



## **PROTECTION OF PERSONAL INFORMATION AND RETENTION OF DOCUMENTS POLICY**

### **1. INTRODUCTION**

- 1.1. Mokoduo Erasmus Davidson Incorporated (“MED”) is a law firm specializing in personal injury and medical negligence law. This policy applies to business of MED and applies to all employees of MED.
- 1.2. MED is a responsible party in respect of personal information and special personal information that it holds and MED determines the purpose of and means for processing that personal information.
- 1.3. The Purpose of this policy is to enable MED to:
  - 1.3.1. Comply with the law in respect of personal information it holds about its employees, clients, suppliers, experts, service providers, and any other data subject;
  - 1.3.2. Protect MED employees and clients, and any other data subject about whom personal information is held;
  - 1.3.3. Protect MED from the consequences of a breach of its responsibilities under POPI.

### **2. DEFINITIONS**

- 2.1. “BCEA” means the Basic Conditions of Employment Act 75 of 1997.
- 2.2. “Client” means any natural and/or juristic person who contacts MED for the provision of legal services, whether or not a formal mandate is concluded with MED, and includes potential, past and existing clients.
- 2.3. “Competent person” means “competent person” as defined in section 1 of POPI.
- 2.4. “Data subject” means “data subject” as defined in section 1 of POPI and includes employees of MED, clients of MED, suppliers, experts and service providers of MED.
- 2.5. “EEA” means the Employment Equity Act 55 of 1998.

- 2.6. “FICA” means the Financial Intelligence Centre Act 38 of 2001.
- 2.7. “ITA” means the Income Tax Act 58 of 1962.
- 2.8. “LPA” means the Legal Practice Act 28 of 2014.
- 2.9. “LRA” means the Labour Relations Act 66 of 1995.
- 2.10. “MED” means Mokoduo Erasmus Davidson Incorporated, registration number 2009/007236/21, with registered address at 10<sup>th</sup> Floor, Bedford Office Towers, Smith Road, Bedfordview 2007.
- 2.11. “Operator” means “operator” as defined in section 1 of POPI.
- 2.12. “Quality” when referring to a record of personal information means that the record is complete, accurate, not misleading and up to date.
- 2.13. “PAIA” means the Promotion of Access to Information Act 2 of 2000.
- 2.14. “Personal information” means “personal information” as defined in section 1 of POPI.
- 2.15. “POPI” means the Protection of Personal Information Act 4 of 2013.
- 2.16. “Processing” means “processing” as defined in section 1 of POPI.
- 2.17. “Special personal information” means “special personal information” as defined in section 26 of POPI.
- 2.18. “UIA” means Unemployment Insurance Act 63 of 2002.
- 2.19. “VAT Act” means the Value-Added Tax Act 89 of 1991.

### **3. APPLICATION AND SCOPE**

- 3.1. This policy will apply to the processing by MED of all personal information of a data subject.
- 3.2. This policy will apply to:
  - 3.2.1. All branches of MED, including the Johannesburg, Pretoria, Durban, Phuthaditjhaba, Bloemfontein and Nelspruit branches, all employees, including directors and permanent, contract and temporary employees; and
  - 3.2.2. Any operator who processes personal information on behalf of any of the MED branches.

### **4. INFORMATION OFFICER**

- 4.1. The information officer of MED is:

Name:	Yagaspery
Surname:	Doolabh

Business address: Bedford Centre Office Towers, Smith Road, Bedford Gardens,  
Bedford View

Email address: [lorrained@medlaw.co.za](mailto:lorrained@medlaw.co.za)

Telephone number: 0800 633 529

Fax number: 086 570 9781

Cell Number: 084 503 4784

4.2. The deputy information officer of MED is:

Name: Merle

Surname: Hart

Business address: Bedford Centre Office Towers, Smith Road, Bedford Gardens,  
Bedford View

Email address: [accounts@medlaw.co.za](mailto:accounts@medlaw.co.za)

