



# POPI and the Procurement Professional

# INTRODUCTION

- Daily ‘bombardment’ of voluminous amounts of information
- Why?
  - It is there and readily available
  - Critical for:
    - Strategic business decisions;
    - Negotiation leverage;
    - Risk Management
  - **INFORMATION = KNOWLEDGE = POWER**

**RESPONSIBILITY!!!!**

# EVOLUTION: “FICA”

## I. Financial Intelligence Centre Act (“FICA”) Act 38 of 2001, as amended by the Financial Intelligence Centre Amendment Act that came into effect on 14 June 2017

### AIM

To combat money laundering and the financing of terrorism

control measures - detection and investigation of money laundering and terrorist financing

responsibilities on financial institutions – ‘relationship’

### REQUIREMENT

“Know Your Client” (KYC) or Customer Due Diligence (“CDD”)

- Proof of Identity;
- Proof of residence

Regularly updated

### SANCTION

Offence: Sect 46, 48 (‘destroying’ or ‘tampering’), 53 (‘unauthorized disclosure’), 60 (‘misuse’), 65 and 66 (access/tampering with electronic data);

Penalty: Sect 68 (1): 15 years imprisonment or R 10,000,000

# EVOLUTION: “RICA”

## 2. Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002

### AIM

To regulate the interception of certain communications

To prohibit the provision of telecommunication services which do not have the capability to be intercepted

### REQUIREMENT

“Face-to-Face” Validation of Customers:

- Proof of Identity;
- Proof of residence

Regularly updated

### SANCTION

Offence / Penalty: Sect 51

- fails to comply with certain provisions of the Act - a fine or 12 months imprisonment.
- Any company not complying with recordkeeping – R2m fine or 10years imprisonment

# EVOLUTION: “PCCA”

## 3. Prevention and Combating of Corrupt Activities Act (PCCA) Act 12 of 2004, as amended

- Application
- Definitions
- Specific sections
- Specific offences (tenders, contracts and public officials)
- Both ‘private’ and ‘public’, as well as active and passive bribery, are criminalised. (‘duty to report’, Sect 34(1))

# EVOLUTION: “PCCA”(2)

Requirements (As per Ministry of Justice in the UK):

Companies must demonstrate implementation and adherence to the following principles:

- “Proportionate procedures”
- “Top-level commitment”
- “Risk assessment”
- “Due diligence” (‘Homework’ on suppliers **AND** duty to inform)
- “Communication (including training)”
- “Monitoring and review”

Employee ‘Declarations of Interest’ / ‘Gift Registers’

# EVOLUTION: “PCCA”(3)

## Sanctions:

- Sect 34(1): “Duty to Report
- Chapter 6: Register of Tender Defaulters
- Sect 26: Life, 18years, 10years, 5years, 3years or R250,000

# EVOLUTION: “BBBEE”

4. The **Broad-Based Black Economic Empowerment (B-BBEE)**, Act 53 of 2003 (the Act) as amended by the **B-BBEE Amendment**, Act 46 of 2013 came into effect on 24 October 2014, read together with The B-BBEE Codes of Good Practice (the Codes) came into effect on 1 May 2015

- **Aim**: To address the inequalities of the past
- **Requirements**:
  - BEE Certificates
  - “Empowering Supplier” (currently ‘on hold’) BUT ‘Compliance to regulatory requirements’
  - Fronting



# EVOLUTION: “BBBEE” (2)

## Sanctions:

- Fronting - Sect 130(1)(d) and 130(3)
- [A]ny person who “...becomes aware...”
- ‘Duty to Report’ (Verification Professionals) – Sect 130(1)

See also The Preferential Procurement Policy Framework Act, Act 5 of 2000: Preferential Procurement Regulations, 2017 in respect of Public Sector

# PROCUREMENT / SCM

## AIM

Collection of information for:

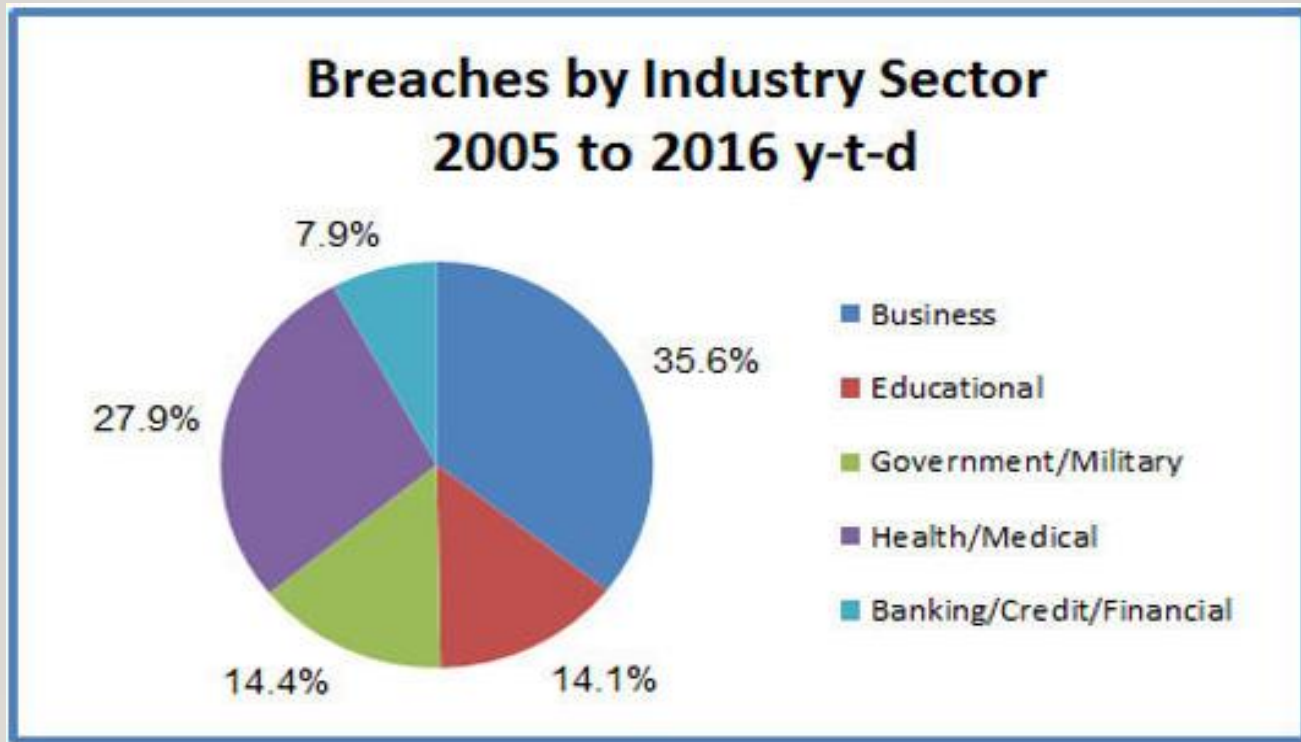
- strategic business decisions;
- negotiation leverage;
- Risk Management

## REQUIREMENTS

- Vendor Information (CIPRO);
- Contact Detail: Name and cellno (Emergency Contact Person)
- Domicilium citandi et executandi
- Pricing Variation Formulae:  
Information
- Cost Drivers;
  - Exchange rates;
  - Indices
- Bank account details
- BEE certificate(-s)
  - Due diligence
- VAT & Tax Clearance
- Safety & insurance – WW LOGS (Quarterly)
- Contract document

# WHY PROTECT?




- More Than 6,000 Breaches Reported Since 2005, a 397% increase
- As at Apr 2016, nearly 6.2 million records – adding to the more than 851 million records exposed over the last decade



