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Department:  
Basic Education  
REPUBLIC OF SOUTH AFRICA

**THE PROTECTION OF PERSONAL INFORMATION IN TERMS  
OF THE PROTECTION OF PERSONAL INFORMATION ACT,  
2013 (ACT NO. 4 OF 2013 (POPI ACT))**

**THE DEPARTMENT OF BASIC EDUCATION GUIDELINE  
DOCUMENT ON THE POPI ACT**



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### **1. INTRODUCTION**

The right to privacy is an intergral human right recognised and protected in the South African Constitution and in terms of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013)(POPI Act).

The POPI Act aims to promote the protection of privacy through guiding principles that are intended to be applied in the processing of personal information.

The POPI Act therefore requires the Department of Basic Education (DBE), a 'responsible body', to utilise the data it collects in a responsible manner which protects the privacy of people.

Given the importance of privacy, the DBE is committed to effectively managing personal information in accordance with the POPI Act's provisions.

### **2. PURPOSE OF THE DBE GUIDELINE DOCUMENT**

The Guideline Document sets out the manner in which the DBE deals with the data subjects' personal information and stipulates the purpose for which the said information is used.

The Guideline Document is made available on the DBE website for ease of reference.

### **3. ORGANISATIONAL SCOPE**

The DBE Guideline Document applies to:

- (a) All the DBE employees including DBE researchers;
- (b) All directorates of the DBE;
- (c) All other government departments;
- (d) Organisations such as the National Student Financial Aid Scheme (NSFAS), Umalusi and the South African Social Security Agency (SASSA); and



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- (e) All contractors, suppliers and other persons acting on behalf of the DBE.

The DBE Guideline Document will apply at all times when dealing with the processing of personal information and must be read in conjunction with the POPI Act and the DBE PAIA and POPI Act Manual.

#### **4. THE PROCESSING OF PERSONAL INFORMATION**

Chapter 3 of POPI Act provides for the minimum Conditions for Lawful Processing of Personal Information by a Responsible Party. These conditions may not be derogated from unless specific exclusions apply as outlined in the POPI Act.

The responsible party must ensure that the conditions set out in Chapter 3 of the POPI Act and all the measures that give effect to such conditions, are complied with at the time of the determination of the purpose and means of the processing and during the processing itself.

All employees and persons acting on behalf of the DBE will at all times be subject to, and act in accordance with, the following guiding principles:

##### **4.1 Accountability**

The DBE must appoint a party (Information Officer) who will be responsible for ensuring that the information protection principles within the POPI Act and the controls that are in place to enforce the principles are complied with.

##### **4.2 Processing Limitation**

The DBE must ensure that there is lawfulness of processing, minimality of information collected, consent, justification and objection, and the collection of personal information directly from the data subject.

##### **4.3 Purpose Specification**

The personal information must be collected for a specific purpose and the data subject from whom the personal information is collected must be made aware of the purpose for which the personal information is collected.



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### **4.4 Further processing Limitation**

If a responsible party further processes personal information, such processing must be compatible with the purpose for which the information was collected.

### **4.5 Information Quality**

The responsible party must take practical and reasonable steps to ensure that the personal information that has been collected is complete, accurate, not misleading and up to date. In so doing, the responsible party must take into consideration the purpose for which the personal information was collected.

### **4.6 Openness**

The responsible party must be open about the collection of personal information by notifying the Regulator if the responsible party is going to process personal information and, if personal information is going to be collected, the responsible party must take practical and reasonable steps to ensure that the data subject has been made aware that his or her personal information is going to be collected. The responsible party should, for example, take reasonable steps to make the data subject aware of its name and address, and the purpose for which the personal information is being collected.

### **4.7 Security Safeguard**

The responsible party must ensure that the integrity of the personal information in its control is secured through technical and organisational measures.

### **4.8 Data Subject Participation**

The data subject has the right to request that a responsible party confirm (free of charge) whether it holds personal information about the data subject, and he or she may also request the record or a description of such information.

