

ANNUAL REPORT FOR THE 2019/20 FINANCIAL YEAR

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REGISTERED NAME	INFORMATION REGULATOR
REGISTRATION NUMBER	NONE
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ACRONYMS AND ABBREVIATION

ACEIE	African Centre for Excellence for Information Ethics
ANC	African National Congress
AFS	Annual Financial Statements
AGSA	Auditor General South Africa
APP	Annual Performance Plan
CEO	Chief Executive Officer
CFO	Chief Financial Officer
Constitution	Constitution of the Republic of South Africa
CHR-UP	Centre for Human Rights at the University of Pretoria
COVID-19	Coronavirus which was declared a global pandemic by the World Health Organisation
CPDP	Computers, Privacy and Data Protection
DOJ&CD	Department of Justice and Constitutional Development
DPSA	Department of Public Service and Administration
ICIC	International Conference of Information Commissioners
ICDPPC	International Conference on Data Protection and Privacy Commissioners
IDUAI	International Day of Universal Access to Information
IEC	Electoral Commission
LPRITA	Legal, Policy, Research and Information Technology Analysis
Members	Members of the Regulator
Minister	Minister of Justice and Correctional Services
MMA	Media Monitoring Africa
MoC	Memorandum of Cooperation
NDPP	National Director for Public Prosecutions
NPA	National Prosecuting Authority
PAIA	Promotion of Access to Information Act
Parliament	Parliament of the Republic of South Africa
PFMA	Public Finance Management Act
POPIA	Protection of Personal Information Act
PP	Public Protector
Regulator	Information Regulator

SAHRC	South African Human Rights Commission
SANC	South African Nursing Council
SANEF	South African National Editors Forum
SMS	Senior Management Service
SOP	Standard Operating Procedures
Structure	Organisational Structure of the Regulator
Treasury	National Treasury of South Africa
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organisation

FOREWORD BY THE CHAIRPERSON



The Information Regulator (Regulator) is pleased to report that during the year under review, it adopted more policies to strengthen its governance architecture. In addition to the policies which it had adopted during the previous financial year, it adopted the Policy and Procedure on the Assessment of the Performance of the Regulator during the period under review. This document deals with the assessment of the performance of the Committees of the Regulator, its Members, as a collective, its individual Members and its Chairperson (Members).

During the year under review, the Regulator made some progress on the establishment of its administration. The position of Chief Executive Officer and five (5) Executive positions were advertised and filled. The Members had to conduct shortlisting and interviews for these positions. Considering the large number of candidates and the absence of human resource capacity at that time, the Members spent a lot of their time on the recruitment process. The non-achievement of some of the targets for the period under review can be attributed to this.

Notwithstanding the financial and human resources constraints, the Regulator made some progress in fulfilling some aspects of its core mandate. The Memorandum of Cooperation (MoC) between the Regulator and the South African Human Rights Commission (SAHRC) was signed. The MoC outlines components of the PAIA function which are to be implemented during the transitional phase. Section 40(1)(f)(ii) empowers the Regulator to make guidelines to assist public and private bodies to develop codes of conduct or to apply for codes of conduct. The draft guidelines were developed in house by Members and published for comments. During the year under review, the Regulator also held a colloquium with the Electoral Commission (IEC) under the theme “Our personal information matters-protection of personal information, an essential requirement for free and fair elections in the digital era”. The objective of the conference was to discuss the impact of the Protection of

Personal Information Act 4 of 2013 (POPIA) on certain provisions of the Electoral Commission Act 51 of 1996, the Electoral Act 73 of 1998 and the Voter Registration Regulations made there under. The Regulator and the IEC agreed that the identified provisions of the aforesaid legislation may have to be amended in order to protect the personal information of voters. The Regulator was also admitted as an *Amicus Curiae* by the North Gauteng High Court in the case of The President of the Republic of South Africa (President) and others v The Public Protector, case no: 55578/19. The Regulator intervened as *Amicus Curiae* in this Application. An *Amicus Curiae* has a special duty to the Court to provide cogent and informed submissions regarding questions of law or fact to which attention would not otherwise be drawn and which would assist the court. The Regulator was admitted as an *Amicus* to the proceedings to assist the court with insights on the application of POPIA.

The Regulator continued to receive and examine complaints on breach of the conditions for the lawful processing of personal information. The complaints were used to analyse the sectoral trends of these breaches which were mainly in the banking, financial and direct marketing sectors. The Regulator also held engagements with diverse stakeholders in the private and public sectors, which included companies, government departments and Chapter 9 institutions. Key amongst these engagements was the workshop which was held in Carthcart to raise awareness and educate the public about the eight (8) conditions for the lawful processing of their personal information and how the Regulator can be contacted should their personal information be abused. The Members of the Regulator also participated in a number of regional and international conferences of the protection of personal information and access to information. The Regulator also commemorated the International Day for Universal Access to Information in collaboration with the SAHRC and Media Monitoring Africa.

The number of data breaches continued to rise during the year under review. A total number of breaches recorded were eleven (11). Unfortunately, other than compiling a register of data breaches and urging responsible parties which had experienced breaches to notify the Regulator as POPIA prescribes, no action could be taken against the responsible parties since the enforcement provisions have not come into operation.

The continued reliance of the Regulator on the policies and systems of the DoJ&CD has the potential of impacting negatively on its independence. Whilst the Regulator is committed to ensure that it separates from the DoJ&CD, the budget that has been allocated to the Regulator will make it difficult for it to do so.

In conclusion, it is important for the remaining sections of POPIA to be brought into operation as soon as possible for the right to privacy of data subject to be effectively protected. In January 2020, the Members wrote to the President of the Republic of South Africa and to the Minister of Justice and Correctional Services requesting them to bring the remaining sections of POPIA into effect on 31 March 2020. The Regulator remains hopeful that this will be done.

A handwritten signature in black ink, appearing to read "P. Tlakula".

