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TO: THE INFORMATION REGULATOR
c/o Ms M. Mphelo
E-mail: infoegcomments@justice.gov.za

**WRITTEN SUBMISSIONS ON THE DRAFT REGULATIONS OF THE INFORMATION
REGULATOR IN TERMS OF SECTION 112(2) OF THE PROTECTION OF PERSONAL
INFORMATION ACT 4 OF 2013 (POPIA)**

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EXECUTIVE SUMMARY

1. This submission on the draft Regulations published for comment by the Information Regulator in terms of section 112(2) of the Protection of Personal Information Act 4 of 2013 (POPIA) is made jointly by the Press Council of South Africa (Press Council), the South African National Editors' Forum (SANEF), Media Monitoring Africa (MMA) and the amaBhungane Centre for Investigative Journalism (amaBhungane).
2. This submission focuses on the impact and application of the provisions of the draft Regulations on the media, particularly in the light of the express journalistic exclusion contained in section 7 of POPIA. The Press Council, SANEF, MMA and amaBhungane believe in independent co-regulation of the media, involving exclusively representatives of the media and representatives of the public, as it is our firm view that any other form of regulation would threaten the independence of the media.
3. Section 7(2) of POPIA provides for a complete exemption in circumstances where a responsible party processes personal information for exclusively journalistic purposes, and is subject to a code of ethics that provides adequate safeguards for the protection of personal information. In such circumstances, the code of ethics will apply to the processing of personal information for journalistic purposes, to the exclusion of POPIA, and any alleged interference with the protection of personal information will be adjudicated in terms of the code of ethics.
4. We submit that the Press Code is a code of ethics as contemplated by section 7(2) of POPIA. As such, Press Council subscriber members are entitled to the complete exclusion, and exempted from the application of POPIA and the draft Regulations in the processing of personal information for journalistic purposes.
5. In addition to the complete exclusion in terms of section 7(2), POPIA also provides for a partial exclusion for journalists who do not subscribe to a code of ethics in section 7(1). This partial exclusion is subject to the processing of personal information being solely for the purpose of journalistic expression, to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression.
6. In order to ensure that the journalistic exclusion is made clear in the draft Regulations, the following amendments are proposed:
 - 6.1. The insertion of the following section to clarify the application of the draft Regulations:

These regulations do not apply to the processing of personal information that is excluded in terms of the Act, including—

- (1) In respect of the processing of personal information solely for the purpose of journalistic, literary or artistic expression, to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression, as contemplated in section 7(1) of the Act.**
- (2) In respect of a responsible party who processes personal information for exclusively journalistic purposes and is, by virtue of office, employment or profession, subject to a code of ethics that provides adequate safeguards for the protection of personal information, as contemplated in section 7(2) of the Act.**

- 6.2. The insertion of the following wording in respect of Regulation 5 of the draft Regulations:

These regulations do not apply to a code of ethics that provides adequate safeguards for the protection of personal information that is processed for exclusively journalistic purposes, as contemplated in section 7(2) of the Act.

- 6.3. The insertion of the following wording in respect of Regulation 7 of the draft Regulations:

- (4) Any complaint or grievance that arises against a responsible party who processes personal information for exclusively journalistic purposes, and who is subject to a code of ethics for the protection of personal information as contemplated in section 7(2) of the Act, will be adjudicated in terms of that code of ethics.**
- (5) Any complaint or grievance to the Press Council to be adjudicated in terms of the Press Code of Ethics and Conduct for South African Print and Online Media shall be made to the Press Council's Public Advocate either in person, by telephone or in writing, which includes cable, telegram, telex, SMS, e-mail, fax messages, or via the online form at <http://www.presscouncil.org.za>.**

7. In addition to these proposed amendments, further submissions are also made in relation to Regulation 4 regarding compliance manuals, and Regulation 6 regarding direct marketing.

INTRODUCTION

1. This submission on the draft Regulations published for comment by the Information Regulator in terms of section 112(2) of the Protection of Personal Information Act 4 of 2013 (POPIA) is made jointly by the Press Council of South Africa (Press Council), the South African National Editors' Forum (SANEF), Media Monitoring Africa (MMA) and the amaBhungane Centre for Investigative Journalism (amaBhungane). We appreciate the opportunity to participate in this process, and commend the willingness of the Regulator to engage the public on these complex and important issues.
2. This submission focuses on the impact and application of the provisions of the draft Regulations on the media, particularly in the light of the express journalistic exclusion contained in section 7 of POPIA. The Press Council, SANEF, MMA and amaBhungane have extensive knowledge and expertise in this area, each with distinct but interrelated roles in the media landscape.
3. Furthermore, the Press Council, SANEF, MMA and amaBhungane believe in independent co-regulation of the media, involving exclusively representatives of the media and representatives of the public, as it is our firm view that any other form of regulation would threaten the independence of the media. We are committed in all instances to respect and promote the fundamental rights contained in the Constitution,¹ including the rights to freedom of expression, access to information and privacy.

About the Press Council of South Africa

4. The Press Council,² with its Press Ombud and its Appeals Panel, is an independent co-regulatory mechanism set up by the print and online media to provide impartial, expeditious and cost-effective adjudication to settle disputes relating to editorial content between newspapers, magazines and online publications on the one hand, and members of the public on the other. The mechanism is based on two pillars: a commitment to freedom of expression, including freedom of the media; and to high standards in journalistic ethics and practice.
5. The Press Council has adopted, and is the custodian of, the South African Press Code of Ethics and Conduct for South African Print and Online Media (the Press Code), effective from 1 January 2016.³ The Press Code provides a guide to journalists in their daily practice of gathering and distributing news and opinion, as well as a

¹ Constitution of the Republic of South Africa, 1996.

² For more information, please see: <http://www.presscouncil.org.za/>.

