

digital bridges

**Compliance with the
Protection of Access
to Information Act
(PAIA)**

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Digital Bridging Technologies PAIA Compliance

1. RELEVANT DEFINITIONS

These definitions are taken from the Promotion of Access to Information Act 2 of 2000 as amended (PAIA) and the Protection of Personal Information Act 4 of 2013 (POPIA).

1.1. “Body” means a public or private body;

1.2. “Data Subject” means the person to whom personal information relates.

1.3. “Head” of, or in relation to, a private body means in the case of a natural person, that natural person or any person duly authorised by that natural person;

1.4 “Information Officer” of, or in relation to a private body means the head of a private body as contemplated in section 1 of the Promotion of Access to Information Act. 1.5.

1.5 “Person” means a natural person or a juristic person.

1.6. “Personal Information” – means information relating to an identifiable, living, natural person, and where applicable, an identifiable, existing juristic person, including, but not limited to—

a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

b) information relating to the education or the medical, financial, criminal or employment history of the person;

c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;

d) the biometric information of the person;

e) the personal opinions, views or preferences of the person;

f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

g) the views or opinions of another individual about the person; and

h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

1.7 “Private Body” means-

(a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity.

(b) a partnership which carries or has carried on any trade, business or profession; or

(c) any former or existing juristic person, but excludes a public body.

1.8. “Processing” means

any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including

a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

b) dissemination by means of transmission, distribution or making available in any other form; or

c) merging, linking, as well as restriction, degradation, erasure or destruction of information.

1.9. “Public Body” means

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or

(b) any other functionary or institution when

i. exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

ii. exercising a public power or performing a public function in terms of any legislation.

1.10. “Requester”, in relation to

(a) a public body, means-

(i) any person (other than a public body contemplated in paragraph (a) or (b) (i) of the definition of ‘public body’, or an official thereof) making a request for access to a record of that public body; or

(ii) a person acting on behalf of the person referred to in subparagraph (i).

(b) a private body, means-

(i) any person, including, but not limited to, a public body or an official thereof, making a request for access to a record of that private body; or

(ii) a person acting on behalf of the person contemplated in subparagraph (i).

1.11. "Responsible Party" means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information.

1.12. The usage of the words "responsible party" and "body" interchangeably throughout this document depends on the contents of a specific paragraph.

2. INTRODUCTION

2.1. The Protection of Personal Information Act 4 of 2013 (POPIA) was enacted to give effect to the constitutional right of privacy by safeguarding personal information processed by a responsible party and prescribes

2.1.1. the minimum threshold requirements for the lawful processing of personal information;

2.1.2. an obligation on Information Officers of private bodies to designate and/or delegate any power or duty to Deputy Information Officers, as necessary to make the body as accessible as reasonably possible; and

2.1.3. compulsory requirements for registration of Information Officers with the Information Regulator.

2.2. PAIA allows the Information Officer of a private body to authorise any person as an Information Officer.

2.3. The Information Officers and Deputy Information Officers are required, in terms of Section 55(2) of POPIA, to take up their duties only after being registered with the Regulator.

2.4. The Information Officers referred to in section 55(1) of POPIA are the same Information Officers referred to in sections 1 or 14 and 51 of PAIA.

2.5. The Information Officers of public and private bodies perform their duties and responsibilities in terms of both PAIA and POPIA.

3. PURPOSE

The purpose of PAIA is to promote the right of access to information, to foster a culture of transparency and accountability in South Africa, and to encourage an open democracy where individuals from all walks of life are empowered to engage with government and participate in decisions which affect their lives.

The purpose of this document is to confirm compliance with both the PAIA and POPI Acts.

4. LIABILITIES

4.1 Section 93(b)(ii) of POPIA empowers the Enforcement Committee to make any recommendation to the Regulator necessary or incidental to any action that should be taken against an Information Officer in terms of PAIA.

4.2 An Information Officer may, on conviction, be held criminally liable for the following offences, in terms of PAIA

Items	Sections of PAIA	Nature of offence by an Information Officer	Penalty
4.2.1	90(1)	A person ² who, with intent to deny a right of access in terms of this Act,- (a) destroys, damages or alters a record; (b) conceals a record; or (c) falsifies a record or makes a false record	A fine or imprisonment for a period not exceeding two years.