Adv. Pansy Tlakula

Chairperson

Date: 30 October 2020

OVERVIEW BY THE CHIEF EXECUTIVE OFFICER



The 2019/20 financial year presented an opportunity for the Regulator to continue building its administrative capacity to ensure the fulfillment of its legislative mandate. The filling of key Executive positions which included the Chief Executive Officer (CEO), five (5) Executives and seven (7) administrative assistants was concluded. These positions constituted Phase One (1) of the Organisational Structure (Structure) of the Regulator. The Second Phase positions of the Structure have been identified and funded. Eighteen (18) new positions were approved towards the end of the financial year under review as part of Phase Two (2) of its approved Structure. This brings the staff compliment to a total of thirty one (31) positions.

During the period under review the Regulator recorded sixty one percent (61%) achievement of its planned targets contained in the Annual Performance Plan (APP). This is an improvement from the performance recorded in 2018/19 financial year. It is pertinent to note that staff members were only appointed towards the end of the quarter three (3) and four (4) quarters of the financial year under review. Key achievements for the financial year under review include amongst other the development and approval of the Complaints Management System, Standard Operating Procedures and the Manual which provides a step-by-step process on the handling of Complaints. The Public Awareness Strategy and Plan as well as the Stakeholder Engagement Strategy and Plan were developed, approved and implemented. These strategies are key in providing a mechanism within which the Regulator engages with the stakeholders and members of the public in raising awareness on POPIA and PAIA.

With regards to the financial performance, the Regulator spent seventy two percent (72%) of its annual budget. A significant portion of the under spending was recorded under the Compensation of Employees (CoE) item which the result of the delay in the filling of funded

vacant positions. Most of these positions were filled during the third and fourth quarters of the financial year.

The Regulator does not produce separate annual financial statements from the DoJ&CD, at present; it's still making use of the policies, procedures and systems of the DoJ&CD. The Auditor General South Africa (AGSA) audits and expresses an opinion on the Annual Financial Statements of the DoJ&CD.

It is pertinent to note that President of the Republic of South Africa signed a Proclamation that brought the remaining sections, except for section 110 and 114(1) of POPIA into operation with effect from 1 July 2020. Section 110 and Section 114(1) will come into force on 01 July 2021. As such the PAIA function will remain with the SAHRC until 30 June 2021 as proclaimed by the President. The Regulator and the SAHRC concluded a MoC to ensure a seamless a transition of the PAIA function to the Regulator.

Lastly, I would like to thank the leadership of the Regulator under the stewardship of the Chairperson and the Members who continuously provided strategic direction to the CEO and the Executive Team. The staff of the Regulator also contributed to the achievement that has been recorded in the financial year under review. The support that the DoJ&CD provided to the Regulator in various areas of its administration is noteworthy. The contribution of all the stakeholders is really appreciated. Notwithstanding the funding challenges experienced by the Regulator to establish its administration, specifically, the recruitment of staff of the Regulator remains a priority that will be carried over to the next financial year.



Mr. Marks Thibela

Chief Executive Officer

Date: 30 October 2020

STATEMENT OF RESPONSIBILITY AND CONFIRMATION OF THE ACCURACY OF THE PERFORMANCE INFORMATION FOR THE YEAR ENDED 31 MARCH 2019

1. The Accounting Officer is responsible for the preparation of the Regulator's Annual Report in terms of Section 40(1) of the Public Finance Management Act, 1 of 1999 (PFMA) as amended..
2. The Accounting Officer is responsible for establishing and implementing a system of internal control designed to provide reasonable assurance as to the integrity and reliability of performance information.
3. In my opinion the performance information fairly reflects the actual achievements against planned objectives, indicators and targets as per the strategic and APP of the Regulator for the financial year ended 31 March 2020.
4. The Regulator's performance information for the year ended 31 March 2020 was not examined by external auditors as the Regulator is still in its establishment phase.
5. The performance information of the Regulator is set out on page 19 to 24 and duly approved by the Members of the Regulator.



Mr Marks Thibela
Chief Executive Officer and Accounting Officer
Date: 30 October 2020

PART A: STRATEGIC OVERVIEW

1. VISION, MISSION AND VALUES

1.1. Vision

“A world-class institution in the protection of personal information and the promotion of access to information”

1.2. Mission

“An independent institution which regulates the processing of personal information and the promotion of access to information in accordance with the Constitution and the law so as to protect the rights of everyone”

1.3. Values

- Transparency
- Accountability
- Integrity
- Excellence
- Impartiality
- Responsiveness

2. MANDATES

2.1. Constitutional Mandate

The Regulator was established to ensure respect for and to promote, enforce and fulfill the right to privacy and the right of access to information.

2.2 Legislative Mandate

2.2.1 Core functions in terms of POPIA

2.2.1.1. To provide education by:-

- a) promoting an understanding and acceptance of the lawful processing of personal information;
- b) undertaking educational programmes;
- c) making public statements; and
- d) providing advice.

2.2.1.2. To monitor and enforce compliance by:-

- a) public and private bodies;
- b) undertaking research and monitoring developments in information processing and computer technology;
- c) examining proposed legislation, subordinate legislation, and policies, and provide a report on the result of the examination to the Minister and to Parliament.
- d) reporting to Parliament on policy matters affecting the protection of personal information including the need for legislative, administrative or other measures to enhance the protection of personal information;
- e) conducting assessments in respect of the processing of personal information;
- f) monitoring the use of unique identifiers and report to Parliament;
- g) maintaining and publishing copies of the registers prescribed in POPIA; and
- h) examining proposed legislation that makes provision for the collection and disclosure of personal information and provide the report of the results of the examination to the Minister.

2.2.1.3. To consult with interested parties by:-

- a) receiving and inviting representations;
- b) co-operating on a national and international basis with other bodies concerned with the protection of personal information; and
- c) acting as a mediator between opposing parties.

2.2.1.4. To handle complaints by:-

- a) receiving and investigating complaints;
- b) gathering information;
- c) attempting to resolve complaints through dispute resolution mechanisms; and
- d) serving notices.

2.2.1.5. To conduct research on:-

- a) the desirability of acceptance of international instruments relating to the protection of personal information;
- b) any other matter that should be drawn to Parliament's attention.

2.2.1.6. In respect of codes of conduct to:-

- a) issue, amend or revokes codes of conduct;
- b) make guidelines to assist bodies to develop or apply codes of conduct; and
- c) consider determinations by adjudicators under approved codes of conduct.

