

16 August 2020

Adv. Pansy Tlakula
Information Regulator
Braampark Forum 3
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Braamfontein
2017

Email: NNemasisi@justice.gov.za

Dear Adv. Pansy Tlakula

SAICA COMMENT LETTER ON THE *DRAFT GUIDELINES ON THE REGISTRATION OF INFORMATION OFFICERS* IN TERMS OF CHAPTER 5 OF THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013

In response to your request for comments on the *Draft Guidelines on the Registration of Information Officers* (the draft Guidelines) in terms of Chapter 5 of the Protection of Personal Information Act 4 of 2013 (the Act) please find comments prepared by the South African Institute of Chartered Accountants (SAICA).

We thank you for the opportunity to provide comments on this document and we would like to invite the Regulator to engage with us, should you wish to discuss the comments.

Yours sincerely

(Signed electronically)

Juanita Steenekamp

Project Director: Non-IFRS Reporting

General comments

- 1) The Act refers to the fact that the Information Officer may only take up his/her duties once the responsible party has registered the Information Officer with the Information Regulator. The draft Guidelines are therefore compiled to assist with the registration process and cannot add any additional duties or requirements to the Information Officer's responsibilities outside of the scope of the Act.
- 2) We support the initiative to strengthen the governance of companies, however for smaller juristic persons, such as companies with one shareholder or director it may be a challenge to have the positions filled as per this guideline. We therefore suggest that juristic persons be allowed to use their current structures to designate another office bearer such as the chief finance officer or financial manager to execute the duties and responsibilities of the Information Officer and the Deputy Information Officer.

Comments on paragraphs

3)

1.6 "Personal information" – means information relating to an identifiable, living, natural person, identifiable existing juristic person, including, but not limited to –

The definition of personal information should be amended to include "or".

"Personal information" – means information relating to an identifiable, living, natural person, or identifiable existing juristic person, including, but not limited to –"

4)

2.1.2 an obligation on Information Officers of public and private bodies to designate and delegate any power or duty to the Deputy Information Officers.

The Act states in section 56 that each public and private body must make provision for the designation of a Deputy Information Officer, if any, as is necessary to perform the duties and responsibilities as set out in the Act. The Act does not obligate the Information Officer to designate and delegate but rather to allow for the option to designate a Deputy Information Officer, should the Information Officer so require. We therefore request that paragraph 2.1.2 of the guideline be amended.

Suggested wording:

2.1.2 an obligation on Information Officers of public and private bodies to designate and delegate any power or duty to Deputy Information Officers, if required.

5)

3.4 delegation of duties and responsibilities of the Information Officers to the Deputy Information Officers

Section 56 of the Act states that each public and private body must make provision, in the manner prescribed by section 17 of the Promotion of Access to Information Act (PAIA) with the necessary changes, for the designation of a Deputy Information Officer, if any. The Information Regulator therefore does not have the authority to set procedures for the delegation of duties as this is outside of the scope of the Information Regulator.

6)

4. Obligations and liabilities

The paragraph dealing with obligations and liabilities included in the draft Guidelines does not relate to the registration of the Information Officer and should be removed. It is already included in the PAIA.

- 7) Paragraphs 6.1 and 6.2 of the draft Guidelines dealing with the duties of the Information Officer is a repetition of what is already included in the Act as well as the Regulations and we would recommend that this is deleted. It is also not word for word the same and can create confusion in terms of duties. The inclusion of examples is very helpful but we would suggest that the examples are included in an annexure at the end of the document as it is not dealing with the registration of Information Officers.
- 8) Paragraph 6.3 dealing with the requirements to submit information to the Information Regulator has already been included in PAIA and there is therefore no need to include it in the draft Guidelines, as it does not deal with the registration of the Information Officer.
- 9) Paragraph 6.4 dealing with the possible request of the Information Regulator to the private body to submit information to the Information Regulator has already been included in PAIA (section 83(4)) and there is therefore no need to include it in the draft Guidelines.
- 10) Paragraph 6.5 deals with access to health records and it does not seem to have reference to any of the paragraphs in the draft Guidelines. There is also no subsection / subparagraph (1) that is referred to, and we would request that this paragraph either be removed or redrafted.

11) Paragraph 6.6 refers to the fact that all persons identified in paragraph 5.1 must be registered. This paragraph is not required as the Act already requires all Information officers to register as required in section 55(2).

12)

7. Designation of a deputy Information Officer

7.1 Section 17 of PAIA provides for the designation of a Deputy Information Officer of a public body, and section 50(6) of POPIA extends the designation of a Deputy Information Officer for a private body.

7.2 Information Officers of public and private body are required to designate one or more Deputy Information Officers.

Section 7 of the draft guidelines states that Information Officer are required to designate to one or more deputy information officer.

In our view the Act does not require designation to a deputy information officer but requires the public and private body to make provision for a Deputy Information Officer if required in terms of POPIA. For PAIA purposes each public body must designate a Deputy Information Officer.

The question is also raised as to whether the Deputy Information Officer in terms of PAIA and POPIA can be different people or whether it would be required to be the same person.

The Information Regulator therefore cannot require a private body to designate a Deputy Information Officer and this paragraph should be amended accordingly.