MEDIA STATEMENT: INFORMATION REGULATOR OUTCOMES OF COMPLAINTS INVESTIGATED AND ASSESSMENTS CONDUCTED IN RELATION TO PAIA AND POPIA

26 MARCH 2024

1. INTRODUCTION

We welcome you all to JD House, the home of the Information Regulator. We have invited the media here today to update you and the public on the work of the Regulator. We will do this by releasing the outcomes of the matters that we have investigated and the assessments that we have conducted in relation to the Protection of Personal Information Act (POPIA) and the Promotion of Access to Information Act (PAIA). We will also indicate some of the new matters that we are investigating.

2. THE PROCESS

2.1 As a reminder of our processes: Regarding our POPIA work, the Regulator can investigate a complaint submitted by any person, or it can, on its own initiative, investigate a complaint or assess compliance with the provisions of POPIA by a responsible party.

2.2 Regarding PAIA matters, the Regulator can only investigate a complaint submitted by a requester of information or a third party. Upon receipt of a complaint, the Regulator has the option to conduct a full investigation of such a complaint or to resolve it through a settlement or conciliation process. As with POPIA, we can also conduct an own-initiative assessment of PAIA compliance by a public or private body.

2.3 Where investigations have been necessary, an investigation report is referred to the Enforcement Committee for a finding and a recommendation of actions to be taken against the Information Officer or head of the private body in respect of PAIA or the responsible party in relation to POPIA.

2.4 The Enforcement Committee submits its findings and recommendations to the Members of the Regulator for consideration. After considering the findings and recommendations of the Enforcement Committee, the Members make a determination on the complaint and action that must be taken by an Information Officer or a head of a private body in relation to PAIA, or by a responsible party in respect of POPIA.

2.5 This determination or decision is issued through an Enforcement Notice, which must be served on the Information Officer, head of a private body, or responsible party. The Enforcement Notice has the effect of a court order, and failure to comply with it is an offence.

2.6 Where there is non-compliance with the direction given in the Enforcement Notice, the Regulator can issue an Infringement Notice, which can carry a penalty of imprisonment or a fine of up to R10 million in the case of POPIA offences.

3. COMPLETED ASSESSMENTS AND INVESTIGATIONS

3.1 PAIA

During the 2023/2024 financial year, the PAIA Division completed eight (8) matters that are now ready for determination by the Regulator through the Enforcement Committee process. The Division conducted own-initiative assessments on 108 public and private bodies were assessed.

3.1.1 One of these matters is the matter of Clive Hardwick (obo Hardwick Trading (Pty) Ltd) vs Risa Audio Visual Licensing NPC (RAV). This was regarding the issue of access to the records relating to the music royalty revenue received by Gallo for the broadcast of sound recordings and music videos produced by Bula Records, which were broadcast prior to October 2014, including but not limited to revenue received from AIRCO, SAMPRA, RAV and PPL held by the private body.

Following a public hearing that the Regulator conducted regarding access to records relating to music royalties, an Enforcement Notice was issued ordering RAV to release all the records requested by the complainant. Although RAV had expressed an intention to review the Regulator's decision, Gallo, one of RAV's members, subsequently disclosed all the records to the complainant.

Another development related to the issue of transparency of music royalties payments happened after the public hearing on the matter between Hardwick and RAV. The Regulator received a complaint from Thomas Ramatome Molete, a music producer, who had requested access to records related to the royalties collected from Lesedi FM (SABC) so that he could determine if SAMRO had paid him all the royalties due for the period of March 2011 to March 2020. The complaint was resolved through mediation facilitated by the Regulator, and SAMRO disclosed all the royalties' records to Mr Molete.

3.1.2 ASSESSMENTS

We conducted one-hundred and eight (108) PAIA assessments on public and private bodies, including political parties, universities, national & provincial government departments and JSE-listed companies. South Africa is unique among Access to Information (ATI) laws globally because our law applies not only to information held by public bodies but also to information held by private bodies when that information is required to exercise or protect other rights. Furthermore, our ATI law sets another international gold standard in that it also applies to political parties.

The Regulator chose to include political parties in this round of assessments to promote transparency by political parties as an essential part of our system of democratic governance.

