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PROMOTION TO THE ACCESS OF INFORMATION (PAIA) MANUAL

FOR THE IMPLEMENTATION OF THE PROTECTION OF PERSONAL INFORMATION ACT OF 2013 (POPIA)

A. PARTICULARS OF THE INFORMATION OFFICER AND RESPONSIBLE PARTY:

- Name: Dr Siobhán Sweeney
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- BHF Registration number: 0860020409235
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B. INTRODUCTION:

The Protection of Personal Information Act (POPIA) is intended to balance 2 competing interests. These are:

1. Our individual constitutional rights to privacy (which requires our personal information to be protected); and
2. The needs of our society to have access to and to process (work with) our personal information for legitimate purposes, including the purpose of doing business.

This Compliance Manual sets out the framework for the Practice's compliance with POPIA.

Where reference is made to the "processing" of personal information, this will include any activity in which the information is worked with, from the time that the information is collected, up to the time that the information is destroyed, regardless of whether the information is worked with manually, or by automated systems.

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C. OUR UNDERTAKING TO OUR CLIENTS:

1. We undertake to follow POPIA at all relevant times and to process personal information lawfully and reasonably, so as not to infringe unnecessarily on the privacy of our clients.

2. We undertake to process information only for the purpose for which it is intended, to enable us to do our work, as agreed with our clients.

3. Whenever necessary, we shall obtain consent to process personal information.

4. Where we do not seek consent, the processing of our client's personal information will be following a legal obligation placed upon us, or to protect a legitimate interest that requires protection.

5. We shall stop processing personal information if the required consent is withdrawn, or if a legitimate objection is raised.

6. We shall retain records of the personal information we have collected for the minimum period as required by law unless the client has furnished their consent or instructed us to retain the records for a longer period.

7. We shall destroy or delete records of the personal information (so as to de-identify the client) as soon as reasonably possible after the time period for which we were entitled to hold the records have expired.

8. We shall restrict the processing of personal information:

    8.1 where the accuracy of the information is contested, for a period sufficient to enable us to verify the accuracy of the information;

    8.2 where the purpose for which the personal information was collected has been achieved and where the personal information is being retained only for the purposes of proof;

    8.3 where the client requests that the personal information is not destroyed or deleted, but rather retained; or

    8.4 where the client requests that the personal information be transferred to another responsible party.

9. The further processing of personal information shall only be undertaken:

    9.1 if the requirements of paragraphs 3; 6.1; 6.4; 6.5 or 6.6 above have been met;

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9.2 where the further processing is necessary because of a threat to public health or public safety or to the life or health of the client, or a third person;

9.3 where this is required by the Information Regulator appointed in terms of POPIA.

9. We undertake to ensure that the personal information which we collect and process is complete, accurate, not misleading and up to date.

10. We undertake to retain the physical file and the electronic data related to the processing of the personal information.

D. OUR CLIENT'S RIGHTS:

1. In cases where the client's consent is required to process their personal information, this consent may be withdrawn.

2. In cases where we process personal information without consent to protect a legitimate interest, to comply with the law or to pursue or protect our legitimate interests, the client has the right to object to such processing.

3. All clients are entitled to lodge a complaint regarding our application of POPIA with the Information Regulator.

E. THE RESPONSIBLE PARTY HOLDS THE FOLLOWING INFORMATION PERTAINING TO PERSONAL INFORMATION:

1. Clients
2. Employees
3. Third party operators and contractors

F. INFORMATION IS HELD ON THE FOLLOWING PLATFORMS:

1. In general areas in the building.
2. In specific offices and space designated to The Responsible Party and staff.
3. In enclosed areas like locked cabinets, cupboards and safes.
4. On electronic password protected electronic devices.