# WHY PROTECT?

- Specific Info stolen: **PERSONAL INFORMATION**

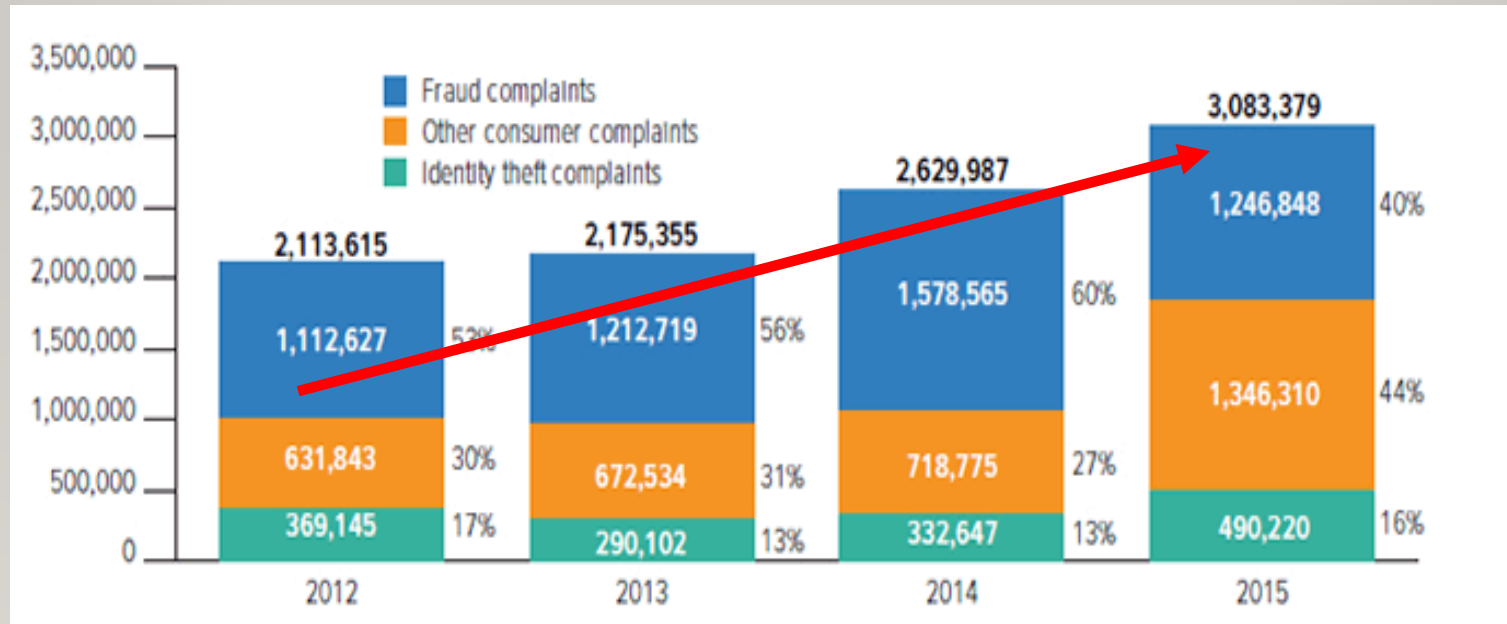
## What Personal Information Is Stolen by Identity Thieves?

 <p><b>PERSONAL INFORMATION</b></p>	 <p>Age marital status name email car number voting habits clubs/downloads political party purchases storage religion kids in house criminal record</p>	 <p>How to Protect Your <b>Online Identity</b></p>	
<p>Name Address Date of birth Social Security number (SSN) Health insurance ID number</p>	<p>Mother's maiden name  Username and passwords for web sites  Driver's license</p>	<p>Personal identification numbers (PINs)  Credit card information (numbers and expiry dates)</p>	<p>Bank account numbers  Signature  Passport number</p>

# WHY PROTECT?

- In the past six years identity thieves have stolen over \$107 billion

*The 2017 Identity Fraud Study, released by Javelin Strategy & Research*



1) Percentages are based on the total number of Consumer Sentinel Network complaints by calendar year. These figures exclude "Do Not Call" registry complaints.

Source: Federal Trade Commission, Consumer Sentinel Network.