Items	Sections of PAIA	Nature of offence by an Information Officer	Penalty
4.2.2	90(2)	The Information Officer who wilfully or in a grossly negligent manner fails to comply with the provisions of section 14 of PAIA	A fine, or imprisonment for a period not exceeding two years
4.2.3	90(3)	The head of a private body who, wilfully or in a grossly negligent manner, fails to comply with the provisions of section 51 of PAIA	A fine, or imprisonment for a period not exceeding two years
4.2.4	77K	Non-compliance with an enforcement notice	A fine or imprisonment for a period not exceeding 3 years or to both such a fine or such imprisonment.

5.WHO SHOULD BE REGISTERED AS AN INFORMATION OFFICER?

5.1 Information Officer is, by virtue of their position, appointed automatically in terms of PAIA and POPIA. Digital Bridging Technologies is a Private body owned and managed by Kate Elphick a natural person who carries on the business, but only in such capacity.

5.2 Each subsidiary of a group of companies must register its Information Officer and Deputy Information Officer(s) with the Regulator.

5.3 Any power or duty authorised, in terms of paragraph 1.3(c) or 5.2 above, must be exercised or performed subject to such conditions as determined by the authorised party.

5.4 Any authorisation in terms of paragraph 1.3(c) or 5.2 above

5.4.1 must be in writing;

5.4.2 does not prohibit the person who made the authorisation from exercising the power concerned or performing the duty concerned herself.

5.6 The person authorising any person as the Information Officer of a juristic person, in terms of paragraph 1.3(c) or 5.2 above, retains the accountability and responsibility for any power or the functions authorised to that person.

5.7 Any person authorised as an Information Officer should be at an executive level or equivalent position. This means that only an employee of a private body at a level of management and above should be considered for authorisation as an Information Officer of that body.

6. DUTIES OF THE INFORMATION OFFICER

6.1 Section 55(1) of POPIA sets out the duties and responsibilities of an Information Officer which include the following: -

6.1.1 the encouragement of compliance by the Body with the conditions for the lawful processing of personal information. For example

6.1.1.1 an Information Officer may develop a policy on how employees should implement the eight (8) conditions for the lawful processing of personal information or consider issuing a circular in the case of provincial and national departments.

6.1.2 dealing with requests made to the Body pursuant to POPIA. For example

6.1.2.1 an Information Officer of a Body will be expected to render such reasonable assistance, free of charge, as is necessary to enable the requester or data subject to comply with the prescribed process for submitting a request in terms of section 18 of PAIA and section 24 of POPIA. If a requester or data subject has made any request that does not comply with the requirements of PAIA or POPIA, the Information Officer concerned may not refuse the request because of that non-compliance, unless the Information Officer has

a) notified the data subject or requester of her intention to refuse the request and stated in the notice, the reasons for the contemplated refusal, as well as her availability to assist that requester or data subject to remove the grounds for refusal;

b) given the requester or data subject a reasonable opportunity to seek such assistance;

c) as far as reasonably possible, furnished the requester or data subject with any information that would assist the making of the request in the prescribed form; and

d) given the requester a reasonable opportunity to confirm the request or alter it to comply with section 18 of PAIA or 24 of POPIA.

6.1.3 working with the Regulator in relation to investigations conducted pursuant to Chapter 6 of POPIA in relation to the body. For example

6.1.3.1 the responsible party must obtain prior authorisation from the Regulator pertaining to the following

a) processing of any unique identifiers of data subjects

i. for a purpose other than the one for which the identifier was specifically intended at collection; and

ii. with the aim of linking the information together with information processed by other responsible parties;

b) processing of information on criminal behaviour or on unlawful or objectionable conduct on behalf of third parties;

c) processing of information for the purposes of credit reporting; and

d) transfer of special personal information or the personal information of children to a third party in a foreign country that does not provide an adequate level of protection for the processing of personal information.

6.1.3.2 pending the authorisation or completion of investigation by the Regulator, or until such time the responsible party receives a notice that a more detailed investigation will not be conducted, the responsible party is prohibited from carrying out information processing. This means that processing that falls under paragraph 6.1.3.3 above is suspended pending the authorisation from the Regulator.

6.1.3.4 failure to notify the Regulator of the processing listed above is an offence and upon conviction, the responsible party will be liable to a fine or imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

6.1.4 otherwise ensuring compliance by a body with the provisions of POPIA. For example

6.1.4.1 POPIA prescribes eight (8) conditions for the lawful processing of personal information¹² by or for a responsible party and it is the responsibility of an Information Officer to ensure compliance with those conditions.