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G. DETAILS REGARDING THE PROCESSING OF PERSONAL INFORMATION AS ENVISAGED IN POPIA (THE PROTECTION OF PERSONAL INFORMATION ACT, 2013) ARE AS FOLLOWS:

1. Purpose of processing: To provide services offered by the Responsible Party to its clients, as well as comply with legislative and regulatory requirements imposed on them by the various professional and regulatory bodies.
2. Categories of data subjects: Private clients, medical aid scheme members and their dependents, employees and contractors.
3. Categories of information: Names, identity numbers, address, contact details, physical and mental health, biometrics, language, gender, employment, marital status, next of kin, and correspondence.
4. Categories of information: Medical aid schemes, third party operators (data processors, accountants), hospitals, doctors and specialists.

H. SECURITY SAFEGUARDS:

1. In order to secure the integrity and confidentiality of the personal information in our possession, and to protect it against loss or damage or unauthorized access, we must continue to implement the following security safeguards:

    1.1 Our business premises where records are kept must remain protected by access control, burglar alarms and armed response.

    1.2 Archived files must be stored behind locked doors and access control to these storage facilities must be implemented.

    1.3 All the user terminals on our internal computer network and our servers must be protected by passwords which must be changed on a regular basis.

    1.4 Our email infrastructure must comply with industry standard security safeguards, and meet POPIA compliance standards.

    1.5 We must use an internationally recognized Firewall to protect the data on our local servers, and we must run antivirus protection at regular intervals to ensure our systems are kept updated with the latest programs to address security vulnerabilities and enhance security features.

    1.6 It must be a term of the contract with every staff member and third-party operator maintain full confidentiality in respect of all of our clients' affairs, including our clients' personal information.

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1.7 Employment and third-party contracts for staff whose duty it is to process a client's personal information, must include an obligation on the staff member (1) to maintain the Company's security measures, and (2) to notify the Responsible Party immediately if there are reasonable grounds to believe that the personal information of a client has been accessed or acquired by any unauthorized person.

1.8 The processing of the personal information of our staff members and third-party contractors must take place in accordance with the rules contained in the relevant labour legislation.

1.9 The digital work profiles and privileges of staff who have left out employ must be properly terminated.

1.10 The personal information of clients and staff must be destroyed timeously in a manner that de-identifies the person.

2. These security safeguards must be verified on a regular basis to ensure effective implementation, and these safeguards must be continually updated in response to new risks or deficiencies.

I. SECURITY BREACHES:

1. Should it appear that the personal information of a client has been accessed or acquired by an unauthorized person, we must notify the Information Regulator and the relevant client/s, unless we are no longer able to identify the client/s. This notification must take place as soon as reasonably possible.

2. The notification to the client must be communicated in writing in one of the following ways, with a view to ensuring that the notification reaches the client:

3.1 by mail to the client's last known physical or postal address;

3.2 by email to the client's last known email address; or

3.4 as directed by the Information Regulator.

4 This notification to the client must give sufficient information to enable the client to protect themselves against the potential consequences of the security breach, and must include:

4.1 a description of the possible consequences of the breach;

4.2 details of the measures that we intend to take or have taken to address the breach;

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4.3 the recommendation of what the client could do to mitigate the adverse effects of the breach; and

4.4 if known, the identity of the person who may have accessed, or acquired the personal information.

J. CLIENTS REQUESTING RECORDS:

1. On production of proof of identity, any person is entitled to request that we confirm, free of charge, whether or not we hold any personal information about that person in our records.

2. If we hold such personal information, on request, and upon payment of a legally allowable fee, we shall provide the person with the record, or a description of the personal information, including information about the identity of all third parties or categories of third parties who have or have had access to the information. We shall do this within a reasonable period of time, in a reasonable manner and in an understandable form.

3. A client requesting such personal information must be advised of their right to request to have any errors in the personal information corrected, which request shall be made on the prescribed application form. See Form C attached.

4. In all cases where the disclosure of a record will entail the disclosure of information that is additional to the personal information of the person requesting the record, the written consent of the Information Officer (or his delegate) will be required, and that person shall make their decision having regard to the provisions of Chapter 4 of Part 3 of the Promotion of Access to Information Act.

5. In certain circumstances, we will be obliged to refuse to disclose the record containing the personal information to the client. In other circumstances, we will have discretion as to whether or not to do so.