# PROTECTION OF PERSONAL INFORMATION ('POPI')

## Aim:

- Sect 14 of the Constitution
- Duty to act 'Responsibly'

## Requirements:

- Consent;
- Valid Reasons;
- limited to the purpose and notice when compromised;
- Access and choice to destroy;
- 'adequate' control measures;
- integrity and continued accuracy;







## Sanctions: Sect 107

# 'POPI' AND PROCUREMENT

## I. "Do I have a (i) record of (ii) 'Personal Information' "?

- 'Record'?
- 'Personal Information'

### What is personal information?

 Email, telephone, address, bank info, etc	 Age, sex, race, birth date, ethnicity, religion, etc.	 Employment, financial, educational, criminal behaviour, medical history, trade union membership	 Opinions of and about the person	 Biometric Information, Blood type, Finger print, DNA, etc.	 Private correspondence & communication
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A higher degree of protection is given to special personal information under POPI given the highly sensitive nature of such information.

**Special personal information includes:**  
Information concerning a child; religious or philosophical beliefs; race or ethnic origin; trade union membership; political opinions; health; biometrical information; sexual life; criminal behaviour.

# 'POPI' AND PROCUREMENT

## 2. "Do I have 'Special Personal Information' "?

<b>Prohibition</b> <b>Sect. 26</b>	<b>General Authorization</b> <b>Sect. 27</b>	<b>Corresponding Exception</b>
<b>Religious or philosophical beliefs</b>	<ul style="list-style-type: none"> <li>• Consent;</li> </ul>	Sect. 28
<b>Race or Ethnic Origin</b>	<ul style="list-style-type: none"> <li>• In terms of law;</li> </ul>	Sect. 29 (BEE)
<b>Trade Union Membership</b>	<ul style="list-style-type: none"> <li>• International Public Law</li> </ul>	Sect. 30
<b>Political Persuasion</b>	<ul style="list-style-type: none"> <li>• Historical, statistical or research, if</li> </ul>	Sect. 31
<b>Health or sex life</b>	<ul style="list-style-type: none"> <li>• Public interest and necessary</li> </ul>	Sect. 32
<b>Criminal behaviour or Biometric Info</b> <ul style="list-style-type: none"> <li>• Alleged commission and proceedings</li> </ul>	<ul style="list-style-type: none"> <li>• To obtain consent is impossible and disproportionate</li> </ul>	Sect. 33
	<ul style="list-style-type: none"> <li>• Sufficient guarantees</li> <li>• Info made public</li> <li>• Regulator, if                             <ul style="list-style-type: none"> <li>○ Public interest;</li> <li>○ Sufficient guarantees</li> </ul> </li> </ul>	