2.2.1.7. To facilitate cross border cooperation in the enforcement of the privacy laws

2.2.2. Core functions in terms of PAIA

2.2.2.1. In respect of complaints to:-

- a) consider a complaint after the internal appeal procedures have been exhausted; and
- b) receive written complaints or to provide assistance to a person who wishes to make a complaint in writing.

2.2.2.2. In respect of investigations to:-

- a) investigate complaints and in the course of an investigation serve an information notice on the information officer or head of a private body;
- b) refer a complaint to the Enforcement Committee; or
- c) decide to take no action on the complaint; or
- d) attempt to settle a complaint through conciliation; and
- d) issue enforcement notices after considering the recommendation of the Enforcement Committee.

2.2.2.3. To issue notices.

2.2.2.4. To issue enforcement notices after considering the recommendations of the Enforcement Committee.

2.2.2.5. To make assessments whether public and private bodies comply with the provision of PAIA.

2.2.2.6. In respect of additional functions to:-

- a) compile and make available a guide on the usage of PAIA;
- b) where possible, develop and conduct educational programmes in particular for disadvantaged communities;
- c) identify gaps in PAIA or any other laws and makes recommendation to reform or amend PAIA or any other laws;
- d) make recommendations for procedures on how private and public bodies make information electronically available;
- e) monitor implementation of PAIA;
- f) if possible, assist any person requesting information;
- g) train information officers and deputy information officers;
- h) recommend to a public or private body to make changes in the manner in which it administers PAIA;

- i) consult with and receive reports from public and private the bodies on problems encountered in complying with PAIA;
- j) obtain advice from, consult with, and consider proposals or recommendations from parties in connection with the Regulator's functions;
- k) request the Public Protector to submit to the Regulator a report on the number of complaints processed relating to PAIA and the nature and outcome of those complaints; and
- l) enquire into any matter including legislation, common law, practice and procedure related to PAIA.

2.2.2.7. A private body should submit information about requests for access to its records and include this information in its Annual Report, upon request by the Regulator.

2.3. GOVERNANCE ARRANGEMENT AT THE REGULATOR

2.3.1. MEMBERS OF THE REGULATOR



Chairperson of the Regulator

Adv. Pansy Tlakula is the Chairperson of the Regulator. She was appointed on 1 December 2016 and is serving her first term of office. She chairs the Policy and Governance and the Education and Communication Committees.



Adv. Lebogang Stroom-Nzama is a full-time Member designated for PAIA. She joined the Regulator on 1 December 2016 and is serving her first term of office. She chairs the Complaints and Investigations Committee.



Adv. Johannes Collen Weapond is a full-time Member responsible for the POPIA. He was appointed on 1 December 2016 and is serving his first term of office. He chairs the following Committees: Compliance and Monitoring, Corporate Services and Risk Management Committees.

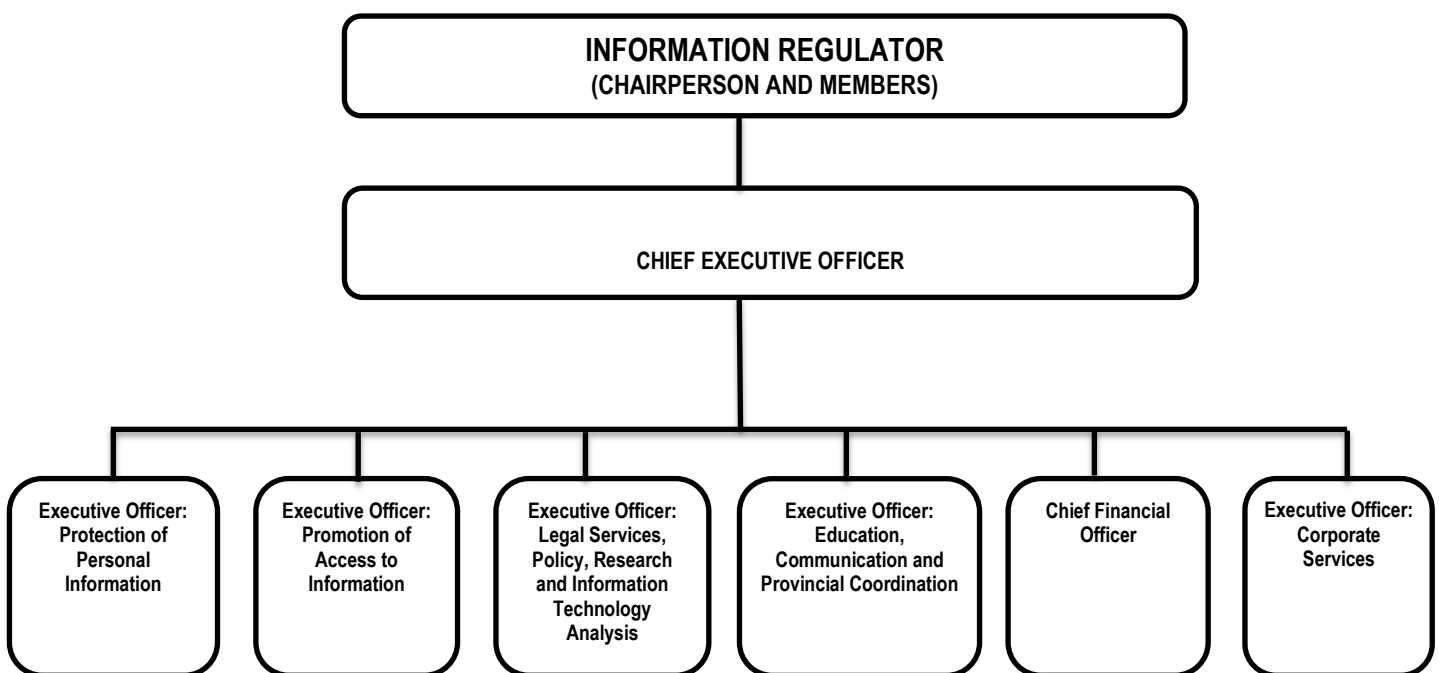


Prof. Tana Pistorius is a part-time Member. She was appointed on 1 December 2016 and served her first term. She resigned on 30 September 2019.