The following are the key findings from those assessments:

a) We assessed thirteen (13) political parties represented in Parliament and one (1) party not represented in Parliament but with a presence in municipal councils nationally. We found that about 54% of political parties represented in Parliament are generally non-compliant with PAIA. About 46% of political parties represented in Parliament have some level of compliance but need to improve in certain areas. Therefore, none of the political parties represented in parliament are compliant with PAIA.
(See Annexure A for a list of political parties assessed and the summaries of outcomes)

b) Twenty-seven (27) JSE-listed companies were assessed for PAIA compliance, and all 27 private bodies were found to be generally compliant with PAIA. However, particular areas of improvement were indicated, such as the designation or delegation of Deputy Information Officers and the production of PAIA manuals that fulfil the requirements of section 51 of PAIA.
(See Annexure B for a list of JSE-listed companies assessed and the summaries of outcomes)

c) Thirteen (13) Universities have compiled PAIA manuals; however, not all Universities' manuals were compliant with section 51 of the Act, and only 40% of the universities made their PAIA manuals available as prescribed. None of the universities (0%) fulfilled the requirement for the compilation of notices of automatically available records. Furthermore, we are concerned that only 40% of the universities submitted their Section 32 reports to us as required by law. Less than half of the assessed universities had duly designated or delegated Deputy Information Officers.

d) Twenty-seven (27) national government departments and 27 Provincial Departments were assessed. All the national government departments, except one, have compiled PAIA manuals. One Department, the State Security Agency, is exempted by the Minister of Justice and Correctional Services from compiling a PAIA manual. All provincial departments, except the Northern Cape Department of Agriculture, have compiled their PAIA manuals, and only six (6) provincial departments' manuals comply with PAIA. Even though the national government departments had compiled PAIA manuals, their manuals are non-compliant with section 14 of the Act. There are also areas of improvement in relation to other PAIA requirements. Areas of improvement in relation to PAIA requirements include:

i) The designation or delegation of Deputy Information Officers: Only 40% of the national government departments and entities had designated or delegated Deputy Information Officers.
ii) On the availability of PAIA Manuals as prescribed, only 40% had made their manuals available as prescribed.
iii) Regarding reporting to the Information Regulator in terms of Section 32 of PAIA, less than half of the national governments have complied with this requirement. We are concerned that some of the departments that failed to submit their section 32 reports to the Regulator include service delivery departments such as the Departments of Health, Higher Education and Training, Home Affairs, and Human Settlements.

3.2 POPIA

The Regulator received 982 complaints during the 2023/2024 financial year, and 14 responsible parties were assessed. Of these, 682 complaints were resolved, and 10 assessments were completed and are ready for determination by the Regulator through the issuing of Enforcement Notices.

As we have done previously, we will highlight a few of these to give a snapshot of the enforcement work that the Regulator has been doing over the last twelve months.

3.2.1 TransUnion

a) In March 2022, TransUnion, a registered credit bureau and a repository of credit information on consumers and businesses, submitted a section 22 notification indicating that it had suffered a security compromise.

b) The Regulator then conducted an assessment which has found, among others, that TransUnion breached the conditions for the lawful processing of personal information by –

i) Failing to secure the confidentiality of the personal information in its possession or under its control.

ii) Failing to take appropriate technical and organisational measures to ensure access control is implemented as directed by their own policy and also not having controls to detect this failure.

iii) Failing to prevent unlawful access to or processing of personal information that enabled unauthorised actors to gain unlawful access through the use of compromised credentials and use of a weak password.

iv) Failing to implement the safeguards that had been put in place in the form of access management policies and user creation policies.

v) Failing to implement the provisions of its own information security policies, which covered the domains recommended to ensure the confidentiality, integrity, and availability of its information processing environment as they relate to:

- User creation – which meant there was a user created outside of approved user creation processes.
- Password complexity - which meant the disregard for the password requirements as set out in their Access Control Policy.

c) Consequently, the Regular has issued an Enforcement Notice against TransUnion, ordering the company to:

   i) develop and put in place security measures to ensure the integrity and confidentiality of personal information in its possession or under its control to prevent loss of, damage to, unauthorised destruction or unlawful access to, personal information.
   ii) Obtain the services of a qualified auditor/audit firm who will perform an audit on all user accounts against the SFTP user creation policy to determine if the configuration of any further user accounts fall outside the prescripts of the policy.
   iii) Conduct a Personal Information Impact Assessment to ensure that adequate measures and standards exist to comply with the conditions for the lawful processing of personal information.

d) TransUnion has until 26 May 2024 to submit proof to the Regulator that all the remedial measures in the Enforcement Notice have been implemented.