Telephone number: 0800 633 529

Fax number: 086 570 9781

Cell Number: 082 834 4999

4.3. The duties and responsibilities of the information officer and deputy are as follows:

- 4.3.1. to develop and maintain this policy in line with any amendments to POPI and its regulations and any notices issued under POPI from time to time;
- 4.3.2. to ensure that POPI training takes place for relevant employees of MED;
- 4.3.3. to ensure that the privacy policy of the firm is published;
- 4.3.4. to handle requests from data subjects for access to personal information held by MED;
- 4.3.5. where necessary to approve unusual or controversial disclosures of personal information held by MED;
- 4.3.6. where necessary to approve contracts or mandates entered into between MED and any operators responsible for processing personal information held by MED;
- 4.3.7. to ensure that operators processing substantial amounts of personal information held by MED are provided with a copy of this policy or undertake to comply with POPI;
- 4.3.8. to ensure that appropriate policies and controls are in place to ensure the accuracy and quality of personal information processed by MED insofar as that is expedient and financially viable;

- 4.3.9. to authorise, approve and ensure the deletion or destruction of records of personal information when files are destroyed and keep a record of destroyed files;
  - 4.3.10. to periodically review MED's processing practices, including physical security measures, to ensure that MED keeps abreast of good practice insofar as this is affordable for the firm;
  - 4.3.11. to keep a register of any security breaches known to the firm which results in the unauthorized or unlawful access to and processing of personal information held by MED;
  - 4.3.12. to manage any security breach which may occur and of which the firm is aware; and
  - 4.3.13. to handle all interactions with the Information Regulator.
- 4.4. The information officer is entitled to delegate his/her duties under this policy to the deputy information officer or any employee of MED, however the information officer shall ensure that such duty so delegated has been completed by the deputy information officer or employee.
  - 4.5. Consideration will be given when necessary to the re-appointment or replacement of the information officer and deputy information officer.
  - 4.6. Re-appointment or replacement of the information officer or deputy information officer will be authorised by the Directors of MED.

## 5. PROCESSING LIMITATION (SECTIONS 9 - 12, 15 AND 17 - 18 OF POPI)

- 5.1. MED shall collect and process personal information in a manner which is lawful and which does not unreasonably infringe the privacy of the data subject, taking into consideration the relationship of trust and confidentiality that exists between attorneys and their clients, and MED's obligation to act in the best interests of its clients.
- 5.2. MED shall only collect and process personal information in a manner which is adequate, relevant and not excessive, having due regard to the purpose for which it is being processed.
- 5.3. MED shall not further process personal information in a manner which is incompatible with the purpose, or any similar or ancillary purpose, for which it was originally processed, unless:
  - 5.3.1. specific consent to do so has been obtained from the data subject;
  - 5.3.2. the information is available or derived from a public record or has deliberately been made public by the data subject;
  - 5.3.3. further processing is necessary to comply with an obligation imposed by law;

- 5.3.4. further processing is necessary for the purposes of litigation, whether commenced or reasonably contemplated; or
- 5.3.5. further processing is necessary to enforce or protect a right or a legitimate interest of the data subject.

5.4. Collection of Personal Information including Special Personal Information

- 5.4.1. In conducting its business, MED collects and processes personal information, including special personal information, of data subjects, including its employees, clients, suppliers, experts and service providers, as required for the purposes of providing legal services to its clients and conducting its business.
- 5.4.2. Examples of personal information collected by MED includes:
  - 5.4.2.1. Names;
  - 5.4.2.2. Identity numbers;
  - 5.4.2.3. Income tax reference numbers;
  - 5.4.2.4. Addresses;
  - 5.4.2.5. Telephone numbers;
  - 5.4.2.6. Email addresses;
  - 5.4.2.7. Employment information; and
  - 5.4.2.8. Medical records
- 5.4.3. MED shall only collect and process personal information, including special personal information, with the consent of the data subject or competent person, where the data subject is a child, unless the collection and processing of personal information is necessary or expedient:
  - 5.4.3.1. to carry out actions for the conclusion or performance of a contract or mandate to which the data subject is a party;
  - 5.4.3.2. to comply with an obligation imposed by law on MED;
  - 5.4.3.3. to protect or pursue a legitimate interest of the data subject; or
  - 5.4.3.4. to pursue or maintain the legitimate interests of MED or a third party to whom the information is supplied.
- 5.4.4. When collecting and processing special personal information, MED shall comply with the provisions of section 27 to 33 of POPI and obtain the specific consent of the data

subject, unless the collection and processing of special personal information is necessary or expedient:

5.4.4.1. to establish, exercise or defend a right or obligation in law;

5.4.4.2. to comply with an obligation of international public law;

5.4.4.3. to protect or pursue a legitimate interest of the data subject;

5.4.4.4. to pursue or maintain the legitimate interests of MED or a third party to whom the information is supplied; or

5.4.4.5. the information has been deliberately made public by the data subject.