Mr Sizwe Snail ka Mtuze is a part-time Member. He was appointed on 1 December 2016 and is serving his first term of office. He chairs the Legal, Policy, Research and Information Technology Analysis (LPRITA) Committee.

2.3.2. ORGANISATIONAL STRUCTURE OF THE REGULATOR



PART B: PERFORMANCE INFORMATION

2.4.1. Auditor-General's Report: Predetermined Objectives

The Regulator has not been audited separately as it still operates under and also uses the policies of the DOJ&CD.

2.4.2. Overview of Departmental Performance

2.4.2.1. Service delivery environment

The Regulator is empowered to promote the protection of personal information and also promote access to information, in terms of POPIA and PAIA, respectively. During the period under review, only sections 1, 39-54 and 112-113 of POPIA were operational and provided for amongst other the establishment of the Regulator. Although the remainder sections were still not operational during the period under review, the Regulator received complaints from data subjects and handled them in terms of section 40 (1) (d) which provides for mediation between the parties involved in an attempt to find resolve such recorded complaints.

2.4.2.2. Organisational environment

The Regulator continued with the process of establishing its administration in terms of section 47 of POPIA. As at year end, the Regulator filled all thirteen (13) vacancies that were identified for Phase One (1) of the Organisational Structure. The Regulator planned to separate from the DoJ&CD with effect from 1 April 2021 and to operate independently. To this end a Separation Plan was developed for the Human Resources and Finance areas which identified key policies, guidelines and systems required for the Regulator to operate as independent institution. This process will be carried through to the next financial year where the actual policies, guidelines and systems will be developed and approved.

2.4.2.3. Key policy developments and legislative changes

Only certain sections of POPIA were operational during the year under review. However, a request was made to both the President and the Minister to bring the remaining sections of POPIA into operation. A proclamation was issued and signed by the President to bring into effect sections 2-38, 55-109, 111 and 114 (2), (3) and (4) from 1 July 2020. Sections 110 and 114 (1) will come into effect on 30 June 2021.

The Regulator is empowered, in terms of section 40(1)(e)(i) of POPIA, "*to conduct research and to report to Parliament from time to time on the desirability of the acceptance, by South Africa, of any international instrument relating to the protection of the personal information of a data subject*".

POPIA also empowers the Regulator to-

- (a) make Regulations;
- (b) issue, from time to time, codes of conduct;
- (c) amend codes and to revoke codes of conduct; and
- (d) make guidelines to assist bodies to develop codes of conduct or to apply codes of conduct”.

2.4.3 Strategic Outcome Oriented Goals

STRATEGIC OUTCOME ORIENTATED GOAL		STRATEGIC OBJECTIVE	
1.	Persons that are aware and understand their rights with regards to the protection of personal information.	SO 1.1	Develop and implement educational awareness and stakeholder engagement programmes aimed at promoting the protection of personal information
2	A conducive Legal, Policy, Research and Information Technology Analysis environment that promotes the protection of personal information.	SO 2.1	Develop and approve a research strategy and plan aimed at ensuring the protection of personal information.
		SO 2.2	Monitor and enforce compliance by public and private bodies to ensure that existing legislation promotes the protection of personal information
3	A compliant environment that fosters the protection of personal information and promotion of access to information.	SO 3.1	Develop guidelines for the Codes of Conduct and produce a Manual for POPIA.
		SO 3.2	Develop a process for the handover of the PAIA functions from the South African Human Rights Commission (SAHRC).
4	Protection of personal information through resolving of complaints.	SO 4.1	Handling of complaints related to the alleged violations of the protection of personal information.
5	Optimally functional independent Information Regulator.	SO 5.1	Fully established administration to enable delivery on the mandate.

2.4.4.1. ACHIEVEMENTS AGAINST PLANNED PERFORMANCE TARGETS

Table 1: Education and Communication Committee

Performance Indicator	Planned Target 2019/20	Actual Achievement 2019/20	Deviation from planned target to Actual Achievement for 2019/20	Comment on deviations
Strategic Goal: A compliant environment that fosters the protection of personal information and promotion of access to information				
Strategic Objective: Develop and implement educational, awareness and stakeholder management programmes aimed at promoting the protection of personal information.				
1.1.1. Approved and Implemented Public Awareness Strategy and Plan for POPIA.	Approved and implemented Public Awareness Strategy and Plan.	Public Awareness Strategy and Plan approved and implemented.	None	None
1.1.2. Approved Communications and Branding Strategy.	Approved Communications and Branding Strategy.	Not achieved	Communication and Branding Strategy not in place.	Delays in the procurement process.
1.1.3. Approved Stakeholder Engagement Strategy and Plan.	Approved Stakeholder Engagement Strategy and Plan.	Stakeholder Engagement Strategy and Plan approved and implemented.	None	None

Strategy to overcome areas of underperformance

The development of the Communication and Branding Strategy and Plan was not achieved during the period under review due to in the appointment of a service provider. The Regulator has already developed bid specifications that will be advertised in the next financial year to appoint a service provider. The service provider will be tasked with developing a Communication and Branding Strategy and Plan as well as to enhance two (2) existing strategies.

Changes to planned targets

There were no performance targets that were either added or removed during the period under review.

Table 2: Legal, Policy, Research and Information Technology Analysis (LPRITA) Committee

Performance Indicator	Planned Target 2019/20	Actual Achievement 2019/20	Deviation from planned target to Actual Achievement for 2019/20	Comment on deviations
Strategic Goal: A conducive Legal, Policy, Research and Information Technology Analysis environment that promotes the protection of personal information.				
Strategic Objective: Develop and approve research strategy and plan aimed at ensuring the protection of personal information.				
2.1.1. Approved Research Strategy and Plan.	Approved Research Strategy and Plan.	Draft Research Strategy and Plan developed but not approved.	Approval of the Research Strategy and Plan not yet completed.	Draft Research Strategy and Plan will be approved in the next financial year.

Strategy to overcome areas of underperformance

The approval of the Research Strategy and Plan could not take place due to the delay in the finalisation of the review processes. This planned target will be carried over to the next financial year.