Records available in terms of applicable legislation (PAIA Section 51 (1) (c))

Information is available in terms of the following legislation, subject to conditions set by such laws. As legislation changes from time to time, and new laws may stipulate new matters and extend the scope of access by persons specified in such entities, the list should be read as not being a final and complete list.

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Business legislation (including all regulations issued in terms of such legislation):

The Companies Act 71 of 2008; Income Tax Act 58 of 1962; Value Added Tax Act 89 of 1991; Labour Relations Act 66 of 1995; Basic Conditions of Employment Act 75 of 1997; Employment Equity Act 55 of1998; Skills Development Levies Act 9 of 1999; Unemployment Insurance Act 63 of 2001; Compensation for Occupational Injuries and Disease Act 130 of 1993; Occupational Health and Safety Act of 85 of 1993; Electronic Communications and Transactions Act 25 of 2002; Telecommunications Act 103 of 1996; Electronic Communications Act 36 of 2005; Consumer Protection Act 68 of 2008; Broad-based Black Economic Empowerment Act 53 of 2003; National Credit Act 34 of 2005; Long-term Insurance Act 52 of 1998; Protection of Personal Information Act 4 of 2013; etc.

Health legislation (including all regulations issued in terms of such legislation): *(This legislation is of extreme relevance in the health sector and requestors should familiarise themselves with it)*

The National Health Act 61 of 2003; Medical Schemes Act 121 of 1998; Medicines and Related Substances Act 101 of 1965; Children's Act 38 of 2005; Mental Healthcare Act 17 of 2002; Choice on Termination of Pregnancy Act 92 of 1996; Sterilisation Act 44 of 1998; Health Professions Act 56 of 1974; etc.

Prescribed fees (PAIA Section 51 (1) (f))

The following legally-mandated fees apply to requests for information:

1. The requester is required to pay the prescribed fee of R50 before the request will be processed.

2. If the preparation of the record requested requires more than the prescribed 6 (six) hours, a deposit of not more than a third of the access fee which would be payable if the access was granted, shall be payable.

3. The requester may lodge an application with a court against the payment of the request fee and/or deposit.

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4. Records may be withheld until fees have been paid.

5. The latest fee structure is available on the website of the SAHRC at www.sahrc.org.za and attached to this manual.

K. RETENTION AND DISPOSAL OF RECORDS:

1. In accordance with the HPCSA, *Guidelines on the Keeping of Patient Records* (2008), para 9., records are to be retain on the following basis:

1.1 Records should be kept for at least 6 years after they become dormant.

1.2 The records of minors should be kept until their 21st birthday.

1.3 The records of patients who are mentally impaired should be kept until the patient's death.

1.4 Records pertaining to illness or accident arising from a person's occupation should be kept for 20 years after treatment has ended.

1.5 Records kept in provincial hospitals and clinics should only be destroyed with the authorization of the Deputy Director-General concerned.

1.6 Retention periods should be extended if there are reasons for doing so, such as when a patient has been exposed to conditions that might manifest in a slow-developing disease, such as asbestosis. In these circumstances, the HPCSA recommends keeping the records for at least 25 years.

1.7 In the likelihood of patients returning for treatment, and in order to continue to provide such treatment, records may be kept longer than the stipulated time period.

1.8 In terms of section 14 of the Protection of Personal Information Act 4 of 2013 records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected and processed. Records should not be retained randomly on an indefinite basis.

1.9 Statutory and regulatory obligations to keep certain types of records for specific periods must be complied with.

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2. An efficient records management system should include arrangements for archiving or destroying dormant records in order to make space available for new records, particularly in the case of paper records. Records held electronically are covered by the Electronic Communications and Transactions Act, which specifies that personal information must be deleted or destroyed when it becomes obsolete. A policy for disposal of records should include clear guidelines on record retention and procedures for identifying records due for disposal. The records should be examined first to ensure that they are suitable for disposal and an authority to dispose should be signed by a designated member of staff. The records must be stored or destroyed in a safe, secure manner.