In terms of section 11 of the POPI Act, personal information may only be processed if certain conditions, listed below, are met:

- (a) The data subject or a competent person where the data subject is a child, consents to the processing;
- (b) The processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is a party;



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- (c) Processing complies with an obligation imposed by law on the responsible party;
- (d) Processing protects a legitimate interest of the data subject; or
- (e) Processing is necessary for pursuing the legitimate interests of the organisation or of a third party to whom information is supplied.

### **5. PERSONAL INFORMATION COLLECTED BY THE DBE**

- 5.1 The data the DBE has access to is extensive. Much of it is 'personal information' in terms of the POPI Act. In particular, the 13-digit national identity number of learners and employees, as well as their names, gender, and date of birth can be found in the data. The provincial education departments need the personal information for operational purposes, and since the source of much of the DBE's data is the provincial departments, personal information is included.
- 5.2 In terms of the National Education Policy Act, 1996 (Act No. 27 of 1996) (NEPA), the use of data by the DBE is limited to monitoring and evaluating progress to comply with the Constitution and the national education policy. Data may either be gathered from EMIS or other suitable means, in co-operation with provincial departments of education. The use of educators' cell phone numbers must be limited.
- 5.3 The personal data the DBE has is required, importantly, for analytical purposes and for the fulfilment of the NEPA monitoring obligations. In particular, personal information is needed when different data sources must be linked. For example, if an analysis must be conducted of how well Grade 12 examination candidates performed in grades below Grade 12, then the Grade 12 examinations data must be linked to separate datasets covering lower grades.
- 5.4 It is often necessary to use multiple variables in linking data sources because one variable on its own will display limitations. For instance, the 13-digit identity number links most learners across the Grade 12 examinations and pre-Grade 12 datasets, but not all, as some identity numbers are missing. In this instance, the use of names and dates of birth can be used to fill the gap, but also to verify the accuracy of the national identity number. Importantly, the monitoring work referred hereto never involves the revelation of personal information in the DBE reports which are produced as part of the process. The reports will only reflect statistics at an aggregate level relating to, for instance, drop-out rates.



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### **6. THE USAGE OF THE PERSONAL INFORMATION COLLECTED**

The NEPA requires the DBE to conduct planning, research and monitoring for the Minister of Basic Education for the furtherance of national goals. In doing this, the DBE produces many internal and public reports each year that are based on the data it has access to, in a wide range of areas that include school attendance, the opening and closing of schools, the employment of teachers and learner performance. In terms of the NEPA, the DBE is also required to advance the use of data in the broader 'national education system', which includes promoting data use across various government entities where this generates knowledge which is important for the education sector.

### **7. DISCLOSURE OF PERSONAL INFORMATION**

The DBE may disclose personal information to other government departments, public entities and third party service providers of the DBE. The DBE may also disclose personal information where there is a duty or a right to disclose in terms of applicable legislation, the law, or where it may be deemed necessary in order to protect the rights of the DBE.

The DBE is routinely involved in exercises where DBE data is linked to other government data for the purposes of verifying data quality and of monitoring. For instance, the DBE and the South African Social Security Agency (SASSA) collaborate, using a variety of personal information fields, to determine if social grant recipients who are of school-going age are attending school. Linking, in collaboration with the Department of Higher Education (DHET), the records of learners previously enrolled in schools to those of students currently in post-school institutions, is important for understanding flows between the two education levels. Section 57(1)(a) of the POPIA indicates that, prior authorisation must be obtained from the Regulator before a unique identifier (such as an ID number) is used for a purpose other than the one for which it was intended at the time of collection, with the purpose to link the information with information processes by other responsible parties. Identity Numbers and names, surnames and date of birth is provided to the Department of Home Affairs for verification. Unit level learner data is provided to the Department of Health for the the execution of the Integrated School Health Program, and to the Department of Social Development for social security initiatives and to the NSFAS for learner funding initiatives via the Department of Social Development.





