POPIA update Oct 2021

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Director ORI

Where are we with UCT POPIA implementation programme?

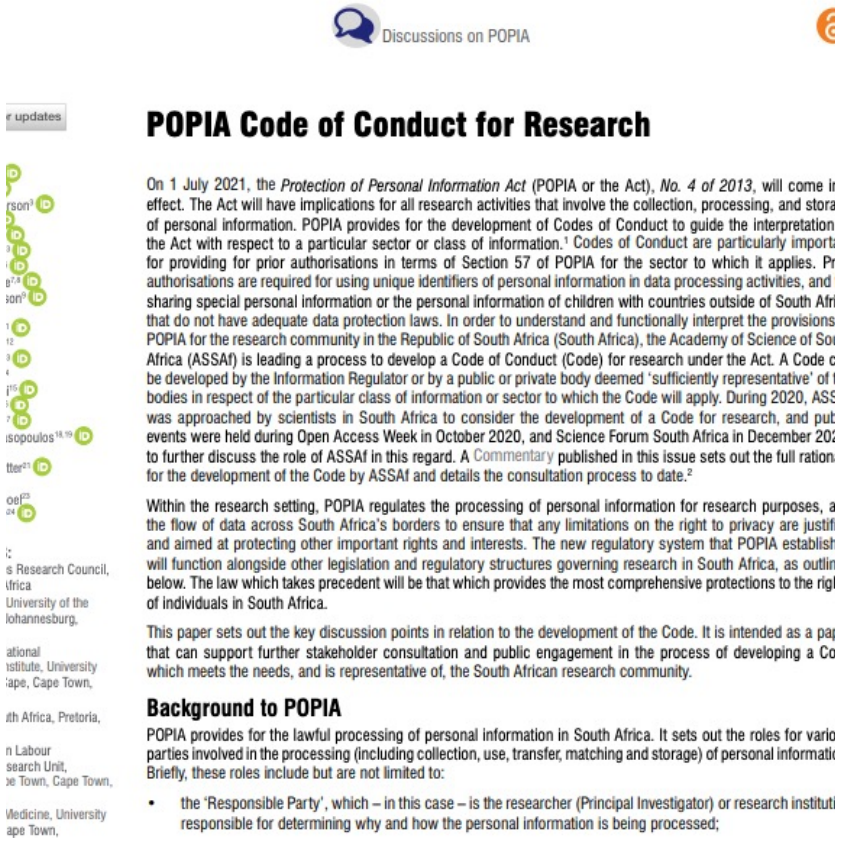
- A lot of progress, but a lot work still to be done across the entire university; Registrar's POPIA team has contracted Novation to work with UCT
- 2 Work Streams
  - All staff and student data
  - Research data
- Multiple activities ongoing:
  - **Policy development and revision** to approved policies (new Data privacy policy, Information Security management Policy, Data governance policy, Information Classification policy etc)
  - **Identification of key role players** and responsibilities within Faculties (Data compliance officers, Data stewards etc)
  - **Training and Awareness**; Training in Data Privacy Impact assessments, especially for DCOs and Data Stewards, also may be needed in research teams. Will need 'train the trainers' training.
  - **Data Privacy statements and templates**- in development.
  - **ICTS:** Assistance with data security and encryption, data storage, appropriate cloud solutions etc. Providing info via Research Announcements and the POPIA Teams Site

Where are we with UCT POPIA implementation programme?

- Delayed drafting a UCT guideline due to prospect of an ASSaf Code of Conduct for the SA research sector Academic and private)
- (A CoC is a legal interpretation of the Act for a particular sector that gets approved by the POPIA Information regulator and becomes binding on that sector)

This is in progress (has been delayed somewhat). Assaf have published an article in the SAJS outlining the issues the code will cover https://sajs.co.za/article/view/10933

UCT POPIA Guideline for Researchers is under development; preliminary draft has been presented to the Registrar's POPIA TG. Hope to present a draft to POPIA Research TG soon and finalise a.s.a. p (e.t.a 3 weeks).



Discussions on POPIA

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POPIA Code of Conduct for Research

On 1 July 2021, the *Protection of Personal Information Act* (POPIA or the Act), *No. 4 of 2013*, will come in
effect. The Act will have implications for all research activities that involve the collection, processing, and stora
of personal information. POPIA provides for the development of Codes of Conduct to guide the interpretation
the Act with respect to a particular sector or class of information.[1] Codes of Conduct are particularly import
for providing for prior authorisations in terms of Section 57 of POPIA for the sector to which it applies. Pr
authorisations are required for using unique identifiers of personal information in data processing activities, and
sharing special personal information or the personal information of children with countries outside of South Afri
that do not have adequate data protection laws. In order to understand and functionally interpret the provisions
POPIA for the research community in the Republic of South Africa (South Africa), the Academy of Science of So
Africa (ASSAf) is leading a process to develop a Code of Conduct (Code) for research under the Act. A Code c
be developed by the Information Regulator or by a public or private body deemed 'sufficiently representative' of t
bodies in respect of the particular class of information or sector to which the Code will apply. During 2020, ASS
was approached by scientists in South Africa to consider the development of a Code for research, and pub
events were held during Open Access Week in October 2020, and Science Forum South Africa in December 202
to further discuss the role of ASSAf in this regard. A Commentary published in this issue sets out the full ration
for the development of the Code by ASSAf and details the consultation process to date.[2]