5.4.5. When collecting and processing personal information including special personal information of children, MED shall comply with the provisions of sections 34 to 35 of POPI and obtain the consent of the competent person, unless the collection and processing of personal information is necessary or expedient:

5.4.5.1. to establish, exercise or defend a right or obligation in law;

5.4.5.2. to comply with an obligation of international public law;

5.4.5.3. to protect or pursue a legitimate interest of the data subject;

5.4.5.4. to pursue or maintain the legitimate interests of MED or a third party to whom the information is supplied; or

5.4.5.5. the information has been deliberately made public by the data subject.

5.4.6. When obtaining consent from a data subject for the collection and processing of personal information, including special personal information, MED shall inform the data subject of the purpose for which the personal information is being collected unless this is obvious from the context, for example, the information is collected for purposes of claiming compensation for a client.

5.4.7. MED shall only collect personal information, including special personal information, which is relevant and necessary or expedient for it to conduct its business and/or render legal services to its clients.

5.4.8. MED shall endeavor to collect personal information, including special personal information, directly from the data subject. Where personal information is collected from another source, such collection will only be done with the consent of the data subject or competent person, unless:

- 5.4.8.1. the information is contained or derived from a public record or has been deliberately made public by the data subject;
  - 5.4.8.2. the collection of information from another source would not prejudice a legitimate interest of the data subject;
  - 5.4.8.3. the collection of information from the data subject would prejudice a lawful purpose of the collection;
  - 5.4.8.4. the collection of information from the data subject is not reasonably practicable in the circumstances of the particular case;
  - 5.4.8.5. the collection of information from another source is necessary:
    - 5.4.8.5.1. to comply with an obligation imposed by law;
    - 5.4.8.5.2. for the purposes of litigation, whether commenced or reasonably contemplated; or
    - 5.4.8.5.3. to enforce or protect a right or a legitimate interest of the data subject; or
    - 5.4.8.5.4. to pursue or maintain the legitimate interests of MED or a third party to whom the information is supplied.
- 5.4.9. In addition to the above, when collecting personal information, including special personal information, and where this is not obvious from the context, MED shall take reasonably practicable steps to ensure that the data subject or competent person is aware of:
- 5.4.9.1. the information being collected and source from which it is collected, if the personal information is not collected directly from the data subject or competent person;
  - 5.4.9.2. whether the supply of the personal information is mandatory or voluntary;
  - 5.4.9.3. the consequences of failing to provide personal information;
  - 5.4.9.4. any particular law authorizing or requiring the collection of personal information;
  - 5.4.9.5. the existence of a right to access and rectify a record of personal information held by MED;
  - 5.4.9.6. the existence of a right to object to the processing of personal information as provided for in section 11(3) of POPI; and