Changes to planned targets

There were no performance targets that were either added or removed during the reporting period.

Table 3: Compliance and Monitoring Committee

Performance Indicator	Planned Target 2019/20	Actual Achievement 2019/20	Deviation from planned target to Actual Achievement for 2019/20	Comment on deviations
Strategic Goal: A compliant environment that fosters the protection of personal information and promotion of access to information				
Strategic Objective: Make guidelines for Codes of Conduct and produce Manual for POPIA				
3.1.1. Approved Guidelines for Developing Codes of Conduct.	Guidelines for Developing Codes of Conduct published.	Guidelines for Developing Codes of Conduct developed but not yet published.	Publication of the Guidelines for Developing Codes of Conduct not yet done.	Delays in the publishing of the Guidelines was due to the time required to consider all the inputs and comments that were received from the stakeholders after the consultation session held in November 2019.
3.1.2. Approved Guidelines for the registration of Information Officers.	Approved and published Guidelines for the registration of the Information Officers.	Guidelines for the registration of Information Officers developed but not approved and published.	Approval and publication of the Guidelines not yet done.	Approval and publication of the Guidelines could not be done due to human resources capacity constraints.
Strategic Objective: Develop process for PAIA functions handover from the South African Human Rights Commission (SAHRC)				
3.2.1. Signed Memorandum of Cooperation (MOC) Implemented.	Memorandum of Cooperation (MOC) signed and implemented.	Memorandum of Cooperation (MOC) approved and implemented.	None	None

Strategy to overcome areas of underperformance

The approval and publication of the Guidelines to develop Codes of Conduct could not be finalised by as at year end due to the volume of comments received. These comments were received from various stakeholders after a consultative session which took place in November 2019. The Regulator intends to finalise the review of all comments and publish the Guidelines during the next financial year. The Guidelines for the Registration of Information Officers will also be published towards the end of the next financial year.

Changes to planned targets

There were no performance targets that were either added or removed during the reporting period.

Table 4: Complaints and Investigations Committee

Performance Indicator	Planned Target 2019/20	Actual Achievement 2019/20	Deviation from planned target to Actual Achievement for 2019/20	Comment on deviations
Strategic Goal: Protection of personal information through resolving of complaints				
Strategic Objective: Handling of complaints related to the alleged violations of the protection of personal information				
4.1.1. Approved POPIA Complaints Management Processes, Standard Operating Procedures (SOPs) and Manual.	Complaints Management Processes, SOPs and Manual developed.	Complaints Management Processes, SOPs and Manual developed and approved.	None	None

Strategy to overcome areas of underperformance

The target was achieved, therefore there is no strategy needed.

Changes to planned targets

There were no performance targets that were either added or removed during the reporting period.

Table 5: Corporate Services Committee

Performance Indicator	Planned Target for 2019/20	Actual Achievement for 2019/20	Deviation from planned target to Actual Achievement for 2018/19	Comment on deviations
Strategic Goal: Optimal functional independent Information Regulator				
Strategic Objective: Fully established administration to enable delivery on the mandate				
5.1.1. Approved Organisational Structure.	Approved Second Phase of the Organisational Structure.	Second Phase of the Organisational Structure approved, Eighteen (18) positions identified, funded and also advertised.	None	None
5.1.2. Approved Corporate Services, Policies and Guidelines.	Approved Recruitment Policy.	Recruitment Policy approved.	None	None
5.1.3. Approved Delegation of Authority Framework.	Approved Delegation of Authority Framework.	Delegation of Authority Framework developed but not yet approved.	Approval of the Delegation of Authority Framework finalised.	Delay in the approval of the Delegation of Authority Framework was due to a lack of human resources capacity.
5.1.4. Approved Employment Equity Policy and Plan.	Approved Employment Equity (EE) Policy and Plan.	Employment Equity Policy and Plan approved.	None	None
5.1.5. Identified list of Finance Policies to be developed.	Identification of list of Finance Policies to be developed.	Identification of list of Finance Policies to be developed has been done.	None	None

Strategy to overcome areas of underperformance

The development and approval of the Delegation of Authority Framework will be completed during the next financial year as the Regulator intends to would have appointed more staff members.

Changes to planned targets

There were no performance targets that were either added or removed during the reporting period.

2.4.4.2. OTHER ACTIVITIES PERFORMED BY THE REGULATOR

2.4.4.2.1. Complaints and Dispute Resolution

Complaints:	Number	Percentage
Breach of personal information	125	53%
Unsolicited Direct Marketing	86	36%
Surveillance	2	1%
Fraud	7	3%
PAIA	7	3%
Data Breach	9	4%
High Profile Complaints	2	1%
TOTAL (Excluding General Enquiries – No. 40)	238	100%

The Regulator received a total number of two hundred and thirty eight (238) complaints for the 2019/20 financial year. The total number of general enquiries received for the period under review is forty (40).

The highest number of complaints received relates to the alleged breach of personal information within the Banking and Finance sector. A total number of complaints received is one hundred and twenty-five (125), which constitute fifty-three percent (53%) of the total complaints.

The second highest number of complaints received during the period under review relates to alleged unsolicited direct marketing. A total of eighty-six (86) complaints were received, which constitute thirty-six percent (36%) of the total number of complaints. The Telecommunication and Telephone Marketers sectors are the primary contributors to these complaints.

The complaints received relating to alleged data breaches are nine (9) and constitutes four percent (4%) of the total complaints.

The number for alleged fraud related complaints received is seven (7), and constitute three percent (3%) of the total fraud related complaints. In respect of PAIA referrals, a total of seven (7) complaints were received and constitute three percent (3%) of the total complaints.

The number of complaints received relating to alleged surveillance is two (2) which the same number of complaints is received relating to high profile complaints, both constitute one percent (1%) of the total complaints respectively.