3.2.2 South Africa Police Service: Part 1 (Krugersdorp)

In the previous financial year, we issued an Enforcement Notice against the SAPS for the distribution of personal information of the victims of sexual assault in the Krugersdorp area. We ordered SAPS, among other things, to investigate the circumstances that led to this security compromise incident. That investigation must specify the measures the SAPS has taken to ensure that this incident or any incident of a similar nature does not recur. SAPS has complied with the Enforcement Notice, and the matter is closed.

3.2.3 Dischem

a) The pharmaceuticals company, Dischem, suffered a security compromise in May 2022 following a brute-force attack that saw the personal information of 3.6 million data subjects' being accessed by unauthorised persons from Dis-Chem's e-Statement Service database. The Regulator issued an Enforcement Notice against Dischem following an investigation into the security compromise. In terms of the Enforcement Notice, Dischem was ordered to, among other things:

   i) conduct a Personal Information Impact Assessment to ensure that adequate measures and standards exist to comply with the conditions for the lawful processing of personal information as required by Regulation 4(1)(b) of POPIA.

   ii) implement an adequate Incident Response Plan: Implement the Payment Card Industry Data Security Standards (PCIDSS) by maintaining a vulnerability management programme, implementing strong access control measures, and maintaining an Information Security Policy.

   iii) ensure that it concludes written contracts with all operators who process personal information on its behalf and that such contracts compel the operator(s) to establish and maintain the same or better security measures referred to in section 19 of POPIA.

   iv) develop, implement, monitor, and maintain a compliance framework in terms of Regulation 4(1)(a) of POPIA, which clearly makes provision for the reporting obligations of Dis-Chem and all its operators in terms of section 22 of POPIA.

b) The Regulator has completed its assessment of Dischem's compliance with the Enforcement Notice and is satisfied that Dischem is compliant with the recommendations contained in the Enforcement Notice. As a result, the Regulator has closed its file on Dischem.

4. NEW MATTERS BEING INVESTIGATED

4.1 POPIA

4.1.1 POPIA: Independent Electoral Commission (IEC)

a) Early this month, March 2024, the Regulator received two (2) security compromise notifications from the IEC following an unauthorised release of candidate lists for the 2024 national and provincial elections.

b) Consequently, the Regulator issued an Information Notice to the IEC seeking further information from the IEC. Following the assessment of the information obtained from the IEC, the Regulator has decided to proceed with a full assessment of the security compromise suffered by the IEC.

4.1.2 South Africa Police Service: Part 2

Regrettably, we have now had to initiate another investigation into SAPS for a similar breach of POPIA following the release of personal information via WhatsApp. This follows investigations into the deaths of prominent businessman Jabulani Ben Gumbi (CAS 557/08/2023) and the late Captain Ernest Dambuza (CAS 334/08/2023). Sensitive crime scene reports, and other personal information (including car registration numbers and home addresses) of individuals involved in the investigation of the two deaths were distributed widely via WhatsApp. The Regulator is considering measures to be taken against SAPS for this continued transgression of POPIA requirements.

4.1.3 Companies and Intellectual Property Commission (CIPC)

a) The Regulator has commenced its own-initiative investigation of the CIPC following the much-publicised security compromise of their systems. Reports received by the Regulator indicate that the threat actors that breached the CIPC systems are still in the CIPC IT environment, and the CIPC systems remain compromised.

b) Another point of inquiry regarding the CIPC's organisational and technical measures for protecting personal information will be whether the CIPC's business model facilitates the selling and buying of personal information in its possession.

4.2 PAIA

4.2.1 Complaint against the State Security Agency

This case relates to a request for access to the State Security Agency (SSA) expenditure information from 2015/2016 to 2018/2019 financial years in respect of services rendered to the SSA by the African News Agency (ANA). The investigation has been completed, and the Members are considering the matter.

4.2.2 Complaint against the Competition Commission

This case relates to a request for investigation reports and merger reports covering 01 January 2021 to 30 July 2022. The complainant submitted that its request for records is motivated by a high number of rejections of merger applications on public interest grounds. Therefore, the disclosure of the records in question will assist in clarifying how the Commission is currently applying the law and public powers when dealing with a merger transaction.

4.2.3 Complaint against the South African Revenue Service

This case concerns a request for access to former President Jacob Gedleyihlekisa Zuma's ("Mr. Zuma") individual tax returns for the tax years 2010 to 2018.

