



INFORMATION REGULATOR (SOUTH AFRICA)

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

MEDIA STATEMENT

INFRINGEMENT NOTICE WITH R5 MILLION ADMINISTRATIVE FINE ISSUED TO THE DEPARTMENT OF BASIC EDUCATION FOR CONTRAVENTION OF POPIA

23 DECEMBER 2024

On 23 December 2024, the Information Regulator (Regulator) issued an Infringement Notice to the Department of Basic Education (DBE) in which it ordered the DBE to pay an administrative fine of R5 million following its failure to comply with the Enforcement Notice issued by the Regulator on 18 November 2024.

The Regulator had issued the Enforcement Notice following the finding of the contravention of various sections of the Protection of Personal Information Act (POPIA) by the DBE. The Enforcement Notice had ordered the DBE to provide an undertaking “that it will not publish the results of the 2024 matriculants in the newspapers” within 31 days from the date on which the order was served. It also ordered that the department “must not publish the results for the 2024 matriculants in newspapers and must make these results available to the learners using methods that are compliant with POPIA.”

The Regulator indicated that should the DBE fail to abide by the Enforcement Notice within the stipulated timeframe, “it will be guilty of an offence, in terms of which the Regulator may impose an administrative fine in the amount not exceeding R10 million, or liable upon conviction to a fine or to imprisonment of the responsible officials”.

The thirty-one (31) days given to the department expired on 19 December 2024. To date, the department has not provided the Regulator with an undertaking that it will not publish the results of the 2024 matriculants in the newspapers as ordered in the Enforcement Notice or any other communication in that regard. The DBE had the right to appeal the Enforcement Notice in terms of section 97(1) of POPIA. POPIA provides amongst others that if an appeal is brought, the Enforcement Notice need not be complied with pending the determination or withdrawal of the appeal. The Regulator had not been served with the appeal application by

close of business on 19 December 2024 despite media reports that the DBE had lodged an appeal against the decision of the Regulator in the High Court.

Explaining the decision of the Regulator, Adv Pansy Tlakula, the chairperson of the Regulator said; *“We understand it from media reports that the DBE intends to publish the matric results in the newspapers on or about 13 January 2025, something which it is prohibited from doing by the enforcement notice issued by the Regulator. The DBE cannot disobey lawfully issued orders of the Regulator without following the procedure stipulated in POPIA. The two (2) orders issued by the Information Regulator against the DBE have the fullest legal force and effect and must be complied with by the DBE until set aside or suspended by an appeal served upon the Regulator timeously.”*

The Regulator had not yet been served with the DBE’s appeal against the orders issued against it. For this reason, these orders remain of full force and effect and must be complied with.

In terms of POPIA, a responsible party who fails to comply with an enforcement notice is guilty of an offence, and the Regulator may cause to be delivered by hand an infringement notice to a responsible party who has committed an offence as provided for in section 109(1) of POPIA. The DBE has failed to comply with the enforcement notice.

Since the Regulator has not received the DBE’s undertaking not to publish the results of the 2024 matriculants in the newspapers, the DBE is in breach of the orders issued by the Regulator. Consequently, the Regulator has issued an infringement notice against the DBE. The infringement notice carries an administrative fine of R5 million to the department for failure to comply with the Enforcement Notice.

The DBE has 30-days from 23 December 2024 to pay the administrative fine or make arrangements with the Regulator to pay the administrative fine in instalments or elect to be tried in court on a charge of having committed the alleged offence referred in terms of POPIA.

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