³ The Press Code is accessible here: <http://www.presscouncil.org.za/ContentPage?code=PRESSCODE>.

guide to the Press Ombud and the Appeals Panel to reach decisions on complaints from the public. The Press Council's subscriber members are print and online publications involved in the production of editorial content, and subscribe to the Constitution of the Press Council, the Press Code and its Complaints Procedures.

6. A list of the Press Council's subscriber members is attached to this submission as "**Annexure A**".

About the South African National Editors' Forum

7. SANEF⁴ is a non-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media, and is a constituent member of the Press Council. SANEF is committed to championing the right to freedom of expression, and promoting quality, ethics and diversity in the South African media, with a vision to being a resource and catalyst for the achievement of its vision through debate and action programmes.
8. SANEF's chief aim is to be a representative and credible voice of journalism in society, to facilitate diversity in newsrooms, to enable a culture of real debate, and to promote free and independent journalism of the highest standard. Moreover, SANEF stands in defence of media freedom, and campaigns for the elimination of legislation and commercial pressures that restrict the media. SANEF also supports the establishment of editors' forums across the continent.

About Media Monitoring Africa

9. MMA is a non-profit organisation that promotes democracy and a culture where media and the powerful respect human rights and encourage a just and fair society. MMA acts in a watchdog role to promote ethical and fair journalism that supports human rights.
10. MMA's vision is a just and fair society empowered by a free, responsible and quality media. Through a human rights-based approach, MMA aims to promote the development of:
 - 10.1. Media that is transparent, diverse, ethical and accountable to its audiences;
 - 10.2. Critical and constructive communications by the powerful; and
 - 10.3. Informed, engaged and connected citizenry.

⁴ For more information, please see: <http://www.sanef.org.za/>.

11. MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical and critical media culture. MMA has over 20 years of experience in media monitoring and direct engagement with media, civil society organisations and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of its projects, it seeks to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.

About the amaBhungane Centre for Investigative Journalism

12. The amaBhungane Centre for Investigative Journalism NPC⁵ is a non-profit company founded to develop investigative journalism in the public interest. This is done through the best practice of investigations, assisting others to do the same, and helping to secure the information rights that investigate journalists need to do their work.
13. Through these activities, amaBhungane seeks to promote a free media, and an open, accountable and just democracy. amaBhungane works to produce stories that are accurate, fair and in the public interest, and to expose wrongdoing and hold power to account. amaBhungane is governed by a board of directors, and is a subscriber member of the Press Council.

Overview of this submission

14. As mentioned above, this submission focuses on the impact and application of the provisions of the draft Regulations on the media. Cognisant of the particular dispensation that POPIA creates for the processing of personal information for journalistic purposes, and the exclusion that it provides in this regard, this submission is structured as follows:
 - 14.1. **First**, we deal with the approach that POPIA takes to the media, and particularly in respect of the journalistic exclusion contained in section 7;
 - 14.2. **Second**, we make submissions on the application of the draft Regulations to the media;
 - 14.3. **Third**, we make submissions on regulation 4, in particular in relation to the compilation of information manuals;
 - 14.4. **Fourth**, we make submissions on regulation 5, and the interplay between section 7 of POPIA and regulation 5;
 - 14.5. **Fifth**, we make submissions on regulation 6 and our concerns regarding the practicability of the approach taken regarding direct marketing; and

⁵ For more information, please see: <http://amabhungane.co.za/>.

14.6. **Sixth**, we make submissions on regulation 7 regarding the submission of complaints or grievances, and the role to be played by the Press Council, together with its Press Ombud and its Appeals Panel.

15. We deal with each of these in turn below.

THE JOURNALISTIC EXCLUSION IN TERMS OF SECTION 7 OF POPIA

16. Section 7 of POPIA provides a particular dispensation for the media, and states that:⁶

- (1) **This Act does not apply to the processing of personal information solely for the purpose of journalistic, literary or artistic expression** to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression.
- (2) **Where a responsible party who processes personal information for exclusively journalistic purposes is, by virtue of office, employment or profession, subject to a code of ethics that provides adequate safeguards for the protection of personal information, such code will apply to the processing concerned to the exclusion of this Act** and any alleged interference with the protection of the personal information of a data subject that may arise as a result of such processing **must be adjudicated as provided for in terms of that code.**
- (3) In the event that a dispute may arise in respect of whether adequate safeguards have been provided for in a code as required in terms of subsection (2) or not, regard may be had to—
 - (a) the special importance of the public interest in freedom of expression;
 - (b) domestic and international standards balancing the—
 - (i) public interest in allowing for the free flow of information to the public through the media in recognition of the right of the public to be informed; and
 - (ii) public interest in safeguarding the protection of personal information of data subjects;
 - (c) the need to secure the integrity of personal information;
 - (d) domestic and international standards of professional integrity for journalists; and
 - (e) the nature and ambit of self-regulatory forms of supervision provided by the profession.

17. We submit that the Press Code is a code of ethics as contemplated by section 7 of POPIA. We recognise the importance of the right to privacy, and the need in appropriate circumstances to balance the right to privacy with freedom of expression and access to information. As such, as it currently stands, the Press Code

⁶ Our emphasis.

already addresses “Privacy, dignity and reputation” in section 3, and “Protection of personal information” in section 4. Furthermore, the Press Council, together with our members and partners, are in the process of reviewing the Press Code to ensure that there are adequate safeguards for the protection of personal information, taking into account the factors listed in section 7(3) of POPIA.