Within the research setting, POPIA regulates the processing of personal information for research purposes, a
the flow of data across South Africa's borders to ensure that any limitations on the right to privacy are justifi
and aimed at protecting other important rights and interests. The new regulatory system that POPIA establish
will function alongside other legislation and regulatory structures governing research in South Africa, as outlin
below. The law which takes precedent will be that which provides the most comprehensive protections to the rig
of individuals in South Africa.

This paper sets out the key discussion points in relation to the development of the Code. It is intended as a pa
that can support further stakeholder consultation and public engagement in the process of developing a Co
which meets the needs, and is representative of, the South African research community.

Background to POPIA

POPIA provides for the lawful processing of personal information in South Africa. It sets out the roles for vario
parties involved in the processing (including collection, use, transfer, matching and storage) of personal informati
Briefly, these roles include but are not limited to:

- the 'Responsible Party', which – in this case – is the researcher (Principal Investigator) or research institut
  responsible for determining why and how the personal information is being processed;

POPIA essentials: terminology

- **Data subject**: the person to whom the information relates
- **Information Officer (VC) and Deputy IO (Registrar)-** persons accountable for implementing POPIA at an institution.
- **Responsible Party**: persons responsible for processing data. (Buck will stop with institution but in large collaborative projects this could also be PI)
- **Personal information** –all identifying info, including biometrics
- **Information Regulator** established in terms of Sec 39. i.e the head of the gov office that oversees the implementation of POPIA; must approve Codes of Conduct
- **Code of Conduct** (POPIA Chapter 7)- industry specific interpretation of POPIA that once approved by the Regulator is binding on that industry. **Allows for more legal certainty in interpretation of POPIA BUT cannot change or exempt requirements of the Act.**

Chapter 3 : Conditions for lawful processing of PI

- Chapter 3 of POPIA outlines the 8 conditions that must be fulfilled for the lawful processing of PI
- There are 8 general conditions; each is specified in detail (next slide)
- POPIA makes provision for:
  - **Exclusions** (deidentified info) *"means to delete information that (a) identifies the DS, that (b)can be manipulated by a reasonably foreseeable method to re-identify, or (c)can be linked with other info to reidentify"*
  - **Exemptions** (Sec 36,37- regulator can provide on a case-by-case basis)
  - **Exceptions** –"historical, statistical and research purpose"; "public interest"
- Both the ASSaf Code and UCT POPIA guideline will provide additional guidance on the interpretation of these in a research context.

POPIA Chapter 3

8 Conditions for Lawful processing:

All 8 must be fulfilled.

- 1. Accountability
- 2. Processing limitation
  - Minimality
  - Consent, justification and objection
  - Collection directly from DS
- 3. Purpose specification
  - Collection for specific purpose
  - Retention and restriction of records
- 4. Further processing limitation
  - Must be compatible with purpose of collection
- 5. Information quality
- 6.Openess
  - Documentation of further processing
  - Notification to DS
- 7. Security Safeguards
  - Security measure on integrity and confidentiality of PI
- 8. Data subject participation
  - Access to PI
  - Corrections to PI

POPIA 8 Conditions for Lawful processing Chapter 3

- Part B Sections devoted to processing of Special information categories including a general prohibition with exceptions
  - Religious or philosophical beliefs
  - Race, ethnic origin
  - Trade union membership, political persuasion
  - Health or sex life
  - Criminal behaviour
  - Biometric information
- Part C concerns processing of special information involving children

Condition 2: Section 11

- Section 11 of the Act is particularly important for researchers as it requires the researcher to make a clear determination or choice on which of the 6 options available, the legal justification for the processing of PI will rest.
- There are 6 options and **only one needs to be present**.
- a) e) and f) are particularly important for research. The ASSaf Code will try and clarify what is meant exactly by "legitimate interest" and when this can be used in research contexts where consent is not easily available.
- Thus Processing is legal if:

a) Consent is given (parent in the case of a child).

b) It is needed to conclude a contract to which the DS is party

c) It complies with an obligation imposed by law on the responsible party

d) It protects a legitimate interest of the DS

e) It is necessary for the proper performance of a public law duty by a public body (this applies directly to Science Councils-MRC, CSIR etc as they are mandated by parliament to conduct research)

f) Is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

Consent

- NB!! Consent is a very important part of POPIA and choosing f) as legal justification DOES NOT waive the consent requirement in most cases, but may open the door to allowing research to continue in some specific cases where obtaining consent may may be particularly difficult. Section 12 (f)- adults and Section 15 (e)-children
- In social media research consent is only not required if the information was deliberately placed in the public domain by the data subject . See section 12 (a).
- Assaf are developing a POPIA consent template that will include all the elements of consent that are legally required by POPIA; should be in the UCT Guideline as well.