6.2 The additional duties and responsibilities of the Information Officers, in terms of regulation 4 of POPIA, are to ensure that

6.2.1 a compliance framework is developed, implemented, monitored and maintained;

6.2.2 a personal information impact assessment is done to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of personal information;

6.2.3 This compliance document constitutes a manual, monitored, maintained and made available as prescribed in sections 14 and 51 of PAIA, as amended;

6.2.4 internal measures are developed together with adequate systems to process requests for information or access thereto;

6.2.5 internal awareness sessions are conducted regarding the provisions of POPIA, regulations made in terms of POPIA, codes of conduct, or information obtained from the Regulator; and

6.2.6 upon request by any person, copies of the manual are provided to that person upon the payment of a fee to be determined by the Regulator from time to time.

6.3 The Information Officer of each public Body must annually, and in terms of section 32 of PAIA, submit to the Regulator a report regarding

6.3.1. the number of requests for access received;

6.3.2. the number of requests for access granted in full;

6.3.3. the number of requests for access granted in terms of section 46 of PAIA;

6.3.4 the number of requests for access refused in full and refused partially and the number of times each provision of PAIA was relied on to refuse access in full or partially;

6.3.5. the number of cases in which the periods stipulated in section 25(1) of PAIA were extended in terms of section 26 (1) of PAIA;

6.3.6. the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record;

6.3.7. the number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27 of PAIA;

6.3.8. the number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 (7) of PAIA.

6.4 The Regulator may, annually, request an Information Officer of a private body, in terms of section 83 of PAIA, to furnish to the Regulator with information about requests for access to records of that body.

6.5 In the case of health records, if the Information Officer is of the opinion that the disclosure of the record to the relevant person would be likely to cause serious harm to their physical or mental health, or well-being, the Information Officer may only give access to the record if the requester proves to the satisfaction of the information officer that adequate provision is made for such counselling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.

6.6 Registration of Information Officers with the Regulator is not only the prerequisite for an Information Officer to take up their duties in terms of POPIA, but is a compulsory requirement for every person identified in paragraph 5.1 above¹⁶.

6.7 The Information Officers of public bodies and heads of private bodies under PAIA will have to register to perform their duties and responsibilities in terms of POPIA.

6.8 It is a duty of the responsible party to ensure that the Information Officer is registered with the Regulator.

7. DESIGNATION OF A DEPUTY INFORMATION OFFICER

In the unlikely event that a deputy Information Officer is designated

7.1. Section 17 of PAIA provides for the designation of a Deputy Information Officer of a public body, and section 56 of POPIA extends the designation of a Deputy Information Officer for a private body.

7.2. Only employee(s) of a body can be designated as a Deputy Information Officer.

7.3. In order to render a body as accessible as reasonably possible the Information Officers of public and private bodies must designate one or more Deputy Information Officers as are necessary, depending on the structure and size of such bodies;

7.4. More than one (1) Deputy Information Officer can be designated, depending on the size, structure and the complexity of the operations of a specific body;

7.5. The decision whether or not to designate a Deputy Information Officer will depend on the size and structure of a body.

7.6. To ensure accessibility, the Information Officer of a multinational entity based outside the Republic must designate any person within the Republic of South Africa as a Deputy Information Officer.

7.7 A designation to a Deputy Information Officer must be in writing;

7.8. A person designated as a Deputy Information Officer should be afforded sufficient time, adequate resources and the financial means to devote to matters concerning POPIA and PAIA;

7.9. A Deputy Information Officer should report to the highest management office within a Body. This means that only an employee at a level of management and above should ideally be considered for designation as a Deputy Information Officer of a body;

7.10. A Deputy Information Officer should be accessible to everyone, particularly to a data subject in respect of POPIA or a requester, in terms of PAIA;

7.11. A Deputy Information Officer should have a reasonable understanding of POPIA and PAIA in order to execute his or her duties.

7.12. A Deputy Information Officer should have a reasonable understanding of the business operations and processes of a body. An employee(s) with institutional knowledge is preferred for designation as a Deputy Information Officer(s).

7.13. To ensure accessibility, the designated Deputy Information Officer(s) of a multinational entity must be based within the Republic.