18. Notably, not all members of the print and online media are subscriber members of the Press Council, although it is open to all to seek to do so. For ease of reference, we use the nomenclature of “**subscribers**” to refer to publications and members of the media that subscribe to a code of ethics as contemplated in section 7(2) of POPIA (including the subscriber members of the Press Council, as listed in Annexure A, that subscribe to the Press Code); and “**non-subscribers**” to refer to publications and members of the media that do not subscribe to a code of ethics as contemplated in section 7(2) of POPIA.
19. This distinction is relevant to understanding the dispensation that POPIA creates for journalists.
 - 19.1. Section 7(1) of POPIA provides an overarching exclusion, and applies to both subscribers and non-subscribers who are involved in “the processing of personal information solely for the purpose of journalistic ... expression to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression”.
 - 19.2. The distinction between subscribers and non-subscribers only arises in section 7(2). This section provides three requirements that must be met in order to rely on the journalistic exclusion: (i) the responsible party is processing the personal information for exclusively journalistic purposes; (ii) the responsible party is subject to a code of ethics; and (iii) and the code of ethics provides adequate safeguards for the protection of personal information.
 - 19.3. The threshold set in respect of the safeguards to be contained in the code of ethics is that of adequacy, taking into consideration the exigencies of the media and the work of journalists; it does not require a direct replication of the contents of POPIA, which would render the exclusion redundant. Section 7(3) of POPIA sets out the factors to be taken into consideration when assessing the adequacy of the safeguards in question, including the special importance of the public interest in freedom of expression.
 - 19.4. In circumstances in which these requirements are met, section 7(2) provides for two consequences. The first is that the code of ethics will apply to the processing of personal information for journalistic purposes, to the

exclusion of POPIA. Allied to this, the second consequence that flows is that any alleged interference with the protection of personal information must be adjudicated in terms of the code of ethics. Section 7 is an important provision, and essential to safeguarding the role and independence of the media, the right to freedom of expression, as well as the right to privacy.

19.5. The import of these provisions is that POPIA grants a complete exclusion for subscribers, and a partial exclusion for non-subscribers. The application of the partial exclusion to non-subscribers is subject to the exclusion being necessary to reconcile the right to privacy with the right to freedom of expression, as a matter of public interest. The complete exclusion applicable to subscribers is not circumscribed in the same way.

19.6. The application of the exclusion to both subscribers and non-subscribers, albeit differently, is borne out by the drafting history of section 7:

19.6.1. The version of the Protection of Personal Information Bill under discussion in August 2012 before the Portfolio Committee on Justice and Constitutional Development (the Portfolio Committee) provided as follows:

“Section 6: Exclusions

(1) This Act does not apply to the processing of personal information—

...

(d) solely for the purpose of literary or artistic expression, to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression ...”

“Section 7: Exclusion for journalistic purposes

(1) This Act does not apply to the processing of personal information for exclusively journalistic purposes by responsible parties who are subject to, by virtue of office, employment or profession, a code of ethics that provides adequate safeguards for the protection of personal information.

(2) In the event that a dispute may arise in respect of whether adequate safeguards have been provided for in a code as required in terms of subsection (2) or not, regard may be had to—

(a) the special importance of the public interest in freedom of expression;

(b) domestic and international standards balancing the—

(i) public interest in allowing for the free flow of information to the public through the media in

recognition of the right of the public to be informed; and

- (ii) public interest in safeguarding the protection of personal information of data subjects;
- (c) the need to secure the integrity of personal information;
- (d) domestic and international standards of professional integrity for journalists; and
- (e) the nature and ambit of self-regulatory forms of supervision provided by the profession.”

19.6.2. As appears from this earlier draft, there was no overarching exclusion that applied to journalists, as is now contained in section 7(1) of POPIA. This was later inserted on the urging of members of the media, and following a series of engagements with the Portfolio Committee, in an effort to ensure that non-subscribers – including, for example, freelance journalists – were also catered for to some extent by the journalistic exclusion under POPIA.

19.6.3. It is therefore apparent from the drafting history, as well as the discussions that took place at the time, that the insertion of journalists under the overarching exclusion in section 7(1) was a deliberate measure by the legislature to ensure that non-subscribers were also entitled to an exclusion – albeit a partial exclusion – from the application of POPIA to journalistic activities.

20. The crux, therefore, is that the dispensation created under section 7 of POPIA is that POPIA does not apply at all to the journalistic activities of subscribers, by virtue of subscribers being subject to a code of ethics that contains adequate safeguards, whilst it applies partially to non-subscribers.
21. The distinction between subscribers and non-subscribers further finds application through section 65(2) of POPIA, which distinguishes between a “code of ethics” and a “code of conduct”. The term “code of ethics” is only used in POPIA in reference to the journalistic exemption. In terms of section 65(2), non-subscribers have the option of submitting a code of conduct to the Regulator for approval, in accordance with section 60-68 under Chapter 7 of POPIA, which the Regulator is required to consider having regard to the factors listed in section 7(3)(a) to (d). Importantly, this is not similarly required for a code of ethics, such as the Press Code, from which it follows that a code of ethics is not required to be submitted to the Regulator in terms of chapter 7. The wording of section 65(2) is clear that POPIA recognises a “code of ethics” as distinct from a “code of conduct”, and does not unintentionally conflate these terms.

22. Non-subscribers may also benefit from the provisions of section 37, which provides for the Regulator to grant further exemptions. In this regard, section 37(2)(f) specifically provides for the “special importance of the interest in freedom of expression” as one of the considerations when determining whether to grant such an exemption.
23. Subscribers are not subject to the jurisdiction of the Regulator, including the complaints jurisdiction of the Regulator. Non-subscribers, on the other hand, are subject to the Regulator’s jurisdiction – although POPIA again recognises a particular dispensation for journalists in section 44(3), which provides that when determining whether there has been an interference by a non-subscriber with the protection of personal information, the Regulator is still required to have regard to the factors listed in section 7(3).
24. Further in relation to the complaints jurisdiction of the Regulator, we note that in terms of section 78(1), the Regulator is empowered to refer a complaint received to another regulatory body if it considers that the complaint relates to a matter that is more properly within the jurisdiction of that regulatory body. The Press Council, with its Press Ombud and its Appeals Panel, may be considered a regulatory body as contemplated in section 78(1). The Press Council would be in a position to adjudicate such complaints, and should be provided with such powers, resources and assistance necessary to effectively fulfil this mandate.