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### **8. MEASURES TO SAFEGUARD PERSONAL INFORMATION**

- 8.1 The DBE has secured the integrity and confidentiality of personal information in its possession or under its control by taking appropriate and reasonable technical and organisational measures to prevent loss of, or damage to, or unauthorised destruction, unlawful access to or processing of, personal information.
- 8.2 The DBE put in place security protocols to safeguard personal information from being unlawfully accessed. The Department envisages the enhancement of Information Security Measures as follows:
- (a) By ensuring that the correct classification of information is recorded since employee data will be classified as 'personal information' or 'special personal information';
  - (b) ensuring that security protocols are enhanced to guard against unauthorised access to information by implementing computer and network security measures such as passwords, implementing firewalls, installing antivirus protection, ensuring data protection through data encryption and redaction of personal information, securing laptops and computers through passwords or biometrics and securing the Virtual Private Network (VPN);
  - (c) protocols notifying employees or other persons when their personal information has been compromised, or when there is a breach of privacy in relation to the personal information concerned; and
  - (d) by ensuring that stricter security protocols are adopted to restrict access by third parties, the office environment, computer network, system, application software, data or another resource.

### **9. THE RIGHT OF DATA SUBJECT TO ACCESS PERSONAL INFORMATION**

The DBE acknowledges that a data subject has the right to establish whether the DBE holds personal information related to him, her or it, including the right to request access to the personal information.

### **10. THE RIGHT OF A DATA SUBJECT TO HAVE PERSONAL INFORMATION CORRECTED OR DELETED**

The data subject has a right to request, where necessary, that his, her or its personal information be corrected or deleted where the DBE is no longer authorised to retain the personal information.



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### **11. THE RIGHT OF THE DATA SUBJECT TO OBJECT TO THE PROCESSING OF PERSONAL INFORMATION**

The data subject has a right, on reasonable grounds, to object to the processing of his, her or its personal information. In such circumstance, the DBE will give due consideration to the request and the requirements of the POPI Act.

### **12. THE RIGHT OF THE DATA SUBJECT TO OBJECT TO DIRECT MARKETING**

The data subject has the right to object to the processing of his, her or its personal information for the purpose of direct marketing by means of unsolicited electronic communications.

### **13. THE RIGHT OF THE DATA SUBJECT TO BE INFORMED**

The data subject has the right to be notified that his, her or its personal information has been collected by the DBE. The data subject also has a right to be notified of any situation where the DBE has reasonable grounds to believe that the personal information of the data subject has been accessed or acquired by an unauthorised person.

### **14. THE RIGHT OF THE DATA SUBJECT TO COMPLAIN TO THE REGULATOR**

The data subject has a right to submit a complaint to the Regulator regarding an alleged infringement of any of the rights protected under the POPI Act.

### **15. CONTACT DETAILS OF THE DBE INFORMATION OFFICER**

#### **Information Officer**

Mr HM Mveli, Director-General

[Mveli.M@dbe.gov.za](mailto:Mveli.M@dbe.gov.za)

#### **Deputy Information Officer**

Adv. Shalili D Misser, Chief Director: Legal and Legislative Services

[Misser.S@dbe.gov.za](mailto:Misser.S@dbe.gov.za)

#### **General contact information**

**Physical address**

**Postal address**



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### **16. ACCOMPANYING AGREEMENT FORMS**

Accompanying the DBE Guideline Document are two forms to be signed by the national EMIS Officer, who is also the data supplier of data collected via EMIS systems and processes, and the data user. The national EMIS Officer is an official in the Department of Basic Education referred to in Government Notice 1950 of 2004. The data user must be employed by a South African government entity, and should use the data in performing work for that entity. Among government entities included are the DBE itself, all other government departments, whether national or provincial, and organisations such as the National Student Financial Aid Scheme (NSFAS), Umalusi and the South African Social Security Agency (SASSA).

### **17. CONSEQUENCES OF NOT BEING POPIA COMPLIANT**

The consequences of non-compliance are significant, and may even result in the loss of a licence to trade (where applicable). Even if the penalties are paid, the loss of reputation is huge and this can have a devastating effect on any organisation.

According to the POPI Act, the organisation must first inform the Regulator and then also inform every person that might be affected when there is an information/data loss.

The following are the consequences for not being compliant:

- (a) Administrative penalties
  - o Fines up to R10 million and/or 10 years in jail per incident.
- (b) Enforcement notices
  - o Stop processing personal information.
- (c) Civil Action
  - o May be brought on by data subjects for “distress” pay out millions in damages to a civil claimant.



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- Suffer reputational damage.