2.1 A client is entitled to require us to correct or delete personal information that we have, which is inaccurate, irrelevant, excessive, out of date, incomplete, misleading, or which has been obtained unlawfully. See Form 2.

2.2 A client is also entitled to require us to destroy or delete records of personal information about the client that we are no longer authorized to retain. See Form 2.

2.3 Upon receipt of such a request, we must comply as soon as reasonably practicable.

2.4 We must notify the client who has made a request for their personal information to be corrected or deleted what action we have taken as a result of such a request.

2.5 We must maintain a register of each request and log the deletion or correction of such information.

L. SPECIAL PERSONAL INFORMATION:

1. Special rules apply to the collection and use of information relating to a person's religious or philosophical beliefs, their race or ethnic origin, their trade union membership, their political persuasion, their health or sex life, their biometric information, or their criminal behaviour.

2. We shall not process any of this Special Personal Information without the client's consent, or where this is necessary for the establishment, exercise or defense of a right or an obligation in law.

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M. THE PROCESSING OF PERSONAL INFORMATION OF CHILDREN:

1. We may only process the personal information of a child if we have the consent of the child's parent or legal guardian.

2. Appropriate safeguards will also be put in place to protect the personal information of a child.

N. INFORMATION OFFICER:

1. The Information Officer's responsibilities include:

   1.1 Ensuring compliance with POPIA.

   1.2 Dealing with requests which we receive in terms of POPIA.

   1.3 Working with the Information Regulator in relation to investigations.

2. In carrying out their duties, the Information Officer must ensure that:

   2.1 this Compliance Manual is implemented;

   2.2 a Personal Information Impact Assessment or GAP analysis is done to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of personal information;

   2.3 that this Compliance Manual is developed, monitored, maintained and made available;

   2.4 that internal measures are developed together with adequate systems to process requests for information or access to information.

O. CIRCUMSTANCES REQUIRING PRIOR AUTHORISATION:

1. We will require prior authorization from the Information Regulator before processing any personal information on criminal behaviour or unlawful behaviour.

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P. TRANSBORDER INFORMATION FLOWS:

1. We may not transfer a client's personal information to a third party in a foreign country, unless:

   1.1 the client consents to this, or requests it; or

   1.2 such third party is subject to a law, or a binding agreement which protects the personal information in a manner similar to POPIA, and such third party is governed by similar rules which prohibit the onward transfer of the personal information to a third party in another country; or

   1.3 the transfer of the personal information is required for the performance of the contract between ourselves and the client.

Q. OFFENCES AND PENALTIES:

1. POPIA provides for serious penalties for the contravention of its terms. For minor offences a guilty party can receive a fine or be imprisoned for up to 12 months. For serious offences the period of imprisonment rises to a maximum of 10 years. Administrative fines for the company can reach a maximum of R10 million.

2. Breaches of this Compliance Manual will also be viewed as a serious disciplinary offence.

3. It is therefore imperative that we comply strictly with the terms of this Compliance Manual and protect our client's personal information in the same way as if it was our own.

This manual is signed by Dr Siobhán Sweeney on the 30th day of June 2021

Signature: Information Officer and practice owner

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REPUBLIC OF SOUTH AFRICA

FORM C
REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY
(Section 53(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))
[Regulation 10]

A. Particulars of private body
The Head:

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be given below.
(b) The address and/or fax number in the Republic to which the information is to be sent must be given.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: ……

Identity number:

Postal address: ……

Telephone number: (……) ……..….. Fax number: (……) ……..…...

E-mail address: ……

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: ……

Identity number:

D. Particulars of record

(a)	Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
(b)	If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Description of record or relevant part of the record:

……..

……..

……..

……..

2. Reference number, if available:

……..

……..

……..

……..

3. Any further particulars of record:

……..

……..

……..

……..

E. Fees

(a)	A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
(b)	You will be notified of the amount required to be paid as the request fee.
(c)	The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
(d)	If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

……..

……..

……..

……..

……..

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability: Form in which record is required:

Mark the appropriate box with an **X**.