THE APPLICATION OF THE DRAFT REGULATIONS TO THE MEDIA

25. As set out above, section 7 of POPIA provides a complete exclusion to subscribers in the processing of information for journalistic purposes. In these circumstances, neither POPIA nor the draft Regulations will be applicable.
26. We do, however, recognise that there are instances of processing of personal information by subscribers that may not be exclusively for journalistic purposes. In this regard, responsible parties will still need to comply with the provisions of POPIA and the draft Regulations for processing that is not exclusively for journalistic purposes. Importantly, the interpretation of “journalistic purposes” should be construed broadly and purposively, with due regard to its constitutional underpinnings and the broad scope of work done by journalists.
27. Furthermore, we reiterate that non-subscribers are only granted a partial exclusion in terms of section 7(1), outside of which the provisions of POPIA apply to non-subscribers. There are several options available to non-subscribers in this regard who seek further exclusions from the application of POPIA, including to seek to subscribe to a code of ethics with adequate safeguards, to seek an exemption in

terms of section 37, or to submit a code of conduct for approval to the Regulator in terms of section 65.

28. In order to ensure that the application of the draft Regulations is clear, we propose the inclusion of the following wording in the draft Regulations in line with section 7 of POPIA:

These regulations do not apply to the processing of personal information that is excluded in terms of the Act, including—

- (1) In respect of the processing of personal information solely for the purpose of journalistic, literary or artistic expression, to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression, as contemplated in section 7(1) of the Act.**
- (2) In respect of a responsible party who processes personal information for exclusively journalistic purposes and is, by virtue of office, employment or profession, subject to a code of ethics that provides adequate safeguards for the protection of personal information, as contemplated in section 7(2) of the Act.**

SUBMISSIONS REGARDING REGULATION 4 OF THE DRAFT REGULATIONS

29. Regulation 4 sets out the duties and responsibilities of information officers, including the preparation of manuals by information officers as contemplated in regulation 4(1)(d). POPIA does not deal with any requirements for preparing such a manual in its sections; instead, this is found in the schedule of amendments in POPIA, relating to the amendments to be affected to the Promotion of Access to Information Act 2 of 2000 (PAIA).
30. We note that regulation 4(1)(d) refers to “a manual for the purpose of the Promotion of Access to Information Act and [POPIA]”. Furthermore, the schedule of amendments in POPIA provide for both the contents of the manual in terms PAIA and in terms of POPIA. However, the list in regulation 4(1)(d) only replicates the amendments as they pertain directly to POPIA, and do not include the further information that must be included in terms of PAIA.
31. We are concerned that this may cause uncertainty to a person reading the draft Regulations – without referring to the schedule of amendments in POPIA or to PAIA once amended – to give the impression that the list in regulation 4(1)(d) is the only

information that needs to be provided in the manual. Rather, in the interests of completeness, **we would propose setting out the full list of contents to be provided in the manual, as contained in the schedule of amendments to POPIA, including the categories of records of the body that are available without a person having to request access to them, and a description of all remedies available in respect of an act or failure to act by the body in question.**

32. At a practical level, it would also be helpful for the draft Regulations to provide some guidance on the timing for compliance with preparing the manuals. We note that, in respect of the requirement under PAIA to compile such a manual, the Minister of Justice and Correctional Services has exempted companies with less than 50 employees, or with an annual turnover of less than the stipulated amount, from having to comply until 31 December 2020.⁷
33. This may have the consequence of creating a disparate regime, whereby POPIA comes into force before bodies covered by the exemption are required to compile their manuals under PAIA. **It would therefore be useful for regulation 4 to give guidance on the timing for compliance with preparing the manuals, and the need to read the draft regulations together with sections 14 and 51 of PAIA.**

SUBMISSIONS REGARDING REGULATION 5 OF THE DRAFT REGULATIONS

34. Regulation 5 of the draft Regulations refers to the application by a body to the Regulator for the issue of a code of conduct. As we have addressed above, we submit that the code of conduct contemplated in regulation 5 is not the same as the code of ethics contemplated in section 7 of POPIA. It would be inimical to the Press Council's model of co-regulation and the independence of the media for the Press Council to be required to submit the Press Code to the Information Regulator or any other regulatory body for approval. Should a dispute arise as to the adequacy of the Press Code, it would be for the courts to adjudicate.
35. In line with section 65(2) of POPIA, and for the avoidance of doubt, we propose including the following wording in regulation 5:

These regulations do not apply to a code of ethics that provides adequate safeguards for the protection of personal information that is processed for exclusively journalistic purposes, as contemplated in section 7(2) of the Act.

⁷ Department of Justice and Constitutional Development, *Promotion of Access to Information Act, 2000 (Act No. 2 of 2000): Exemption of certain private bodies from compiling manual*, Government Notice No. 1091, 30 December 2011.

SUBMISSIONS REGARDING REGULATION 6 OF THE DRAFT REGULATIONS

36. Regulation 6 of the draft Regulations relates to a request for a data subject's consent for the purpose of direct marketing by means of unsolicited electronic communications. This accords with section 69(2)(b) of POPIA, which provides that "[t]he data subject's consent must be requested in the prescribed manner and form". Form 4 to the Annexure of the draft Regulations provides an application to obtain the consent of a data subject for such processing.
37. While this provision certainly seeks to achieve an important aim, we are concerned that Form 4 in its current form may be difficult to implement in practice. This is particularly so when consent may be sought online, for instance through a website, given the length of the form, the need to provide a signature, and the requirement that the form be submitted by post, facsimile or email.
38. The United Kingdom's Information Commissioner's Office (UK ICO) has published a guidance note regarding direct marketing.⁸ Specifically with regard to the consent of a data subject for the purpose of direct marketing, the UK ICO advises as follows:⁹
- 38.1. There must be some form of communication or positive action by which the individual clearly and knowingly indicates their agreement. This might involve clicking an icon, sending an email, subscribing to a service, or providing oral confirmation.