- 5.4.9.7. the existence of a right to lodge a complaint to the Information Regulator and the contact details of the Information Regulator.
- 5.4.10. It is not necessary for MED to comply with clause 5.4.9 above if:
- 5.4.10.1. the data subject or competent person has provided consent for the non-compliance;
  - 5.4.10.2. the non-compliance would not prejudice the legitimate interests of the data subject;
  - 5.4.10.3. the non-compliance is necessary to comply with an obligation imposed by law;
  - 5.4.10.4. the non-compliance is necessary for the purposes of litigation, whether commenced or reasonably contemplated;
  - 5.4.10.5. compliance with clause 5.4.9 would prejudice a lawful purpose of the collection;
  - 5.4.10.6. compliance with clause 5.4.9 is not reasonably practicable in the circumstances of the particular case.
- 5.5. Use of Personal Information including Special Personal Information
- 5.5.1. MED shall only use personal information, including special personal information, of a data subject if it is necessary or expedient for MED to conduct its business and/or render legal services to its clients.
- 5.5.2. Where it's necessary or expedient for MED to use the personal information, including special personal information, of a data subject, MED will only use the personal information which is relevant to the purpose for which it was processed and MED will not use personal information in an excessive manner.
- 5.5.3. MED may use the personal information, including special personal information, of a data subject:
- 5.5.3.1. to comply with the provisions of legislation such as *inter alia* the LPA, FICA, BCEA, EEA, LRA, UIA, ITA and VAT Act;
  - 5.5.3.2. for purposes of litigation, including *inter alia* drafting pleadings, briefing counsel, appointing and briefing experts, and negotiating settlements;
  - 5.5.3.3. for purposes of providing legal advice and opinions;
  - 5.5.3.4. to evaluate whether a data subject's claim has merit; and

5.5.3.5. for any other purpose relevant to the conduct of its business and/or to render legal services to its clients, and any other similar or ancillary purpose.

## 6. PURPOSE SPECIFICATION (SECTIONS 13 - 14 OF POPI)

- 6.1. MED shall only collect and process personal information, including special personal information, for a specific purpose related to conducting its business and/or rendering legal services to its clients, which purpose shall be communicated to the data subject.
- 6.2. MED shall not keep a record of personal information for longer than is necessary to achieve the purpose for which it was collected and processed, having due regard to the time periods for retention of records as specified by the Legal Practice Council.
- 6.3. Retention of Records
  - 6.3.1. MED shall not retain records of personal information for longer than is necessary to achieve the purpose for which the information was collected and processed, unless:
    - 6.3.1.1. the data subject or competent person has consented to retention of the record;
    - 6.3.1.2. retention of the record is required or authorised by law;
    - 6.3.1.3. MED requires the record for lawful purposes related to its functions or activities;  
or
    - 6.3.1.4. retention of the record is required by a contract between the parties thereto.
  - 6.3.2. MED shall comply with the Rule 54.9 of the Legal Practice Council Rules and shall retain a record of personal information for a period of seven (7) years from the date of last entry on the record.
  - 6.3.3. MED shall destroy or delete a record of personal information as soon as is reasonably practicable after MED is no longer authorized to retain the record, having due consideration for clause 6.3.2 above.
  - 6.3.4. MED shall destroy or delete a record of personal information in a manner that prevents its reconstruction in an intelligible form, to the extent that this is reasonably possible.
  - 6.3.5. The information officer shall authorise the destruction or deletion of any record of personal information and shall ensure that it is completed. The information officer shall retain a register of all records of personal information which were destroyed or deleted.
  - 6.3.6. MED shall destroy or delete a record of personal information in the following manner:

6.3.6.1. Original documents:

- 6.3.6.1.1. Arrangements will be made with the data subject to collect the original document from the business premises of MED;
- 6.3.6.1.2. Arrangements will be made with the data subject for a courier service to deliver the original document to an address specified by the data subject, at the expense of the data subject;
- 6.3.6.1.3. Arrangements will be made with the data subject for the original document to be delivered by pre-paid registered post to a post office specified by the data subject, at the expense of the data subject; or
- 6.3.6.1.4. In the event that MED is unable to make contact with the data subject, MED shall deliver notification to the data subject by pre-paid registered post to the data subject's last known address or by email to the data subject's last known email address, that MED shall retain the original document in a secure location at its business premises until such time as the data subject requests that the original document be returned to it or until MED is entitled to shred the document.

6.3.6.2. Electronic records

- 6.3.6.2.1. MED shall delete all electronic records of personal information from every device, internal or external server, cloud storage, or any other means of electronic storage which is under their control.

6.3.6.3. Hard copy records

- 6.3.6.4. All hard copy records of personal information shall be shredded by MED or disposed of in any other manner which protects the privacy of the data subject and the confidentiality of the record.

