

POPIA AND RESEARCH

WHATEVER YOU THINK IT IS, IT IS NOT AS BAD AS YOU
THINK IT IS

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Client: **UNIVERSITY OF CAPE TOWN**
Prepared by: **ELIZABETH DE STADLER**



A 5 MIN REMINDER

(SOME FUNDAMENTAL PRINCIPLES.)

WHAT IS PERSONAL INFORMATION?

- Identifiers
- Demographic information
- Contact details
- Financial information
- Background or historical information

Information relating to an identifiable, living, natural person or an existing organisation.

- Usernames and social media handles
- Biometric information
- Health information
- Preferences and opinions
- Behavioural information
- Correspondence

SOME INFO IS SPECIAL

Personal information concerning...

- Religious or philosophical beliefs
- Race or ethnic origin
- Trade union membership
- Health
- Sex life
- Biometric information
- Criminal behaviour that relates to the alleged commission of an offence or the proceedings relating the alleged offence

WHAT'S PROCESSING? EVERYTHING. NOTHING.

It is a collection of interrelated work tasks that achieve a specific result during which personal information is **created, collected, used, shared, transformed, stored, or destroyed**.



IT FEELS FAMILIAR BECAUSE IT IS



A CODE OF CONDUCT IS COMING

- To assist South African research institutions and researchers to achieve compliance with POPIA
- To ensure that research institutions, researchers and the Information Regulator have a consistent interpretation of POPIA
- To establish South Africa as a safe haven for research data (and to prepare for a possible application to the European Commission for an adequacy decision)
- To ensure that research institutions and researchers are accountable for non-compliance

WHAT PROCESSES WILL BE AFFECTED

- Research contracts (particular when there is sharing)
- Applying for research (ethics) approval - we will take a risk-based approach to assessing privacy impacts
- Asking for POPIA consent when you need it (and keeping a record of it) or notifying research participants
- Making disclosures to research participants
- Gathering the research data (harvesting from other sources)
- Deciding where and how to store the data (this is nb!)
- De-identifying/anonymising the data
- Deciding on secondary use and granting open access

HOW TO READ THIS PRESENTATION

- The headings are the main headings used in the Code. Our hands are a bit tied there – the IR wants what the IR wants. 😊
- A round bullet or “” means that the wording is from the Code
- ◻ This kind of bullet means that the question is in the Personal Information Impact Assessment. You can see all the questions together and in a slightly more logical sequence in the Annexure.
- Guidelines and resources that are hyperlinked are included in the Code as guidelines. We are not restating them, because then they become ‘fixed’ in time and binding. They are just guidelines or ‘examples’.
- When a word is capitalised, it is defined in the Glossary of Terms.

THE COC FOR RESEARCH ACTIVITIES

(KEY POINTS AND DECISIONS WE NEED
CONFIRMED.)

WHEN DOES THE CODE APPLY?

“

This Code applies to the [Processing](#) of [Personal Information](#) of [Identifiable](#) research participants (individuals or organisations) for [Research](#) in South Africa. This includes including the collection, use, sharing, transformation, storage or preservation Personal Information of Research Participants.

”

IDENTIFIED OR IDENTIFIABLE?

- **The Code will not apply if** all information that
 - identifies the research participant,
 - can be used or manipulated to identify the research participant,
 - can be linked by a reasonably foreseeable method to other information that identifies the data subject,has been permanently deleted.
- **Use the ‘motivated intruder test’:** Consider whether identification is reasonably likely to be attempted, their motive, how successful any attempt may be, and who may undertake it.

MOTIVATED INTRUDER?

- **The motivated intruder is** someone that
 - is reasonably competent,
 - has access to appropriate resources (e.g. the internet, libraries, public document); and
 - uses investigative techniques (e.g. making enquiries of people who may have additional knowledge about an individual).
- See the [ICO's full explanation](#) of the motivated intruder test.
- **Pseudonymisation is a strong safeguard, but the Code still applies.** If anybody (including the researcher(s)) has the means to re-identify the information, the Code will apply.

DO YOU NEED A POPIA CONSENT

* The short version

Special personal information Personal information of children

You do not need consent:

- ☐ If the research is in the public interest
- ☐ If it is impossible or would require a disproportionate effort to get consent

No special personal information

You do not need consent:

- ☐ If the responsible party is obligated to do the research by law (contract, legislation, public law duty)
- ☐ If the research passes a [legitimate interest assessment](#)

- ☐ The researcher must record the legal basis they are relying on in writing (e.g. in the research data management plan).

PROCESSING LIMITATION

Researchers must answer these questions:

- ☐ Is all of the personal information (field by field) necessary for *this* research?
- ☐ What personal information (field by field) are not necessary for *this* project, but may be necessary for future research?
- ☐ Why must the personal information be identified for this research?
- ☐ Can the personal information be pseudonymised?

PROCESSING LIMITATION

Researchers must answer these questions:

- ☐ Will the personal information be collected directly from the research participants?
- ☐ If not, justify why the personal information can be harvested from another source. E.g.,
 - ☐ It is in a public record administrated by a public body.
 - ☐ The research participant deliberately made the personal information public.
 - ☐ The research participant will not suffer any harm and would consent to the use of their personal information if asked.
 - ☐ There is no practical alternative way to collect the personal information.

PROCESSING SPECIFICATION

Researchers must answer these questions:

- ☐ What is the purpose of the research?
- ☐ What future purposes might the personal information be used for?
- ☐ Specify:
 - ☐ for how long the identifiable personal information will be retained.
 - ☐ where it will be retained.
 - ☐ who will have access to the identifiable personal information after the completion of the research.
 - ☐ If not, specify how the personal information will be de-identified and whether there is any risk that a motivated intruder can re-identify it.

FURTHER PROCESSING LIMITATION

Researchers must answer these questions:

- ☐ Will identifiable personal information be used in future research activities?
- ☐ Are there measures in place to ensure that the personal information will:
 - ☐ only be used for research activities, and that it will
 - ☐ not be published in an identifiable form.

(if neither can be ensured, POPIA consent will be required for the future research)

INFORMATION QUALITY

- ❑ Use reliable sources
- ❑ Do data quality reviews
- ❑ Provide access to research participants
- ❑ Do master data management
- ❑ Design questions (and answer formats) for accuracy
- ❑ Minimise the risk of bias

OPENNESS (AND NOTIFICATION)

- Transparency is not an absolute requirement, but hidden processing is very high risk
- Transparency is important when:
 - You are asking POPIA or ethical consent
 - You are relying on legitimate interest (the right to object)
 - You are collecting information from another source

SECURITY SAFEGUARDS

- ❑ Protect confidentiality (authorised access and access controls)
- ❑ Protect integrity (e.g., master data management and change controls)
- ❑ Protect availability (back-ups)
- ❑ Use University sanctioned software (ask for help!)
- ❑ Share very carefully
- ❑ Pseudonymise as soon as you can
- ❑ Encrypt whenever you can

FURTHER PROCESSING

Secondary use is possible with consent or when:

- the information will only be used for research purposes, and
- it won't be published in an identifiable form.

TRANSBORDER INFORMATION FLOWS

Anywhere, but the EU or 'adequate' countries? Make sure what the laws are and that there are safeguards in place.

THANK YOU!

elizabeth@novcon.co.za

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