⁸ UK ICO, *Direct marketing*, 19 May 2016 (accessible at: <https://ico.org.uk/media/for-organisations/documents/1555/direct-marketing-guidance.pdf>). The following general guidance may be of interest and relevance in considering the import and ambit of direct marketing more broadly:

- The key element to the definition of direct marketing is that the material must be directed to particular individuals; as such, indiscriminate blanket marketing – for example, leaflets delivered to every house in an area, magazine inserts, or adverts shown to every person who views a website – will not therefore fall within this definition of direct marketing.
- The direct marketing rules will not apply if an organisation contacts customers to conduct genuine market research (for example the purpose is to use market research to make decisions for commercial or public policy) or contracts a research firm to do so, although they will still need to comply with the other principles of data protection.
- Direct marketing also includes promoting an organisation's aims and ideals, and applies to the promotional, campaigning and fundraising activities of political parties, charities and other not-for-profit organisations.
- There are different rules which apply for marketing to companies and marketing to individuals (which includes sole traders and some partnerships), with the general position being that marketing to companies is not as strict.
- Furthermore, the rules on calls, texts and emails are stricter than those on mail marketing, and consent must be more specific.

⁹ At pp 16-30.

- 38.2. The crucial consideration is that the individual must fully understand that their action will be taken as consent, and must fully understand exactly what they are consenting to. There must be a clear and prominent statement explaining that the action indicates consent to receive marketing messages from that organisation (including what method of communication it will use). Text hidden in a dense privacy policy or in ‘small print’ which is easy to miss would not be enough.
- 38.3. Organisations need to be able to demonstrate that consent was knowingly and freely given, clear and specific, and should keep clear records of consent, including the date of consent, the method of consent, who obtained consent, and exactly what information was provided to the person consenting.
39. The UK ICO recommends the use of use of opt-in boxes, and proposes the following example as good practice:
- Please tick if you would like to receive information about our products and any special offers by post / by email / by telephone / by text message / by recorded call**
40. Instead of Form 4, we would propose the following:
- 40.1. **Provide proposed wording for an opt-in tick box that can be used that explains precisely what the data subject is consenting to.**
- 40.2. **Provide proposed wording for further explanatory information to be provided to the data subject, in simple terms, including what is meant by “direct marketing” and “consent”.**
- 40.3. **Any proposed form should be user-friendly and practicable, taking into account how this will work on websites, mobile applications and so on. In particular, we would propose that an opt-in box with an explanatory note be the preferred approach over the draft Form 4, and should not be subject to the requirement of being signed or submitted via post, facsimile or email. In this regard, clicking a ‘submit’ button should also suffice.**

SUBMISSIONS REGARDING REGULATION 7 OF THE DRAFT REGULATIONS

41. Regulation 7 deals with the submission of a complaint or grievance to the Regulator. As a general comment, we would propose that Part I(A) of Form 5 also request details regarding the date and manner in which the data subject became aware of

the breach, as well as any information regarding the date on which the breach occurred.

42. More specifically, in accordance with section 7(2), we would propose including specific reference to the adjudication of complaints regarding the processing for exclusively journalistic purposes. In our view, it is important to ensure that this is clear, and to avoid any confusion or delays that may arise by the data subject approaching the Regulator first instead of the Press Council or other regulatory body.
43. Accordingly, we would propose the following additions to Regulation 7:
 - (4) **Any complaint or grievance that arises against a responsible party who processes personal information for exclusively journalistic purposes, and who is subject to a code of ethics for the protection of personal information as contemplated in section 7(2) of the Act, will be adjudicated in terms of that code of ethics.**
 - (5) **Any complaint of grievance to the Press Council to be adjudicated in terms of the Press Code of Ethics and Conduct for South African Print and Online Media shall be made to the Press Council's Public Advocate either in person, by telephone or in writing, which includes cable, telegram, telex, SMS, e-mail, fax messages, or via the online form at <http://www.presscouncil.org.za>.**
44. The draft Regulations may further include information regarding other complaints procedures in terms of codes of ethics contemplated in section 7(2) of POPIA.

CONCLUSION

45. We wish to reiterate our appreciation to the Regulator for the opportunity to make submissions on the draft Regulations, and for the Regulator's willingness to engage. We remain available to the Regulator to provide any further assistance in relation to the current draft Regulations, as well as any other matter pertaining to the Regulator's mandate.

46. On a final note, we are aware that while the Regulator's work is well underway, it is still unclear as to when POPIA will be fully brought into force. The draft Regulations, once finalised, can also not be brought into force until the remaining provisions of POPIA are brought into force. In the light of the importance of POPIA and the concerns regarding the proliferation of data breaches, both domestically and abroad, we therefore urge the functionaries responsible for bringing the remaining provisions into force to do so as a matter of urgency and public importance.

**PRESS COUNCIL OF SOUTH AFRICA
SOUTH AFRICAN NATIONAL EDITORS' FORUM
MEDIA MONITORING AFRICA
AMABHUNGANE CENTRE FOR INVESTIGATIVE JOURNALISM**