2.4.4.2.2. Stakeholder Engagements

(a) International Day of the Universal Access to Information (IDUAI)

The Regulator and the SAHRC collaborated with the United Nations Educational, Scientific and Cultural Organization (UNESCO), Media Monitoring Africa (MMA), South African National Editors Forum (SANEF) the Centre for Human Rights: University of Pretoria (CHR-UP) and the African Centre for Excellence for Information Ethics (ACEIE) in commemorating this day on 27 September 2019. The theme of the event focused on the right of access to information in so far as it relates to digital equality and universal access to the internet. The key note speaker was Commissioner Lawrence Mute, the African Commissioner on Human and People's Rights Special Rapporteur on Freedom of Expression and Access to Information in Africa. The guest speaker was the Honorable Minister of Communications and Digital Technologies, Mrs Stella Ndabeni-Abrahams. There were also various addresses by collaborating partners which sought a quest for universal access to the internet.

(b) Guidelines for the development of Codes of Conduct

The Regulator published draft Guidelines for the development of Codes of Conduct as stipulated under Chapter 7 of POPIA. The objective of these Guidelines is to serve as an explanatory aid to Chapter 7 of POPIA. The Guidelines further serve as a practical guide that outlines minimum criteria, and provides a framework to ensure that Codes are evaluated in a standardised manner. The Guidelines provide clarity on how the conditions for lawful processing of personal information are to be applied and complied with given the particular features of a relevant body. A public consultation session was held in November 2019. The Regulator received written comments from various stakeholders on the draft Guidelines. The comments are currently being considered. Final Guidelines will be published after all comments have been considered.

(c) Colloquium held between the Regulator and the Electoral Commission (IEC)

On 30 January 2020 the Regulator in collaboration with the Electoral Commission (IEC) held a colloquium under the theme "Our personal information matters - Protection of personal information an essential requirement for free and fair elections" to discuss the impact of POPIA on certain provisions of the Electoral Commission Act 51 of 1996, the Electoral Act 73 of 1998 and the Voter Registration Regulations. The Colloquium also discussed the impact of digital technologies on the freeness and fairness of the elections. The objectives of the colloquium were as follows:

- Whether the provisions of section 3(2) (a) of POPIA takes precedence over the provision of the Electoral Act;
- Whether section 16(1) and 16(2) of the Electoral Act and the Voter Registration Regulations comply with the conditions for lawful processing of personal information provided for in POPIA;
- Whether section 16(1) and section 16(2), on account of section 15(1) and 15(2) of the Electoral Act, provide a justifiable reason for non- compliance with the conditions for lawful processing of personal information of voters' in the compilation and maintenance of the National Common Voters Roll;
- Whether section 91(2)(b) of the Electoral Act pertaining to the voters' roll complies with the conditions for lawful processing of personal information provided for in POPIA;
- Whether the first part of section 5(1) (e) of the Electoral Commission Act 51 of 1996 complies with POPIA;
- The use of personal information of voters by political parties for campaigning purposes– a detailed discussion on whether Section 31 of POPIA overrides section 69 of POPIA in respect of direct marketing to voters by political parties;
- The impact of fake news, misinformation, disinformation and social media bots on the freeness and fairness of elections– Measures taken by social media companies to counter these;
- The use of cyber security to ensure that personal information of voter's information is protected; and
- Proposed measures which can be taken by the Electoral Commission to ensure lawful processing of personal information of a voter by political parties for campaign purposes, e.g. compilation and issuance of a Code of Conduct provided for in section 99(2) of the Electoral Act.

2.4.4.2.3. National Engagements

Table: Names of Organisations and types of engagement

No.	NAME OF ORGANISATION OR EVENT	TYPE OF ENGAGEMENT
1	Media Monitoring Africa (MMA) and South African National Editors Forum (SANEF)	The Regulator delivered a presentation at the round table on Universal Access to the Internet, Free Public Access and Digital Rights.
2	Parliament of the Republic of South Africa (Parliament)	The Regulator attended and delivered a presentation on the position of the Regulator at the public hearing held in Parliament on the Proposed Political Party Funding Regulations prepared by the Electoral Commission.
3	Commission on Gender Equality	The Regulator delivered a presentation at the induction workshop of the new Commissioners of the Commission on Gender Equality.
4	South African Human Rights Commission (SAHRC)	The Regulator delivered a presentation at the South African Consultation on the United Nations Human Rights Business and Human Rights in Technology Project. The aim of the project is to advance the embedding of respect for human rights in business practices relating to the development and application of digital technology.
5	High Level panel to commemorate the 25th anniversary of human rights democracy in South Africa held in September 2019	The Regulator participated in a High Level panel to commemorate the 25th anniversary of human rights democracy in South Africa and the establishment of the Human Rights Institute of South Africa.
6	State Information Technology Agency and Government Information Technology Officers Council – Annual GovTech conference	The Regulator attended the Annual GovTech Conference and delivered a presentation on POPIA and the digital economy.
7	Refinitiv	Members of the Regulator met with the delegation from Refinitiv to discuss the implementation of POPIA
8	Department of Public Service and Administration (DPSA)	The Regulator delivered a presentation on the right of access to information as it relates to the African Union Anti-Corruption Board Mission to South Africa on the evaluation of the implementation of the African Union Convention on

No.	NAME OF ORGANISATION OR EVENT	TYPE OF ENGAGEMENT
		Prevention and Combatting of Corruption.
9	Electoral Commission and the United Nations Development Programme	The Regulator attended a workshop and made a presentation on Perspectives regarding social media regulation. The workshop was jointly organised by the Electoral Commission and the United Nations Development Programme on Safeguarding Electoral Integrity in the Digital Disinformation: Strategies for Combatting Digital Disinformation.
10	Facebook	The Regulator held a meeting with the representatives of Facebook and discussed the implementation of POPIA
11	PPM	The Regulator attended a stakeholder engagement session and made a presentation on the implementation of POPIA
12	Information Regulator and Black Sash	The Regulator conducted a public awareness session on POPIA to the members of the community of Cathcart in the Eastern Cape Province
13	Limpopo Department of Agriculture	The Regulator made a presentation on the implementation of POPIA to the senior management team of Limpopo Department of Agriculture
14	Right to Know (R2K) and UNESCO	The Regulator attended an event to celebrate IDUAL which was organised by the R2K and also made a presentation
15	SAHRC	The Regulator attended the conference on Human Rights in the Fourth Industrial Revolution(4IR) and made presentations on the implementation of POPIA
16	DLA Piper	The Regulator attended a conference and made a presentation on the implementation of POPIA
17	South African Nursing Council (SANC)	The Regulator made a presentation on the implementation of POPIA to the senior management team of SANC
18	Electoral Commission	The Regulator attended the 26th World Press Freedom Day event organised by the Electoral Commission in commemorating Media for Democracy: Journalism and Elections in times of Misinformation.
19	ID for Africa conference held in	The Regulator attended the ID for Africa conference