### **18. AMENDMENTS TO THE DBE GUIDELINE DOCUMENT**

Amendments to, or a review of the DBE Guideline Document, will where necessary, be updated annually. Employees and any interested parties are advised to access the DBE's website periodically to keep abreast of any changes.

### **19. APPROVAL**

SIGNED ON BEHALF OF THE DBE ON BY:

\_\_\_\_\_  
**MR HM MWELI**  
**DIRECTOR-GENERAL**  
**DEPARTMENT OF BASIC EDUCATION**  
DATE: 04/07/2021



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**EMIS DATA HANDOVER FORM**

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**Commitment of the national EMIS Officer (also the data supplier)**

I, ....., agree to the following:

1. To the best of my knowledge, I am satisfied that the data user referred to in the accompanying form has a legitimate need to process the data I am supplying, data which includes personal information. For example, the need exists to further the Department of Basic Education's monitoring and research responsibilities, in terms of the National Education Policy Act (Act 27 of 1996).
2. I am satisfied that the analyst understands requirements to protect personal information, which include limiting the time such information is stored on the data user's personal computer, and destroying personal information after it is no longer needed.
3. I am sharing the following data with the data user (general nature of the data and its personal information to be briefly described).

4. The following conditions, if any, not already mentioned in this EMIS Data Handover form apply to the use of the data. (For instance, any permissions or use restrictions applicable to the *anonymised* data *without* personal information to be specified here. Any code of conduct issued by the Information Registrar which should be taken into account should be mentioned. Moreover, if there are exceptional reasons to permit the destruction of the personal information *beyond* three months, due to a need to work for a longer period of time with the personal information, details of this should provided.)



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|  |              |
|--|--------------|
| <b>Signature of the National EMIS Officer:</b> | <b>Date:</b> |
|--|--------------|



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**EMIS DATA ACCEPTANCE FORM**

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**Commitment of the data user**

I, ..... (all names with surname at end), agree to the following:

1. My identify number is as follows:

2. The government entity I am employed by is the following:

3. I require the data being supplied to me for the monitoring, research or data verification purposes explained below. (The description should include an indication of how the need for the analysis arose, the intended audience of the report, and how the report would be disseminated. Reference should be made to a document, or documents, explaining the research, and such documents should be shared with data supplier. The description should also explain why personal information is required for the analysis.)

4. I have read in full the guidance document accompanying this form, titled 'Guidance regarding the use of EMIS data containing personal information' and dated 21 January 2021, and agree to and understand my responsibilities as an analyst in terms of the Protection of Personal Information Act, 2013. I am sufficiently familiar with data anonymisation techniques to remove personal information as required by the POPIA, and agree to consult applicable data anonymisation guides.

5. I understand that the information in this agreement may be shared with the Information Regulator.

6. I agree to remove and destroy the personal information in the data supplied to me after I have completed the data anonymisation process. The removal of the personal information will occur on or before the following date. (A date between one to three months from the signing of this EMIS Data Acceptance Form is recommended.)

7. The removal of the data will occur in such a manner that it cannot be retrieved.




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8. I agree to notify the data supplier in writing as soon as the personal information has been destroyed.
9. While the personal information still exists, the data will be stored on the following device, with the following security features. (Description of the device, its serial number, and the type of access protection to the device to be specified.). I undertake that I will take appropriate, reasonable technical and organisational measures to prevent loss of, unlawful access to the personal information given to me by the data supplier.

|  |
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10. I will not store the data with the personal information on any device not mentioned above.
11. I will not share the data containing personal information with any other person.
12. Furthermore, I understand that this data acceptance form does not authorise me to share the data *after* the personal information has been removed, unless such authorisation is made explicit in paragraph 4 of the data supplier's section of this data acceptance form.
13. If requested, I will provide a copy of the anonymised data to the Directorate: Education Management Information Systems. I will also provide a report of how the data anonymisation occurred, if requested.
14. I will provide the Directorate: Education Management Information Systems with all reports reflecting the results of any analysis, of any type, using the data.
15. I agree to any additional conditions specified under point 4 under 'Commitment of the national EMIS Officer'.

|   |                            |
|---|----------------------------|
| <b>Signature of the Data User:</b><br> | <b>Date:</b><br>01/09/2021 |
|---|----------------------------|