8. DELEGATION OF AUTHORITY BY AN INFORMATION OFFICER TO A DEPUTY INFORMATION OFFICER

8.1. An Information Officer of both a public or private body may, subject to legislation and policies governing the employment of personnel of the body concerned, delegate any power or duty conferred or imposed on him or her to a Deputy Information Officer of that body.

8.2 Only an employee of a body can be delegated as a Deputy Information Officer.

8.3. The delegation referred to in paragraph 8.1 above must be in writing.

8.4. The delegation of any powers or duties and responsibilities to a Deputy Information Officer does not prohibit an Information Officer from exercising the powers or performing the duty that he or she has delegated to a Deputy Information Officer;

8.5. Any power, duties and responsibilities delegated to a Deputy Information Officer should be exercised or performed subject to such conditions as an Information Officer may consider necessary. Any conditions of delegation, as conferred on the Deputy Information Officer, should ensure that the body is as accessible as reasonably possible for data subjects or requesters.

8.6. An Information Officer of a body must ensure that he or she reserves his or her rights in the aforesaid delegation to

8.6.1. exercise the powers or to perform the duties and responsibilities concerned himself or herself; and

8.6.2. withdraw or amend the aforesaid delegation at any time.

8.7. An Information Officer must be aware that any right or privilege acquired or any obligation or liability incurred as a result of a delegation of any powers, duties and responsibilities is not affected by any subsequent withdrawal or amendment of the decision to delegate.

8.8. Depending of the circumstances of the case, the obligation or liability incurred as a result of any delegation of any powers, duties and responsibilities may be imposed on either the Information Officer or responsible party in so far as POPIA is concerned.

8.9 To ensure a level of accountability by a delegated Deputy Information Officer, bodies are encouraged to ensure that such duties and responsibilities or any power delegated to a Deputy Information Officer is part of his or her job description.

8.10. Despite the above-mentioned delegation of a Deputy Information Officer, an Information Officer retains the accountability and responsibility for the functions delegated to the Deputy Information Officer.

8.11. To ensure accessibility of the body, the Deputy Information Officer(s) of a multinational entity must be based within the Republic.

9. TRAINING OF INFORMATION OFFICERS / DEPUTY INFORMATION OFFICERS

An Information Officer and Deputy Information Officer(s) receive appropriate training and keep abreast of the latest developments in POPIA and PAIA. This document represents the training manual.

10. PROCEDURE FOR THE REGISTRATION OF THE INFORMATION OFFICER

10.1 An Information Officer of a body identified in paragraph 5.1 above, must complete and submit an online registration form.

10.2 The registration form requires the following key information

10.2.1 Name of the Information Officer and designation;

10.2.2 Name of the Deputy Information Officer(s), if any, as designated in terms of section 56(1) of POPIA or section 17(1) of PAIA;

10.2.3 The official postal and street address, phone, and electronic mail address of

10.2.3.1 the Information Officer, and

10.2.3.2 every Deputy Information Officer(s) designated.

11. UPDATING THE DETAILS OF AN INFORMATION OFFICER AND DEPUTY INFORMATION OFFICER(S)

11.1 A body must, if necessary, update the particulars of an Information Officer and Deputy Information Officer(s) at intervals of not more than one year.

11.2 The particulars of an Information Officer and Deputy Information Officer(s) contained in the PAIA Manual must be the same as the particulars provided to the Regulator.

12. PUBLICATION OF THE PARTICULARS OF AN INFORMATION OFFICER

In order to ensure accessibility of a body, the Regulator will make the contact details of the Information Officers and that of his or her Deputy Information Officer(s) available on its website.

13. CONTACT DETAILS OF THE REGULATOR

13.1. Manual applications for registration of Information Officers and Deputy Information Officers may be submitted to the Regulator through the following channels

13.1.1. Email: registration.IR@justice.gov.za

13.1.2. Postal: P.O Box 31533

Braamfontein

House 27 Stiemens Street Braamfontein Johannesburg 2001

14. DECLARATION OF COMPLIANCE

I Kathryn Jane Elphick, resident in Lynwood Glen, Pretoria hereby confirm that I, as the Sole Proprietor of Digital Bridging Technologies have been designated the Information Officer for said business and that I understand my rights and duties in terms of the PAIA and POPI Acts.

Dated: 09 December 2021.