6.4. Restriction from Processing Personal Information:

- 6.4.1. MED shall restrict processing of personal information if:

- 6.4.1.1. the accuracy of the record is contested by the data subject and until such time as MED can verify the accuracy of the information. This does not apply where

the opponent or expert in respect of a client claim offers a different version of the facts relating to a client matter;

- 6.4.1.2. MED no longer requires the personal information to achieve the purposes, plus ancillary or similar purposes, for which it was collected and processed, save for the duty of MED to store and retain the personal information for the period detailed in clause 6.3.2 above;
  - 6.4.1.3. processing of the personal information is unlawful and the data subject opposes its destruction or deletion and on valid grounds requests restriction of its use instead; and
  - 6.4.1.4. the data subject requests that the personal information be transmitted to another automated processing system and it is possible and financially viable for the firm to comply with the request.
- 6.4.2. MED shall only process personal information which has been restricted from being processed as detailed in clause 6.4.1 above, for purposes of proof, with the consent of the data subject of competent person where the data subject is a child, or for the protection of the rights of another natural or juristic person, or if such processing is in the interests of the public or the data subject.
  - 6.4.3. Where processing of personal information is restricted, MED shall inform the data subject before lifting the restriction on processing wherever possible and financially viable.

## **7. INFORMATION QUALITY (SECTION 16 OF POPI)**

- 7.1. MED shall take reasonably practicable steps to ensure that personal information collected and processed by MED is complete, accurate, not misleading and updated where necessary for the purpose of providing legal services and conducting its business.
- 7.2. In ensuring the quality of a record of personal information, MED shall:
  - 7.2.1. endeavour to collect personal information directly from the data subject or competent person, where the data subject is a child, if reasonably practicable;

- 7.2.2. where MED collects a record personal information from a source other than the data subject or competent person, MED shall provide the data subject or competent person with a copy of the said record of personal information on their request.
- 7.3. If a record of personal information collected and processed by MED contradicts or in any way conflicts with another record of personal information, MED shall:
  - 7.3.1. take reasonably practicable steps to verify the accuracy of the records; and
  - 7.3.2. save where the conflicting information is the opponent's or expert's account of the facts relating to a client claim, destroy or delete the record of personal information which is inaccurate or incomplete and update the personal information of the data subject accordingly.

## **8. ACCESS AND CORRECTION OF PERSONAL INFORMATION (SECTIONS 23 - 25 OF POPI)**

- 8.1. A data subject has the right to request access to and the correction of a record of personal information held by MED.
- 8.2. A data subject has the right to request information about any third parties, or categories of third parties, who have had access to the data subject's personal information.
- 8.3. Upon receipt of a request by a data subject for access to a record of their personal information or confirmation of the personal information that MED holds about them, MED shall within reasonable time and in a generally understandable manner and format:
  - 8.3.1. Request proof of identity from the data subject if relevant;
  - 8.3.2. Confirm whether MED holds personal information about that data subject, without charging a fee to the data subject;
  - 8.3.3. Provide the data subject with copies of the personal information held by MED, upon payment by the data subject of the prescribed fee.
- 8.4. If the data subject is required to pay a fee to MED for the services provided in clause 8.3 above, MED shall provide the data subject with a written estimate of the fee payable before providing the services, and may request that the whole fee, or a portion thereof, be paid as a deposit.
- 8.5. Upon receipt of a request by a data subject to correct or delete a record of their personal information held by MED, MED shall as soon as reasonably practicable:

- 8.5.1. Correct, delete or destroy the record unless it is an opponent's or expert's version of the facts of a claim;
  - 8.5.2. Provide the data subject, to their satisfaction, with evidence supporting the quality, relevance and necessity of the record, and the lawfulness with which it was obtained; or
  - 8.5.3. Where MED and the data subject are unable to reach an agreement relating to the quality, relevance and necessity of the record, and the lawfulness with which it was obtained, MED shall take reasonable steps under the circumstances, to annex to the record, a notice is to be read with the record which indicates that a correction of the record was requested but not made by MED.
- 8.6. The provisions of sections 18 to 53 of PAIA apply to requests detailed in this clause.