Johannesburg, 7 November 2017

ANNEXURE A: LIST OF PRESS COUNCIL SUBSCRIBER MEMBERS

	Print	Online
CURRENT MEMBERS		
Customer Name: 24.com		Online
news24.com		Online
sport24.co.za		Online
netwerk24.com		Online
fin24.com		Online
channel24.co.za		Online
Kick Off South Africa		Online
Health24.com		Online
Huisgenoot		Online
dailysun.co.za		Online
food24.com		Online
Wheels24.co.za		Online
Drum		Online
parent24.com		Online
You		Online
son.co.za		Online
Sarie		Online
24.com		Online
Landbou		Online
litnet.co.za		Online
truelove.co.za		Online
media24.com		Online
Movemag.co.za		Online
Customer Name: ABN PUBLISHERS		
cnbcafrica.com		Online
Customer Name: AFRICAN REPORTER	Print	
Customer Name: ALBERTON RECORD	Print	
Customer Name: ALEX NEWS	Print	
Customer Name: ASSOCIATION INDEPENDENT PUBLISHERS		
"O" Oprah Magazine	Print	
Cosmopolitan	Print	
Good housekeeping	Print	
House and Leisure	Print	
Marie Claire	Print	
cosmopolitan.co.za		Online
goodhousekeeping.co.za		Online
marieclaire.co.za		Online
houseandleisure.co.za		Online
womenonwheels.co.za		Online
Customer Name: BALLYHOO MEDIA		
Nubian Bride	Print	
Customer Name: BARBERTON TIMES	Print	
Customer Name: BEDFORDVIEW/EDENVA	Print	
Customer Name: BEELD	Print	
Customer Name: BENONI CITY TIMES	Print	
Customer Name: BEREA MAIL	Print	

Written Submissions on the Draft Regulations of the Information Regulator

Customer Name: BOKSBURG ADVERTISER	Print	
Customer Name: BOSVELDER	Print	
Customer Name: BRAKPAN HERALD	Print	
Customer Name: BREEDERIVIER GAZETTE	Print	
Customer Name: BURGER, DIE	Print	
Customer Name: CAPE MEDIA CORPORATION		
Leadership	Print	
Explore South Africa	Print	
Leaders in Wellness (formerly "Leadership in HIV/Aids")	Print	
Opportunity	Print	
Service (Leadership In Local Government)	Print	
Black Business Quarterly	Print	
The Project Manager	Print	
Road Ahead, The	Print	
Customer Name: CAPRICORN VOICE	Print	
Customer Name: CARLETONVILLE HERALD	Print	
Customer Name: CHATSWORTH RISING	Print	
Customer Name: CHIAWELO URBAN NEWS	Print	
Customer Name: CITIZEN, THE	Print	
Customer Name: CITY PRESS	Print	
Customer Name: CITY VISION	Print	
Customer Name: COMARO CHRONICLE	Print	
Customer Name: CT MEDIA		
soccerladuma.co.za		Online
Customer Name: CTP LIMITED		
Bona	Print	
Essentials	Print	
Farmer's Weekly	Print	
Food and Home Entertaining	Print	
Living and Loving	Print	
People	Print	
Rooi Rose	Print	
SA Country Life	Print	
SA Garden and Home	Print	
Vroue Keur	Print	
Woman and Home	Print	
Your Family	Print	
citizen.co.za		Online
rekordeast.co.za		Online
rekordcenturion.co.za		Online
lowvelder.co.za		Online
fourwaysreview.co.za		Online
mobserver.co.za		Online
kemptonexpress.co.za		Online
zululandobserver.co.za		Online
farmersweekly.co.za		Online
krugersdorpnews.co.za		Online
rekordmoot.co.za		Online
roodepoortrecord.co.za		Online
georgeherald.com		Online
albertonrecord.co.za		Online
risingsunchatsworth.co.za		Online

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rekordnorth.co.za		Online
bona.co.za		Online
sandtonchronicle.co.za		Online
getitonline.co.za		Online
southcoastherald.co.za		Online
rosebankkillarneygazette.co.za		Online
bedfordviewedenvalenews.co.za		Online
benonicitytimes.co.za		Online
boksburgadvertiser.co.za		Online
witbanknews.co.za		Online
highwaymail.co.za		Online
northglennews.co.za		Online
randburgsun.co.za		Online
brakpanherald.co.za		Online
southcoastsun.co.za		Online
ridgetimes.co.za		Online
vrouekeur.co.za		Online
newcastleadvertiser.co.za		Online
rooirose.co.za		Online
knysnaplettherald.com		Online
ladysmithgazette.co.za		Online
randfonteinherald.co.za		Online
phoenixsun.co.za		Online
springsadvertiser.co.za		Online
germistoncitynews.co.za		Online
mosselbayadvertiser.com		Online
midrandreporter.co.za		Online
mpumalanganews.co.za		Online
bereamail.co.za		Online
alexnews.co.za		Online
comarochronicle.co.za		Online
northeasterntribune.co.za		Online
bloemfonteincourant.co.za		Online
capricornreview.co.za		Online
northcliffmelvilletimes.co.za		Online
southlandssun.co.za		Online
gardenandhome.co.za		Online
southerncourier.co.za		Online
oudtshoorncourant.com		Online
steelburgernews.co.za		Online
roodepoortnorthsider.co.za		Online
livingandloving.co.za		Online
northernnatalcourier.co.za		Online
risingsunoverport.co.za		Online
foodandhome.co.za		Online
suidkaapforum.com		Online
peoplemagazine.co.za		Online
vaalweekblad.com		Online
potchefstroomherald.co.za		Online
tembisan.co.za		Online
essentials.co.za		Online
highvelder.co.za		Online

