



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*

## **MEDIA STATEMENT**

### **INFORMATION REGULATOR SHARES OUTCOMES OF COMPLAINTS INVESTIGATED AND ASSESSMENTS CONDUCTED IN RELATION TO PAIA AND POPIA**

**5 APRIL 2023**

#### **1. INTRODUCTION**

We are delighted to welcome you to the home of the Information Regulator (South Africa) and to this press briefing which is special for two reasons; firstly, it is special because for the first time since its inception the Regulator is releasing the outcomes of the matters that we have investigated and the assessments that we have conducted in relation to the Protection of Personal Information Act (POPIA) and Promotion of Access to Information Act (PAIA).

Secondly, the day is special because we are hosting this press briefing at our headquarters.

#### **2. THE PROCESS**

As far as POPIA is concerned, the Regulator can investigate a complaint submitted by any person or it can, on its own initiative, investigate a complaint. However, as far as PAIA is concerned, the Regulator can only investigate a complaint submitted by a requester of information or a third party. Upon receipt of a complaint, the Regulator has an option to conduct a full investigation of such a complaint or to resolve it through a settlement or conciliation process.

Most of the complaints submitted are resolved through settlement or mediation processes. However, in instances where the complaint cannot be resolved, the matter will be referred for full investigation, after which an investigation report is referred to the Enforcement Committee for a finding and a recommendation of actions to be taken against the Information Officer or head of the private body in respect of PAIA or the responsible party in relation to POPIA. The Enforcement consist of external experts and one Member of the Regulator, and it is chaired by Adv. Helen Fourie SC.

The Enforcement Committee submits its findings and recommendations to the Members of Regulator for consideration. After considering the findings and recommendations of the Enforcement Committee, the Members will make a determination on the complaint and action that must be by an Information Officer or a head of a private body in relation to PAIA, or by a responsible party in respect of POPIA. This determination or decision is issued through an Enforcement Notice which must be served to the Information Officer or head of a private body or a responsible party. The Enforcement Notice has the effect of a court order, and failure to comply with it is an offence.

The Regulator can also conduct assessments on compliance with POPIA and PAIA. The assessment can be conducted by the Regulator on its own initiative or upon request.

For the financial year 2022-2023 the PAIA Division of the Regulator has received over three hundred and nine (309) complaints. Of these, two hundred and nine (209) were resolved. and has conducted ninety-six (96) assessments of public and private bodies, including Regulatory Bodies, Banks, Insurance Companies and Municipalities. During these assessments, it transpired a lot of work needs to be done to ensure compliance with PAIA. For example, none of the assessed Municipalities were 100% compliant with PAIA. Some were not complaint at all.

The POPIA division received eight-hundred and ninety-five (895) complaints during the 2022/2023 financial year. Of these, six-hundred and sixteen (616) were resolved. In the 2021-2022 financial year five-hundred and forty-four (544) POPIA complaints were received. This is a 30% increase from the previous financial year.

Of these complaints and assessments, we wish to pick out a few to give a snapshot of the enforcement work that the Regulator has been doing over the last twelve-months.

### **3. COMPLAINTS DECIDED BY THE REGULATOR**

#### **3.1 POPIA: South Africa Police Service and the Krugersdorp Sexual Assault Victims**

The matter relates to the distribution of personal information of the victims of sexual assault in the Krugersdorp area. The names, addresses, and ID numbers of these victims (data subjects) were distributed via WhatsApp to a number of people within the SAPS. Following a leak from the members of the South African Police Service (SAPS-responsible party), the personal information of the data subjects was circulated on social media platforms such as Facebook. The Regulator conducted an own initiative investigation on whether the manner in which the SAPS handled (processed) the personal information of the data subjects was in compliance with POPIA.

The Regulator has, after considering the report of the Enforcement Committee, issued an Enforcement Notice wherein it decided that the responsible party (SAPS) has interfered with the protection of the personal information of the data subjects in that it breached the conditions for the lawful processing of personal information. Furthermore, that the responsible party did not comply with the duty to notify the Regulator and the data subjects of the security compromise as prescribed in POPIA.

The Regulator found that SAPS has violated several provisions of POPIA, namely, that:

- by distributing the personal information of data subjects in a WhatsApp message, it processed such information unlawfully, unreasonably and in a manner that infringed their privacy and did so without the consent of the data subjects.
- the personal information of data subjects contained in the WhatsApp message was excessive and not relevant for the purpose for which it was distributed, which, according to the SAPS, was to alert the respective stations of the serious crime which had been committed in the West Rand District.
- the responsible party had failed to take appropriate, reasonable, technical measures to prevent the unlawful accessing of personal information of data subjects as prescribed in POPIA.

The Regulator has, against the above backdrop, amongst others ordered that the Responsible Party notify (within 31 days) the data subjects of the security compromise which relates to their personal information, publish an apology to data subjects, prominently in major national weekly newspapers and social media platforms such as Facebook and Twitter for the unlawful processing of their personal information, investigate the conduct of the SAPS members responsible for the unlawful processing of the personal information and include training on POPIA in all SAPS training programmes.