4.2.4 Complaint against Sibanye Stillwater Limited

The complaint concerns a request for all annual compliance reports from 2019 to 2023 for the Eastern and Western platinum mines' social labour plans (SLP). The annual compliance reports that the complainant requires access to relate to progress on community projects that the mines undertake to implement as part of their licensing requirements.

ENDS

ANNEXURE A: LIST OF POLITICAL PARTIES ASSESSED

		Areas of Compliance with PAIA							
	Name of Political Party	**Compiled PAIA Manual**	**Designated/Delegated a Deputy Information Officer**	**PAIA Manual compiled but not according to requirements.**	**Created and kept records of any donation exceeding the prescribed threshold that has been made to the political party and the identity of the persons or entities who made such donations**	**Created records of donations exceeding the prescribed threshold that has been made to the political party and the identity of the persons or entities who made such donations, but failed to make same records available as prescribed**	**Compiled a PAIA Manual but failed to make the manual available, as prescribed-**	**Compiled categories of records that are automatically available without a requester having to request access thereto but failed to submit same to the Regulator**	**Made itself available for compliance assessment**
1.	Action SA								
2	African Christian Democratic Party (ACDP)	X	X						✓
	African Independent Congress (AIC)	X	X						✓
3	African National Congress (ANC)	✓		✓	✓	✓	✓	✓	✓
4	African Transformation Movement (ATM)	X	X						✓
5	Al Jama- ah	✓		✓				✓	✓
6	Congress of the People (COPE)	X	X						✓
7	Democratic Alliance (DA)	✓		✓	✓			✓	✓
8	Economic Freedom Fighters								X
9	Freedom Front Plus (FF+)	✓		✓			✓	✓	✓
10	GOOD Party	✓		✓	✓	✓		✓	✓
11	Inkatha Freedom Party (IFP)	X	X						✓
12	National Freedom Party (NFP)	X	X						✓
13	Pan African Congress of Azania (PAC)	X	X						✓
14	United Democratic Movement	X	X	✓			✓		✓

ANNEXURE A: LIST OF COMPANIES ASSESSED

		AREA OF COMPLIANCE						
	Name of Company	**Compiled the PAIA Manuals.**	**PAIA Manuals compliant with Sec 51 of PAIA**	**Designated or delegated Deputy Information Officers**	**PAIA Manual available as prescribed**	**Compiled categories of records that are automatically available**	**Submitted their Annual Report in terms of section 83 (4) of PAIA**	**PAIA guide available in 2 or more official languages**
1	Anglo American Platinum Limited	✓	X	✓	✓	X	X	✓
2	Anglo Gold Ashanti Limited	✓	X	X	✓	X	✓	✓
3	Aspen Pharmacare Holdings Limited	✓	X	✓	✓	X	X	✓
4	African Rainbow Minerals	✓	X	✓	✓	X	X	✓
5	Balwin Properties	✓	X	✓	X	X	X	
6	Bidvest Limited	✓	X	X	✓	✓	✓	✓
7	Dischem Pharmacies Limited	✓	X	X	✓	X	X	X
8	Exxaro Resources Limited	✓	X	✓	X	✓	X	✓
9	Gold Fields Limited	✓	X	X	✓	X	✓	✓
10	Growthpoint Properties Limited	✓	X	X	✓	X	✓	✓
11	Impala Platinum Holdings Limited	✓	X	X	✓	X	X	✓
12	Imperial Holdings Limited	✓	X	✓	✓	✓	✓	✓
13	Kumba Iron Ore Limited	✓	X	✓	✓	X	X	✓
14	Massmart Holdings Limited	✓	X	✓	✓	X	✓	X

15	Mediclinic Intl. Limited	✓	X	X	X	X	X	
16	Mondi Ltd	✓	✓	✓	✓	X	X	✓
17	MTN Group Limited	✓	✓	✓	✓	X	X	✓
18	Naspers Limited	✓	X	✓	✓	X	X	
19	Remgro Ltd	✓	X	✓	✓	X	✓	✓
20	RMB/H Holdings Limited	✓	X	✓	✓	X	X	✓
21	Sanlam Limited	✓	X	X	✓	X	X	
22	Sasol Limited	✓	X	✓	✓	X	X	✓
23	Shoprite Holdings Limited	✓	✓	✓	✓	X	✓	X
24	Tiger Brands Limited	✓	X	✓	✓	X	✓	
25	Tsogo Sun	✓	X	X	✓	X	✓	✓
26	Vodacom Group Limited	✓	X	✓	✓	✓	✓	✓
27	Woolworths	✓	X	✓	✓	X	✓	X