NOTES:
(a) Compliance with your request for access in the specified form may depend on the form in which the record is available.
(b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
(c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form:						
	copy of record*		inspection of record			
2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):						
	view the images		copy of the images*		transcription of the images*	
3. If record consists of recorded words or information which can be reproduced in sound:						
	listen to the soundtrack (audio cassette)		transcription of soundtrack* (written or printed document)			
4. If record is held on computer or in an electronic or machine-readable form:						
	printed copy of record*		printed copy of information derived from the record*		copy in computer readable form* (stiffy or compact disc)	

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES	NO

G. Particulars of right to be exercised or protected

If the provided space is inadequate, please continue on a separate folio and attach it to this form.
The requester must sign all the additional folios.

1. Indicate which right is to be exercised or protected:

……..

……..

……..

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

……..

……..

……..

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved / denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

……..

Signed at …….. this day…… of ……year …….

……
SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE

FORM 2

REQUEST FOR CORRECTION OR DELETION OF PERSONAL INFORMATION OR DESTROYING OR DELETION OF RECORD OF PERSONAL INFORMATION IN TERMS OF SECTION 24(1) OF THE PROTECTION OF PERSONAL INFORMATION ACT, 2013 (ACT NO. 4 OF 2013)

REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION, 2018

[Regulation 3]

Note:

1. *Affidavits or other documentary evidence as applicable in support of the request may be attached.*
2. *If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.*
3. *Complete as is applicable.*

Mark the appropriate box with an "x".

Request for:

☐ Correction or deletion of the personal information about the data subject which is inpossession or under the control of the responsible party.

☐ Destroying or deletion of a record of personal information about the data subject which is in possession or under the control of the responsible party and who is no longer authorised to retain the record of information.

A	**DETAILS OF THE DATA SUBJECT**
Name(s) and surname / registered name of data subject:	
Unique identifier/ Identity Number:	
Residential, postal or business address:	
	Code ( )
Contact number(s):	
Fax number/E-mail address:	
B	**DETAILS OF RESPONSIBLE PARTY**
Name(s) and surname / registered name of responsible party:	
Residential, postal or business address:	
	Code ( )
Contact number(s):	
Fax number/ E-mail address:	
C	**INFORMATION TO BE CORRECTED/DELETED/ DESTRUCTED/ DESTROYED**
REASONS FOR *CORRECTION OR DELETION OF THE PERSONAL INFORMATION ABOUT THE DATA SUBJECT IN TERMS OF SECTION 24(1)(a) WHICH IS IN POSSESSION OR UNDER THE CONTROL OF THE RESPONSIBLE PARTY ; and or REASONS FOR *DESTRUCTION OR DELETION OF A RECORD OF PERSONAL INFORMATION ABOUT THE DATA SUBJECT IN TERMS OF SECTION 24(1)(b) WHICH THE RESPONSIBLE PARTY IS NO LONGER AUTHORISED TO RETAIN. *(Please provide detailed reasons for the request)*	

Signed at ..... this ..... day of .....20……...

.....

Signature of data subject/ designated person

FEES IN RESPECT OF RECORDS REQUESTED FROM PRIVATE BODIES

1. The fee for a copy of the manual as contemplated in regulation 9 (2) (c) is R1.10 for every photocopy of an A4-size page or part thereof.

2. The fees for reproduction referred to in regulation 11 (1) are as follows:

    a) For every photocopy of an A4-size page or part thereof R1.10

    b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form R0.75

    c) For a copy in a computer-readable form on:

        i) Compact disc R70.00

    d) i) For a transcription of visual images, for an A4-size page or part thereof R40.00

        ii) For a copy of visual images R60.00

    e) i) For a transcription of an audio record, for an A4-size page or part thereof R20.00

        ii) For a copy of an audio record R30.00

    f) Search and preparation of the record for disclosure R30.00 per hour or part thereof, excluding the first hour, reasonable required for search and preparation

    g) Actual postage fee

3. The request fee payable by a requester, other than a personal requester, referred to in regulation 11 (2) is R50.00.