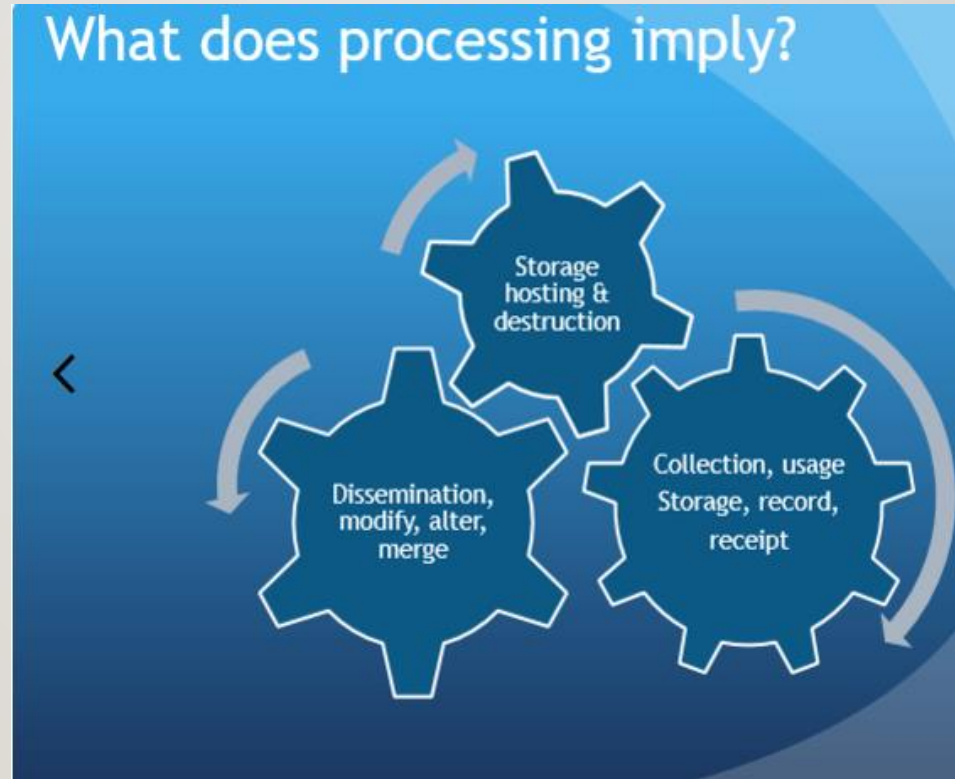


# ‘POPI’ AND PROCUREMENT

## 3. “Any Exclusions?”

- Sect. 6 (exclusive household, de-identified, national safety, corruption plus ‘adequate safeguards’, cabinet, court);
- Sect. 7 (journalistic, literary, artistic)

## 4. “Processing”



# ‘POPI’ AND PROCUREMENT

## 6. “Processed by means of...?”

- Definitions (Sect 1)

## 7. “Is ‘Identification’ possible?”

- Definitions (Sect 1)

**ONCE IT IS ESTABLISHED THAT PERSONAL INFORMATION IS BEING PROCESSED, COMPLIANCE TO THE FOLLOWING CONDITIONS IS NON-NEGOTIABLE!**

# 'POPI' AND PROCUREMENT

## CONDITIONS FOR LAWFUL PROCESSING

### 1. ACCOUNTABILITY

#### Sect. 8

- Compliance to all conditions and ALL measures to comply to the conditions at the time of determination of the purpose and means of processing and during processing itself.

### 2. PROCESS LIMITATION

#### Sect. 9 - 12

- Processing must be lawful, processed in a reasonable manner, necessary, adequate, relevant and not excessive.

### 3. PURPOSE SPECIFICATION

#### Sect. 13 - 14

- Information must be collected for a specific, explicitly defined and lawful purpose related to the function or activity.

### 4. FURTHER PROCESS LIMITATION

#### Sect. 15

- Further processing must be compatible with the purpose for which it was initially collected.

### 5. INFORMATION QUALITY

#### Sect. 16

- Information is complete, accurate, not misleading and updated where necessary, taking into account the purposes for which it was collected.

### 6. INFORMATION QUALITY

#### Sect. 17 - 18

- What information is being collected?
- Name and address of responsible party
- The purpose for which the information is collected
- Information supplied is voluntary or mandatory

### 7. SECURITY SAFEGUARDS

#### Sect. 19 - 22

- Responsibility to secure the integrity of information in possession or under control.

### 8. DATA SUBJECT PARTICIPATION

#### Sect. 23 - 25

- Data subject has the right to request:
- What personal information is carried
- A record of the personal information
- The identity of all third parties who have or had access to the information

# CSF's

- Acknowledgement of major business risk – Reputational Risk;
- Executive level representation and drive ‘Top Down’;
- Integrated in all areas of business (Governance, Risk and Compliance);
- Recognized audit requirement
- Suitable data breach capability and infrastructure (IT Data Recovery & Business Continuity)
- Funding
- Susceptible Employee Culture

# ACTION LIST

- Revisit ALL business processes and policies - Audit processes
- Design appropriate support processes with effective controls;
- Develop 'purpose' methodology to determine what privacy data is (to be) processed (only lawful, relevant and necessary), the limitations on the processing and the retention period(s)
- Revisit ALL contracts;
- Ascertain requirement and Implement necessary information security measures.
- Establish a Privacy Office and associated staff
- Create Employee Awareness
- Implement privacy statements, consent and process forms – to support data subject participation

# QUESTIONS



**THANK YOU**

# CONTACT DETAILS

For further information, please do not hesitate....



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