No.	NAME OF ORGANISATION OR EVENT	TYPE OF ENGAGEMENT
	June 2019 in Kempton park, South Africa	

2.4.4.2.4. International and Regional engagements

Table: Names of Organisations and types of engagement

No.	NAME OF ORGANISATION OR EVENT	TYPE OF ENGAGEMENT
1	26th World Press Freedom Day held in Addis Ababa, Ethiopia in May 2019	The Regulator attended and made a presentation on Elections, Media and the Internet at the 26th World Press Freedom Day. The theme of the commemoration was Media for Democracy: Journalism and Elections in times of Misinformation.
2	Media Foundation of West Africa Excellence Conference and Awards held in Accra, Ghana in October 2019	The Regulator attended and delivered a key note address on mitigating the risks of fake news to enhance electoral integrity during the 2019 West Africa Media Excellence Conference and Awards organised by the Media Foundation of West Africa. The theme of the conference was Fake News, Social Media and Elections in Africa
3	Study tour held at Mexico City, Mexico in November 2019 organised by the National Institute for Transparency, Access to Information and Personal Data Protection Commission of Mexico	The Regulator participated and made a presentation on Lessons from abroad on Access to Information as a human right during the study tour study tour organised by the National Institute for Transparency, Access to Information and Personal Data Protection Commission of Mexico to the Regional meeting of Latin American Network of Information Commissioners.
4	Africa DPPC conference held in June 2019 in Ghana	The Regulator attended the Regional conference
5	Computers, Privacy and Data Protection (CPDP) conference held in January 2020 in Belgium	The Regulator attended this conference
6	International Conference on Data Protection and Privacy	The Regulator attended this conference

No.	NAME OF ORGANISATION OR EVENT	TYPE OF ENGAGEMENT
	Commissioners (ICDPC) held in October 2019 in Albania	

2.4.4.2.5. Litigation

(a) Court intervention as *Amicus Curiae*

In July 2019 the Public Protector (PP) found that the President misled Parliament when it responded to a Parliamentary question relating to the sum of R500 000-00 that was paid by African Global Operations (previously known as Bosasa) to the president's son, Mr Andile Ramaphosa. It seems as if these funds were paid towards the President's CR17 campaign during his election campaign for the Presidency of South Africa. The PP in her findings was of the view that there is a *prima facie* suspicion of money laundering against the President and had requested that the National Director of Public Prosecutions (NDPP) who is the head of the National Prosecuting Authority (NPA) to investigate these allegations.

The President launched a Review Application in the Pretoria High Court challenging the PP's findings. The Regulator intervened as *Amicus Curiae* in this Application. An *Amicus Curiae* has a special duty to the Court to provide cogent and informed submissions regarding questions of law or fact to which attention would not otherwise be drawn and which would assist the court. The Regulator was admitted as an *Amicus* to the proceedings to assist the court with insights on the application of POPIA. The court set aside the PP's remedial actions against the President as contained in her 2019 report on Bosasa. The Economic Freedom Fighters (EFF) has applied for leave to appeal and have also brought an Application to unseal the personal information that was sealed by the Deputy Judge President Ledwaba – The Regulator has filed a notice to abide.

PART C: CORPORATE GOVERNANCE

2.5.1. Introduction

The Regulator consists of the Chairperson and four (4) Members who provide leadership and guidance when discharging the mandate of the Regulator. Section 41 (1) (f) empowers the Chairperson of the Regulator to direct the work of the Regulator and the Staff. The five (5) Members of the Regulator constitute the governing structure of the Regulator and reports to the National Assembly (NA). The Regulator has been implementing the Charter of Roles and Responsibilities which guides the Members both individually and collectively on the performance of their fiduciary responsibilities. This includes providing strategic direction and supervision to the CEO in the performance of his financial and administrative duties in terms of POPIA and PAIA.

Furthermore, the Regulator reconstituted the Committees that are established in terms of section 49 of POPIA to ensure effective oversight. The review of the Terms of Reference (ToR) for each of the Committees is being finalised. It is envisaged that the reconstituted Committees will be fully operational during the next financial year to ensure good corporate governance.

The Regulator convened monthly meetings to review progress against the fulfillment of the legislative mandate and the establishment of its administration. Performance against the targets set in the APP was reported on a quarterly basis.

2.5.2. Risk Management

The Regulator utilised the policies of the DoJ&CD and did not develop its own Risk Management Policy. A high level risk assessment was conducted which resulted in the identification of key risks of the institution.

2.5.3. Fraud and Corruption

The Regulator operates under the policies of the DoJ&CD which outline the manner in which fraud and corruption should be reported.

2.5.4. Minimising Conflict of Interest

During the period under review the Members of the Regulator disclosed their financial interest as required in terms of section 45 of POPIA. At the start of each meeting, the Members declared any interest whether direct or indirect by indicating on the attendance register. With regard to Staff members, the financial disclosures were administered in terms of the Policy Framework on Financial Disclosures issued by the Department of Public Service and Administration (DPSA) which is utilised by the DoJ&CD.

2.6 Code of Conduct

The Regulator implemented the Policy on Code of Ethics and Conduct that guided the Members on how to conduct themselves in the performance of their functions. The Staff members were guided by the Code of Conduct and Service Charter of the DoJ&CD.