The Regulator is committed to ensuring compliance with the provisions of POPIA and will leave no stone unturned in executing this legislative mandate.

### **3.2 PAIA: The right of access to the records of payment of royalties - Complaint against Risa Audio Visual Licensing NPC (RAV)**

Most musicians die poor in South Africa and this complaint relates to the right of producers and musicians being granted access to records relating to payment distribution of royalties collected from the broadcasters. The Information Regulator received a complaint from Hardwick Trading Pty) Ltd. This complaint was lodged against the decision of the head of Risa Audio Visual Licensing NPC(RAV), who refused to grant the complainant access to the records pertaining to payment distribution made to any third party in respect of license fees or copyright royalties received by the RAV from broadcasters and other users for the public broadcast of music videos created by Bula Records. The complainant is represented by its director, Mr Clive Martin Hardwick (“Mr Hardwick”), who submitted that he co-founded Bula Records with Mr. Peter Tladi and Mr. Harvey Roberts and that Bula Records became one of the biggest independent labels in South Africa.

Considering that the nature of this complaint affects majority of musicians in South Africa, the Regulator decided to conduct the investigation through a public hearing which was held on 2 and 3 August 2022. The Regulator received evidence from different music industry players and the Group Chief Executive Officer of the SABC. Upon completion of investigation, an investigation Report was referred to the Enforcement Committee and the Committee made findings and recommendations to the Regulator.

After considering the recommendations of the Enforcement Committee, the Regulator issued an Enforcement Notice against the CEO of Risa Audio Visual Licensing NPC in his capacity as the head of the private body. The Enforcement Notice provides as follows:

- the decision of the CEO of Risa Audio Visual Licensing NPC was set-aside.
- the CEO of Risa Audio Visual Licensing NPC is directed to grant access to the complainant the complete and accurate records of payment distributions made to any third party in respect of license fees or copyright royalties received by the private body from broadcasters and other users for the public broadcast of music videos created by Bula Records (Pty) Ltd, in respect of the broadcast usage reports for the periods October 2009 to October 2014 or any prior periods in respect of which distribution payments were made from 2014 to the date of submission of the PAIA request; and
- the CEO of Risa Audio Visual Licensing NPC is further directed to ensure that he complies with the Enforcement Notice within thirty-one (31) days from the date of receipt of the Notice.

#### **4. MATTERS RESOLVED THROUGH CONCILIATION AND MEDIATION**

In addition to the above mentioned matters the Regulator resolved other cases through conciliation and mediation. Among others, the Regulator resolved the following:

##### **4.1.1 Complaint against the South African Police Service (SAPS)**

In this matter, the complainant opened two criminal cases against (a) third party(ies), and the National Prosecuting Authority (NPA) declined to prosecute. Aggrieved by the decision, the complainant requested access to the dockets so that he could pursue his rights and access to the dockets was refused. Upon the Regulator's intervention, access to the dockets was granted to the complainant.

##### **4.1.2 Complaint against the South African Music Rights Organisation (SAMRO)**

This complaint followed the Regulator's public hearings regarding refusal of access to records relating to the payment of music royalties. The complainant was a music producer, who alleged that SAMRO had collected his royalties from Lesedi FM (SABC) for the usage of songs titled "Sephethepethe (Botshelo)" and "Dipapadi (Kutlwano)" as radio jingles.

The complainant wanted access to the payment records for royalties collected from the SABC for the period from March 2011 to March 2020. Upon the

Regulator's intervention, SAMRO duly cooperated with the Regulator and granted access to the requested records.

#### **4.1.3 Complaint against the Department of Mineral Resources and Energy (DMRE)**

The complainant submitted twenty-three (23) complaints against the DMRE. The complainant had requested access to several records relating to the mineral rights status reports for each of the several farms across the country. Upon the intervention of the Regulator, access to the records was granted by the department.

#### **4.1.4 Complaints against Eastern Cape Department of Health**

The Road Accident victims have the right to lodge a claim with the Road Accident Fund (RAF) and to lodge a claim with RAF, one must have the hospital records. When access to the hospital records is refused, the victims of the road accidents are deprived of their right to claim compensation from RAF. In this financial year, the Regulator has received 57 complaints against the Eastern Cape Department of Health, for alleged deemed refusal of access to the records. Upon the Regulator's intervention and in collaboration with the Office of the Premier of the Eastern Cape, access to the hospital files were granted for 47 complaints and the Regulator is continuing with its intervention to enable access to the records by the remaining complaints. The Regulator would like to thank the Office of the Premier of the Eastern Cape, for championing the constitutional right of access to information in the Eastern Cape province.

**END.**

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**ISSUED BY THE INFORMATION REGULATOR OF SOUTH AFRICA.**