

The Protection of Personal Information Bill, 2009

Introduction

Cabinet's approval of the Protection of Personal Information Bill ("the Bill") in August 2009 was greeted with a collective sigh of relief by many legal and industry experts. This watershed legislative development has been eagerly anticipated since 2003 when the South African Law Commission first released its issue paper on privacy and data protection.

The Bill's approval by Cabinet and subsequent tabling in Parliament has signified a major stride towards increased legal certainty in information security regulation in South Africa. However, there is still a lengthy constitutional process that must be followed before the legislation becomes binding on individuals and companies. In October 2009 the public was invited to submit comments on the Bill. Once these comments have been analysed and possibly incorporated into the Bill, an updated version will be submitted to the National Council of Provinces and the National Assembly for approval. It is likely that the Bill will contain further amendments before it is sent to the President for signature and then published in the Government Gazette. There are strong indications from Government that the Bill will be passed into law before the start of the FIFA World Cup tournament in South Africa in June 2010.

In the meantime, it is critical for companies to assess the information management arrangements currently in place in their businesses in order to determine how ready they are to meet the requirements of the new legislation. The results of these privacy impact assessments will help companies to begin re-aligning their strategic objectives and information management processes to ensure future compliance with the legislation. Companies will still be able to collect and use personal information. However this will have to be done within the framework prescribed in the Bill, which aims to ensure that individuals retain control of how their personal information is collected, stored, shared or used in any way by other persons or organisations.

Key implications of the Bill

Businesses increasingly rely on personal information when making decisions about potential customers, employees and even product development. Indeed, electronic communication has become an inextricable component of

contemporary business practice. The use of the internet and mobile technology for shopping and banking services has provided new sources of personal information which enable companies to make decisions about individuals based on their “electronic profiles” without properly verifying the information. This free flow of personal information also increases the threat of criminal activity related to identity theft.

The Bill attempts to address these concerns by giving effect to the core information protection principles that are applied internationally. In order to comply with these principles companies who process personal information, manually or electronically, must ensure that:

- Personal information is only collected or stored if it is necessary for or directly related to a lawful and explicitly defined purpose;
- Personal information is collected directly from the individual with the individual’s express consent;
- The individual is informed of the specific purpose for which the personal information is required and of all the intended recipients of the personal information;
- The personal information is not kept any longer than is necessary for its purpose;
- The personal information is not distributed for any other purpose without the individual’s express consent;
- Mechanisms are implemented to ensure that records containing personal information are kept accurate, up-to-date and complete;
- The individual is allowed to access the personal information at any time and request it to be corrected, changed or deleted;
- Appropriate technical and organisational measures have been taken to protect the personal information against the risk of loss, damage, destruction or unauthorised access; and
- Information Protection Officers are appointed and properly trained to oversee compliance with the legislation.

Spam and automated decision making

In addition, the Bill contains a chapter that deals specifically with unsolicited electronic communication (“spam”) and automated decision making (“electronic profiling”). This is aimed at protecting consumers from being unreasonably targeted by unfair marketing practices. In terms of this chapter if a consumer does not respond to a direct marketing invitation sent via an e-mail or a mobile text message, a company will not be allowed to contact that consumer a second time. Companies will also be prohibited from

making decisions about individuals based solely on their electronic profiles compiled through the tracking of lifestyle or spending habits.

Liability and enforcement provisions

Failure to comply with the legislation could result in exposure to civil and criminal liability, including fines and/or imprisonment of up to ten years. The responsibility for the monitoring and enforcement of compliance will rest with the Information Protection Regulator, an independent statutory body to be established once the Bill is passed into law. The success of the legislation will depend largely on how effective the Regulator will be in influencing companies to appreciate the business value of enhanced personal information protection and empowering individuals to meaningfully exercise the increased level of information control afforded to them by this landmark legislation.

For more information, please contact:

[Farzana Badat](#) Advisory, Regulatory & Compliance Services +27 (11) 647 5576

A dark blue rectangular graphic with a lighter blue horizontal bar at the top. The word "Newsletter" is written in white, bold, serif font in the center. Below it, "SOUTH AFRICA" is written in white, all-caps, sans-serif font.

Newsletter

SOUTH AFRICA

A light blue vertical rectangular bar.A dark blue vertical rectangular bar.

[Privacy & Disclaimer](#)