2.7. MEMBERS OF THE REGULATOR

NAME OF THE MEMBER	ROLE AT THE REGULATOR	DATE OF APPOINTMENT	STATUS OF APPOINTMENT
Adv. Pansy Tlakula	Chairperson	1 December 2016	Active Member until 30 November 2021
Adv. Lebogang Stroom-Nzama	Full-time Member	1 December 2016	Active Member until 30 November 2021
Adv. Collen Weapond	Full-time Member	1 December 2016	Active Member until 30 November 2021
Mr. Sizwe Snail ka Mtuze	Part-time Member	1 December 2016	Active Member until 30 November 2021
Prof. Tana Pistorius	Part-time Member	1 December 2016	Resigned on 30 September 2019

PART D: HUMAN RESOURCE MANAGEMENT

2.7.1. Introduction

Section 47 of POPIA empowers the Regulator to establish its own administration to support it in the performance of its functions. The Regulator is also empowered to appoint a suitably qualified and experienced Chief Executive Officer (CEO) as the Head of Administration and Accounting Officer. The CEO is empowered in terms of section 48 of POPIA to manage the day-to-day operations of the Regulator and to oversee all matters pertaining to the establishment of the administration, provide leadership, maintenance and discipline of Staff as well as implementing the decisions of the Regulator and therefore accountable to the Regulator.

The CEO is supported by six (6) Executives who are appointed by the Members to assist him in the performance of his functions and he may delegate such functions to his Executives from time to time in accordance with POPIA and PAIA.

2.7.2. Status of Human Resources in the Regulator

During the year under review the Regulator filled all the thirteen (13) positions that were identified under Phase One (1) of the Organisational Structure. These were positions of the CEO, CFO, Executive: Corporate Services, Executive: POPIA, Executive: LPRITA and Executive: PAIA and certain administrative positions to support the Members and Executives. The funding of these positions was undertaken in terms of section 47(5) which provides for consultation between the Regulator and the Minister of Finance. The Minister of Finance agreed to the above-mentioned Organisational Structure and further advised that the filling of vacant positions should be done in a phased-in approach.

As at year end, the Regulator had finalised a list of eighteen (18) positions that form part of Phase Two (2) of the Organisational Structure. These positions have been funded and were advertised during the last quarter of the financial year and the finalisation of the recruitment process will be undertaken in the next financial year.

2.7.3. Human Resource Priorities

During the period under review the following deliverables were identified and completed:

- Implementation of Phase One (1) of the Organisational Structure was completed;
- Finalisation of the Phase Two (2) list of positions on the Organisational Structure was completed and posts advertised;
- Recruitment Policy was finalised and approved;
- Employment Equity Policy and Plan were developed and approved; and
- Separation Plan for Human Resources which will enable the Regulator to operate independently from the DoJ&CD was developed and approved.

2.7.4. Workforce planning and key strategies to attract and recruit skilled and capable workforce.

The Regulator is empowered in terms of POPIA to recruit skilled personnel to assist it in the performance of its functions. Whilst, the Regulator continued to attract and recruit suitably skilled and competent individuals during the reporting period, it had to ensure that this process was done in a manner that provides for the advancement of persons disadvantaged by unfair discrimination as stated in section 47(3)(a) of POPIA. Furthermore, the Regulator finalised its own Employment Equity Policy and Plan and the implementation thereof will be carried out in the next financial year to ensure compliance with the above-mentioned provision. At the end of the reporting period, a draft Human Resource Strategy had been developed and will be finalised and approved in the next financial year.

2.7.5. Employee Performance Management

The Regulator currently uses the Performance Management and Development (PMD) Policy of the DoJ&CD which requires that Performance Agreements (PAs) of employees should be submitted by 31 May of each financial year. New Staff members are expected to submit their PAs two (2) months after assumption of duty. None of the Staff members were employed at the Regulator as at 31 May 2019 and some of the Staff members assumed duty from June 2019 and the majority only joined in the third and fourth quarters of the financial year. Those who only worked for less than three (3) months in the financial year were not required to submit performance agreements in terms of the PMD policy.

2.7.6. Employee Wellness Programmes

The Regulator has not developed its own Employee Wellness Programmes but relied on the DOJ&CD. However, Guidelines for the Governance and Risk Management of COVID-19 in the workplace have been developed in line with the Health and Safety Regulations published by the Department of Employment and Labour as well as the COVID-19 Guidelines from the DPSA. The Executive: Corporate Service was designated as the Occupational Health and Safety Officer of the Regulator as required in terms of the Health and Safety Regulations.

2.7.7. Achievements and challenges faced by the Regulator as well as future human Resources Plans and Goals

The Regulator achieved the following Human Resource objectives during the period under review:

- Filling of thirteen (13) positions for Phase One (1) of the Organisational Structure;
- Development and approval of the Recruitment Policy;
- Development and approval of Employment Equity Policy and Plan;
- Development and approval of the Separation Plan; and
- Approval of phase two (2) of the Structure.

The following are the Human Resource Priorities for the next financial year:

- Filling of the eighteen (18) positions that fall under Phase Two (2) of the Structure;
- Development of Human Resource Policies, Guidelines, Strategies and Plans;
- Identification of positions that will fall under Phase Three (3) of the Structure; and
- Build capacity in the core business units.

The following are the identified Human Resource Challenges:

- Inadequate funding to build human resource capacity and
- Inadequate funding to implement training and development programmes for the staff.

Part E: FINANCIAL INFORMATION

The Regulator did not produce separate its Annual Financial Statements (AFS) for the 2019/20 financial year as its financial records form part of the AFS of the DOJ&CD and are audited by the AGSA. However, the Regulator hereby provides its report on the Expenditure versus the Budget for the reporting period as follows:

Table: Expenditure versus Budget for the period

Economic Classification	Actual Expenditure R'000	Original Budget R'000	Adjusted Budget R'000	Variance R'000
Compensation of Employees	12 339	19 517	19 517	7 178
Goods and Services	8 995	6 578	8 994	(1)
Buildings	38	0	38	0
Machinery and Equipment	1 063	2 812	2 774	1 711
TOTAL	22 435	28 907	31 323	8 888

The original budget available to the Regulator was R28.907 million. The budget has been adjusted upwards to R31.323 million by the DoJ&CD.

Total expenditure for the year was R22.435 million (72% of the budget). This resulted in budget under spending of R8.888 million of which Compensation of Employees is R7.178 million and Machinery and Equipment is R1.711 million. Overspending on Goods and Services amounts to R1 000.00.