



MEDIA STATEMENT

INFORMATION REGULATOR REFERS NATIONAL DEPARTMENT OF HEALTH TO THE ENFORCEMENT COMMITTEE REGARDING PERSONAL INFORMATION COLLECTED DURING COVID-19

20 FEBRUARY 2023

The Information Regulator (Regulator) has decided to refer the National Department of Health (NDoH) to the Enforcement Committee over the issue of certain personal information that the NDoH had collected as part of the management of the spread of the coronavirus during the COVID-19 pandemic. This decision follows numerous unsuccessful requests for information to the NDoH made by the Regulator. Referral to the Enforcement Committee can culminate in issuing an enforcement notice which has the same effect as a court order.

In April 2020, the contact tracing regulations were issued in terms of the Disaster Management Act. These regulations authorised the compilation of an electronic COVID-19 contact tracing database for the purpose of managing the spread of COVID-19. The database was supposed to contain information such as the first name, surname, identity or passport number, residential address and COVID-19 test results of people who are known or suspected to have come into contact with persons known or suspected to have contracted COVID-19. These regulations directed that the NDoH, as the custodian of the database, must, within six weeks of the lapse of the national state of disaster, destroy or de-identify the information in the database. Further to that the de-identified information could only be used for research, study or teaching purposes.

The Regulator had sought to obtain confirmation and guarantees from the NDoH that personal information that had been collected during COVID-19 had been de-identified or destroyed after the lifting of the national state of disaster. After the national state of disaster was declared, the Regulator issued (on 3 April 2020) a Guidance Note on the processing of personal information

in the management and containment of the COVID-19 pandemic. The Guidance Note indicated that during and/or after the national state of disaster, the Regulator will monitor compliance with the Guidance Note and Regulations by the NDoH.

Since May 2022, the Regulator has been demanding from the NDoH a report indicating how the department is complying with the lawful processing of personal information collected during the COVID-19 response. Specifically, the Regulator wanted the NDoH to advise whether it (NDoH) had destroyed and/or de-identified the information that had been transferred to it during the national state of disaster in accordance with the procedure set out in the Disaster Management Regulations and provide the Regulator with evidence of such action. Additionally, the Regulator wanted the NDoH to confirm that it had obtained a report from an expert third-party IT security firm as to the reliability and suitability of the IT security safeguards in place in relation to personal, location and health data held by or on behalf of the government in relation to COVID-19. The Regulator wanted access to this report. This report was recommended to the Minister of Health by the retired Justice Kate O'regan, who had served as the designated judge to monitor the implementation of the track and trace programme to protect people's privacy.

Despite acknowledging receipt of the Regulator's letters, the NDoH failed to accede to the Regulator's requests or explicitly refused to comply. This is despite a formal Information Notice in terms of section 90 of POPIA that the Regulator issued in November 2022. The Information Notice wanted the same information that was requested in previous letters to the NDoH. There was no response to the Information Notice. Therefore, the Regulator is left with no other option than to refer the matter to the Enforcement Committee in terms of section 92(1) of POPIA.

The Chairperson of the Regulator, Adv. Pansy Tlakula said, "the Regulator is obliged to monitor the NDoH's and the National Institute for Communicable Diseases' (NICD) compliance with the Guidance Note that we issued on the processing of personal information in the management and containment of the COVID-19 pandemic. This Guidance Note was issued in terms of POPIA and requires that the NDoH submits its report to Parliament as indicated. Compliance is not optional. Personal information that was collected during the pandemic included special personal information of people such as COVID test results and there must be accountability for how that personal information has been handled. We have been lenient with the NDoH on this point, but we would be failing the data subjects if we, as the Regulator, do not take action to ensure that there is compliance and accountability".

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