vryheidherald.co.za		Online
countrylife.co.za		Online
womanandhomemagazine.co.za		Online
risingsunlenasia.co.za		Online
letabaherald.co.za		Online
yourfamily.co.za		Online
heidelbergnigelheraut.co.za		Online
sedibengster.com		Online
Customer Name: DAILY SUN	Print	
Customer Name: DALLER	Print	
Customer Name: DIEPKLOOF URBAN NEWS	Print	
Customer Name: DISTRICT MAIL / DISTRIKSPOS	Print	
Customer Name: DOBSONVILLE URBAN NEWS	Print	
Customer Name: ECHO, THE	Print	
Customer Name: EIKESTADNUUS	Print	
Customer Name: ELDORADO PARK URBAN NEWS	Print	
Customer Name: ENTREPRENEUR MEDIA SA (PTY)LTD		
entrepreneurmag.co.za		Online
Customer Name: eSAT TV (PTY)LTD		
etv.co.za		Online
eNCA News Android App		Online
eNCA News iOS App		Online
enca.com		Online
Customer Name: ESTCOURT & MIDLAND NEWS	Print	
Customer Name: EXPRESS	Print	
Customer Name: FOURWAYS REVIEW	Print	
Customer Name: GERMISTON CITY NEWS	Print	
Customer Name: GOVERNMENT COMMUNICATIONS (GCIS)		
Public Sectors Manager Magazine	Print	
Customer Name: HEIDLEBURG / NIGEL HERAUT	Print	
Customer Name: HELDERPOS / HELDERMAIL	Print	
Customer Name: HERMANUS TIMES	Print	
Customer Name: amaBHUNGANE CENTRE FOR INVESTIGATIVE JOURNALISM NPC amaBhungane		Online
Customer Name: HIGBURY SAFIKA MEDIA (PTY) LTD		Online
m.sarugbymag.co.za		Online
sarugbymag.co.za		Online
Customer Name: HIGHVELD HERALD / HOVELDER	Print	
Customer Name: HIGHWAY MAIL	Print	
Customer Name: HOLD THE BACK PAGE (PTY) LTD		
Amakhosi Magazine	Print	
Customer Name: INDEPENDENT NEWSPAPERS		
Customer Name: INDEX PUBLICATIONS CC T/A HABITAT		
Habitat	Print	
Customer Name: ISIKO MEDIA PTY LTD		
Elle	Print	
Elle Decoration	Print	
Customer Name: JABAVU URBAN NEWS	Print	
Customer Name: JOBURG EAST EXPRESS	Print	
Customer Name: KEMPTON EXPRESS	Print	

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Customer Name: KNYSNA PLETT HERALD	Print	
Customer Name: KOUGA EXPRESS	Print	
Customer Name: KROONNUUS	Print	
Customer Name: KRUGERSDORP NEWS	Print	
Customer Name: LADYSMITH GAZETTE	Print	
Customer Name: LAW SOCIETY OF SOUTH AFRICA		
De Rebus	Print	
Customer Name: LONEHILL TRADING (PTY) LTD		
Gardener, The	Print	
Tuiner, Die	Print	
Customer Name: LOWVELDER, THE / DIE LAEVELDER	Print	
Customer Name: MAIL & GUARDIAN		
mg.co.za		Online
thoughtleader.co.za		Online
Customer Name: MALUTI	Print	
Customer Name: MARITZBURG ECHO	Print	
Customer Name: MARITZBURG FEVER	Print	
Customer Name: MEADOWLANDS URBAN NEWS	Print	
Customer Name: MEDIA 24		
Weg/Ry (Drive Out)	Print	
Top Car/Top Motor	Print	
Your Pregnancy	Print	
Bicycling	Print	
SA Cricket	Print	
Sowetan Soccer Magazine	Print	
Explore South Africa	Print	
Weg Kuierkos	Print	
Weg Namibie/Go Namibia	Print	
Weg/Sleep	Print	
Women's Health	Print	
Fairlady Bride	Print	
Nubian Bride	Print	
SA Wedding Album	Print	
Sarie Bruid	Print	
True Love Bride	Print	
Wedding Inspirations	Print	
Saltwater Girl	Print	
Seventeen	Print	
Built	Print	
Earthworks	Print	
Environmental Management	Print	
Leading Architect & Design	Print	
Sales Guru	Print	
Leaders in Wellness (formerly "Leadership in HIV/Aids")	Print	
LMS	Print	
Medical Chronicle	Print	
Mims Guide To Otc Products	Print	
Pedmed	Print	
Analytical Reporter	Print	
Opportunity	Print	
Service (Leadership In Local Government)	Print	
Brainstorm	Print	

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I Week	Print	
African Decisions	Print	
Black Business Quarterly	Print	
Business Brief	Print	
The Project Manager	Print	
Prive	Print	
JSE	Print	
Mercedes	Print	
Plascon Spaces (Name Change)	Print	
Good Taste	Print	
Taste (Woolworths)	Print	
De Rebus	Print	
Tax Talk	Print	
Wits Business School Journal	Print	
AA Traveler/AA Reisiger	Print	
Africa Geographic	Print	
Hire SA	Print	
MDR-MIMS Desk reference	Print	
Mims Fees	Print	
Think Sales	Print	
Edgars Club Magazine	Print	
Road Ahead, The	Print	
Concrete Trends	Print	
Network	Print	
Sensitive Midwifery	Print	
Dish Compact	Print	
Magic	Print	
Siyasiza	Print	
Khuluma	Print	
Mango Juice	Print	
JD Group Club Magazines (A)	Print	
JD Group Club Magazines (B)	Print	
Discovery	Print	
Obrigado (Vida Obrigado)	Print	
Men's Health		Online
Runner's World		Online
Women's Health		Online
Bicycling		Online
topgear.co.za		Online
FrontShop		Online
Bloemnuus	Print	
Breederivier Gazette	Print	
City Vision (Khayalitsha)	Print	
City Vision (Langa/Gugulethu)	Print	
Echo, The	Print	
Express	Print	
Helderpos Gazette	Print	
Kouga Express	Print	
Kroonnuus	Print	
Maluti	Print	
Maritzburg Fever (formaly Mirror The)	Print	
Noordkaap	Print	