Data Privacy Impact Assessment, Privacy IAs, Personal Information IAs

ALPHABET SOUP: PIAS, PIIAS, AND DPIAS Page 16 Usaf POPIA Implementation Guideline.

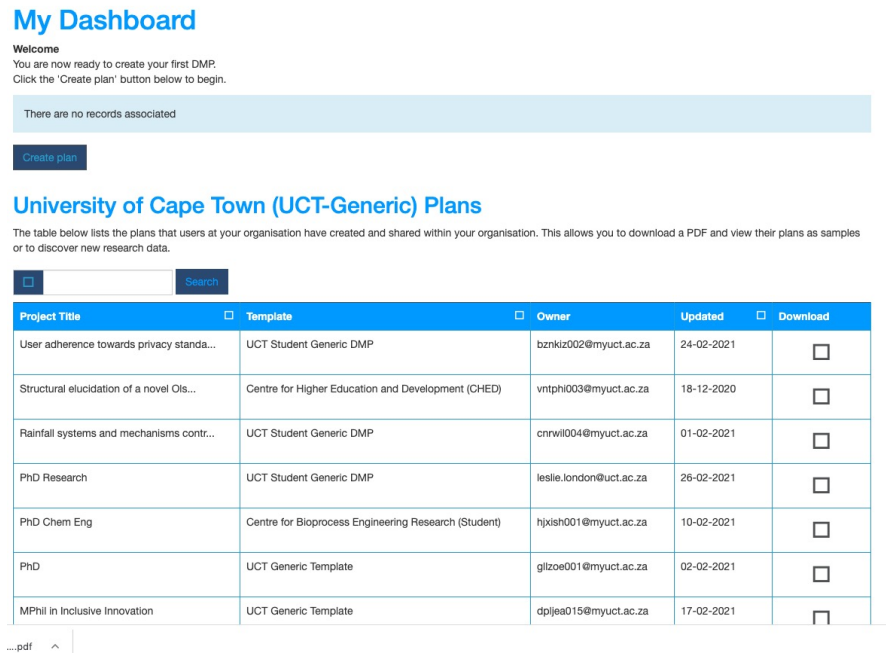
Although the POPIA doesn't mention PIIAs, the EU GDPR refers to data protection impact assessments (DPIAs) to assess compliance with existing laws. There is also the broader privacy impact assessment (PIA) that is a crucial component of privacy by design. PIAs are not just about complying with regulations, but they help you: Identify and evaluate the impact of a project, initiative, or system on the privacy of all stakeholders; and Search for ways to avoid or mitigate this impact.

Information Commissioners Office UK has a good DPIA template that can act as a guide

- https://ico.org.uk/media/about-the-ico/consultations/2258461/dpia-template-v04-post-comms-review-20180308.pdf
- UCT will need to develop its own DPIA templates for various settings to assist researchers and others; it is likely that DPIAs will need to be conducted 'in-house', reaching out for help as needed.

Data Management Plans (DMP)

- Data Management Plans are going to become of increasing importance and in many cases will need to be submitted with an ethics application. https://dmp.lib.uct.ac.za/plans
- A DPIA undertaken as part of a DMP or ethics application to the REC, should flag a high-risk outcome of a DPIA. The REC can play a role in mitigating privacy risk (this is not new!)



My Dashboard

Welcome
You are now ready to create your first DMP.
Click the 'Create plan' button below to begin.

There are no records associated

Create plan

University of Cape Town (UCT-Generic) Plans

The table below lists the plans that users at your organisation have created and shared within your organisation. This allows you to download a PDF and view their plans as samples or to discover new research data.

Search

Project Title	Template	Owner	Updated	Download
User adherence towards privacy standa...	UCT Student Generic DMP	bznkiz002@myuct.ac.za	24-02-2021	
Structural elucidation of a novel Ols...	Centre for Higher Education and Development (CHED)	vntphi003@myuct.ac.za	18-12-2020	
Rainfall systems and mechanisms contr...	UCT Student Generic DMP	cnrwil004@myuct.ac.za	01-02-2021	
PhD Research	UCT Student Generic DMP	leslie.london@uct.ac.za	26-02-2021	
PhD Chem Eng	Centre for Bioprocess Engineering Research (Student)	hjxish001@myuct.ac.za	10-02-2021	
PhD	UCT Generic Template	gltzoe001@myuct.ac.za	02-02-2021	
MPhil in Inclusive Innovation	UCT Generic Template	dpljea015@myuct.ac.za	17-02-2021	

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Thank you!