No. 2 of 2000))

(Regulation 10)

A. Particulars of private body

The Head: G Breytenbach
Breytenbach~Keulder Inc
PO Box 883
78 Kroep Street
Modimolle, 0510
Fax: 014 – 717 4401
E-mail: reception@bkattorney.co.za

B. Particulars of person requesting access to the record

- (a) *The particulars of the person who request access to the record must be given below.*
- (b) *The address ab/or fax number in the Republic to which the information is to be send must be given.*
- (c) *Proof of the capacity in which the request is made, if applicable, must be attached.*

Full names and surname: _____

Identity number: _____

Postal address: _____

Fax number: _____

Telephone number: _____

E-mail address: _____

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: _____

Identity number: _____

D. Particulars of record

- (a) *Provide full particulars of the record to which access is requested, including the reference number if that is known, to enable the record to be located.*
- (b) *If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.*

1. Description of record or relevant part of the record: _____

2. Reference number, if available: _____

3. Any further particulars of record: _____

E. Fees

- (a) *A request for access to a record containing personal information, will be processed only after a request fee has been paid.*
- (b) *You will be notified of the amount required to be paid as the request fee.*
- (c) *The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.*
- (d) *If you qualify for exemption of the payment of any fee, please state the reason for exemption.*

Reason for exemption from payment of fees:

F. Form of access to record

- | | |
|-----|---|
| (a) | <i>Compliance with your request in the specified form may depend on the form in which the record is available.</i> |
| (b) | <i>Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.</i> |
| (c) | <i>The fee payable for access for the record, if any, will be determined partly by the form in which access is requested.</i> |

1. **If the record is in written or printed form** (Mark preferred option with an "X"):

Copy of record	Inspection of record
----------------	----------------------

2. **If the record consists of visual images:**

(This includes photographs, slides, video recordings, computer-generated images, sketches, etc)

<input type="checkbox"/>	<input type="checkbox"/>	Colored Copies
<input type="checkbox"/>	<input type="checkbox"/>	Electronic storage on a memory card
<input type="checkbox"/>	<input type="checkbox"/>	Electronic storage on a CD
<input type="checkbox"/>	<input type="checkbox"/>	Inspection

3. **Disability:**

If you are prevented by a disability to read, view or listen to the record in the form of access provided for above, state your disability and indicate in which form the record is required:

Disability: _____

Form required: _____

**POPI COMPLIANCE OFFICER
BREYTENBACH~KEULDER INC**

CERTIFICATE OF APPOINTMENT

I, **Gerhardt Breytenbach** being the sole director and head of **Breytenbach~Keulder Inc** hereby confirm that I have appointed **MARIAAN VILJOEN** to act as the **POPI COMPLIANCE OFFICER**.

The purpose of this appointment is to give effect to; the right to privacy in terms of our common law, section 14 of the Constitution and the purpose and application of the *Protection of Personal Information Act, No 4 of 2013*.

Specifically, to implement and maintain the provisions of the POPI Act including but not limited to the following:

- To give effect to the Constitutional right to privacy by safeguarding personal information when processed by a responsible party.
- To regulate the manner in which personal information may be processed, by establishing conditions, in harmony with international standards that prescribe the minimum threshold requirements for the lawful processing of personal information.
- To provide persons with rights and remedies to protect their personal information from processing that is not in accordance with the Act.

The Act regulates how anyone who processes personal information must handle, keep and secure that information. If an individual or a company processes personal information relating to a person, that individual or company must comply with the Act. Failure to comply with the Act may lead to the imposition of certain penalties under the Act.

Punishable offences in terms of Act: The following offences are, if committed, punishable with either a fine (not exceeding R10 million), or imprisonment (for a period not exceeding 10 years), or both:

- Obstruction of a Regulator.
- Failure to comply with enforcement or information notices.
- Offences by witnesses – giving false evidence before the Regulator.
- Unlawful acts by a responsible party in connection with information/usage.
- Unlawful acts by third parties in connection with information/usage.
- Any person who sells/offers to sell information obtained illegally.
- Failure to notify the Regulator that processing is subject to prior authorization.
- Breach of confidentiality.
- Obstruction of the execution of a warrant.

SIGNATURE

G Breytenbach

Director, Breytenbach~Keulder Inc

Date: 15 MAY 2021

SIGNATURE

M Viljoen