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Noordwes Gazette	Print	
PE Express	Print	
People s Post Athlone	Print	
People s Post City Edition	Print	
People s Post Claremont/Rondebosch	Print	
People s Post Constantia/Wynberg	Print	
People s Post False Bay	Print	
People s Post Grassy Park	Print	
People s Post Landsdowne	Print	
People s Post Retreat	Print	
Sasolburg Ster	Print	
Swartlander Monitor	Print	
Theewaterkloof Gazette (formerly Caledon Kontreinuus)	Print	
Tygerburger Bellville	Print	
Tygerburger Brackenfell	Print	
Tygerburger Durbanville	Print	
Tygerburger Eersterivier/Blue Downs	Print	
Tygerburger Elsiesrivier	Print	
Tygerburger Goodwood	Print	
Tygerburger Kraaifontein	Print	
Tygerburger Kuilsrivier	Print	
Tygerburger Milnerton	Print	
Tygerburger Parow	Print	
Tygerburger Ravensmead/Belhar	Print	
Tygerburger Table View	Print	
UD News	Print	
Vanderbijlpark Ster	Print	
Vereeniging Ster	Print	
Vista	Print	
Weskus Nuus	Print	
Maritzburg Echo	Print	
Parys Gazette	Print	
People s Post Mitchells Plain	Print	
People s Post Woodstock	Print	
Bosvelder	Print	
Capricorn Voice	Print	
Carletonville Herald	Print	
District Mail	Print	
Eikestadnuus	Print	
Hermanus Times	Print	
Paarl Post	Print	
Potchefstroom Herald	Print	
Vaalweekblad	Print	
Vrystaat	Print	
Weslander, The	Print	
Worcester Standard & Advertiser	Print	
Beeld	Print	
Burger, Die	Print	
City Press	Print	
Daily Sun	Print	
Rapport	Print	
Son, Die	Print	

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Sunday Sun	Print	
Volksblad, Die	Print	
Witness, The	Print	
Weekend Witness, The	Print	
Customer Name: MID SOUTH COAST MAIL	Print	
Customer Name: MIDDELBURG OBSERVER	Print	
Customer Name: MIDRAND REPORTER	Print	
Customer Name: MPUMALANGA NEWS	Print	
Customer Name: NEWCASTLE & DISTRICT ADVERTISER	Print	
Customer Name: NOORDKAAP	Print	
Customer Name: NOORDWES GAZETTE	Print	
Customer Name: NORTH EASTERN TRIBUNE	Print	
Customer Name: NORTHCLIFF & MELVILLE TIMES	Print	
Customer Name: NORTHERN NATAL COURIER	Print	
Customer Name: NORTHGLEN NEWS	Print	
Customer Name: NORTHSIDE CHRONICLE	Print	
Customer Name: ORLANDO URBAN NEWS	Print	
Customer Name: OUDTSHOORN COURANT	Print	
Customer Name: OVERPORT RISING SUN	Print	
Customer Name: PAARL POST (PTY) LTD	Print	
Customer Name: PE EXPRESS	Print	
Customer Name: PEOPLE'S POST	Print	
Customer Name: PIMVILLE URBAN NEWS	Print	
Customer Name: PROTEA URBAN NEWS	Print	
Customer Name: QUEENSBURG NEWS	Print	
Customer Name: RANDBURG SUN	Print	
Customer Name: RANDFONTEIN HERALD	Print	
Customer Name: RAPPORT	Print	
Customer Name: REKORD CENTURION	Print	
Customer Name: REKORD MAMELODI	Print	
Customer Name: REKORD MOOT	Print	
Customer Name: REKORD NOORD	Print	
Customer Name: REKORD NOWETO	Print	
Customer Name: REKORD OOS / EAST	Print	
Customer Name: REKORD SENTRAAL / CENTRAL	Print	
Customer Name: REKORD WESNUUS / WEST NEWS	Print	
Customer Name: RIDGE TIMES	Print	
Customer Name: RISING SUN LENASIA	Print	
Customer Name: ROODEPOORT RECORD	Print	
Customer Name: ROSEBANK KILLARNEY GAZETTE	Print	
Customer Name: SANDTON CHRONICLE	Print	
Customer Name: SARP UITGEWERS	Print	
Customer Name: SASOLBURG STER	Print	
Customer Name: SEDIBENG STER	Print	
Customer Name: SON (DAILY)	Print	
Customer Name: SOUTH CAPE FORUM	Print	
Customer Name: SOUTH COAST HERALD	Print	
Customer Name: SOUTH COAST SUN	Print	
Customer Name: SOUTHERN COURIER	Print	
Customer Name: SPRINGS/ BRAKPAN ADVE	Print	
Customer Name: STEELBURGER	Print	
Customer Name: STREEKNUUS	Print	

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Customer Name: SUNDAY SUN	Print	
Customer Name: SWARTLAND GAZETTE	Print	
Customer Name: TEMBISAN	Print	
Customer Name: THE BIG ISSUE	Print	
Customer Name: THE DAILY MAVERICK (PTY) LTD		
dailymaverick.co.za		Online
Customer Name: THE WEDDING EXPO	Print	
Customer Name: THEEWATERKLOOF GAZETTE	Print	
Customer Name: THINK SALES CORPORATION (PTY)LTD		
Think Sales	Print	
Customer Name: TIMES OF LADYSMITH INC	Print	
Customer Name: TISO BLACKSTAR GROUP PROPRIETARY LIMITED		
Your Family	Print	
Cosmopolitan	Print	
Engineering News	Print	
Good housekeeping	Print	
House and Leisure	Print	
Marie Claire	Print	
PC Format	Print	
Skyways	Print	
Succeed Magazine	Print	
timeslive.co.za		Online
sowetanlive.co.za		Online
bdlive.co.za		Online
sundayworld.co.za		Online
heraldlive.co.za		Online
rdm.co.za		Online
dispatchlive.co.za		Online
financialmail.co.za		Online
bookslive.co.za		Online
sahomeowner.co.za		Online
thhomechannel.co.za		Online
ignitionlive.co.za		Online
Business Day	Print	
Daily Dispatch	Print	
Saturday Dispatch	Print	
Herald, The	Print	
Sowetan	Print	
Sunday Times	Print	
Sunday World	Print	
Weekend Post on Saturday	Print	
Times, The	Print	
Representative	Print	