## **9. STORAGE AND SAFEGUARDING PERSONAL INFORMATION (SECTIONS 19 - 22 OF POPI)**

- 9.1. MED shall put in place reasonable and appropriate technical and organisational safeguards and measures to protect and guard against unauthorised or unlawful processing of personal information and against accidental loss, destruction or damage to personal information, having due regard to the financial and other resources at the disposal of MED.
- 9.2. MED shall review its processing practices, including physical security measures periodically, to ensure that it keeps abreast of good practice.
- 9.3. MED has implemented the following safeguards and measures to protect the personal information it holds:
  - 9.3.1. All MED employees and directors are bound by confidentiality clauses which form part of their contracts of employment;
  - 9.3.2. All relevant MED employees and directors are aware of this Policy and their duties and responsibilities in terms hereof;
  - 9.3.3. Electronic records:
    - 9.3.3.1. All electronic records of personal information are stored on a secure, password protected server with cyber security software being regularly updated, and on cloud-based storage which is also password protected and software regularly updated.

9.3.3.2. All electronic devices used to temporarily store and process personal information are password protected and only accessible by MED employees and directors, and cyber security software on all devices are regularly updated.

9.3.3.3. Where MED makes use of third-party operators to store and process personal information, those operators are bound by the provisions of POPI.

9.3.3.4. If MED or a third-party operator is required to transfer to and/or store personal information on servers in a jurisdiction other than where it was collected (i.e. outside of South Africa), MED shall take reasonably practicable steps to the extent they are able, to ensure that the personal information is adequately protected in that jurisdiction.

9.3.3.5. Electronic records will be deleted or destroyed in accordance with clause 6.3.6.2 above.

9.3.3.6. MED shall create a back-up of all current personal information it holds for operational, business continuity and safety purposes.

9.3.4. Hard copy records:

9.3.4.1. Hard copy records are stored at the premises of MED, which premises are secure and access controlled.

9.3.4.2. Where MED makes use of third-party operators such as document storage service providers to store and process hard copy records, those operators are bound by the provisions of POPI.

9.3.4.3. Hard copy records of personal information will be destroyed in accordance with clause 6.3.6.3 above.

9.4. In the event of a security breach which results in unauthorised access or processing of personal information, MED shall notify the following persons of the breach:

9.4.1. the Information Regulator; and

9.4.2. the data subject affected by the breach, provided that:

9.4.2.1. MED knows the identity of the data subject; and

9.4.2.2. the Regulator has not determined that notification of the data subject will impede any criminal investigation into the incident.

- 9.5. Notification to the data subject referred to in clause 9.4 above shall be sent by email to the data subject's last known email address, or as MED is directed by the Information Regulator, and shall advise the data subject of:
  - 9.5.1. the possible consequences of the security breach, if known to MED;
  - 9.5.2. the measures that MED has taken or will take to address the security breach;
  - 9.5.3. measures the data subject can take to mitigate the possible adverse effects of the security breach; and
  - 9.5.4. if known by MED, the identity of the unauthorised person who accessed or processed the data subject's personal information, provided this does not incriminate MED.
- 9.6. The information officer will keep a register of any security breaches and shall manage any security breach which may occur.

## **10. DISCLOSURE OF PERSONAL INFORMATION**

- 10.1. MED may disclose the personal information of a data subject to a third party, however such disclosure will only occur if necessary or expedient for MED to conduct its business and/or render legal services to its clients.
- 10.2. MED shall comply with the provisions of this policy when disclosing personal information to a third party, and shall obtain the consent of the data subject or competent person, where the data subject is a child, before making such disclosure, unless such disclosure is necessary:
  - 10.2.1. to comply with an obligation imposed by law;
  - 10.2.2. for the purposes of litigation, whether commenced or reasonably contemplated; or
  - 10.2.3. to enforce or protect a right or a legitimate interest of the data subject; or
  - 10.2.4. to pursue or maintain the legitimate interests of MED or a third party to whom the information is supplied.

## **11. AMENDMENTS TO THIS POLICY**

- 11.1. Consideration shall be given on an annual basis by the directors of MED and the information officer as to whether this policy is up to date with the latest amendments to POPI, if any, and whether this policy should be amended.

11.2. If the information officer and directors of MED agree that this policy requires amending, the information officer will cause the amendments to take place.