

Sued For Damages (Non-compliance with the POPI Act)

A. INTRODUCTION

1. The Protection of Personal Information Act, 2013, (POPI) does more than prescribe regulations in relation to the personal information of data subjects (the person to whom the information relates). [If the responsible party \(such as a business, or body corporate\) breaches the conditions of lawful processing of personal information, it may be sued for damages.](#) This is in addition to any other penalties, or enforcement action against it.
2. Most notably, the responsible party can be held liable for the damages [regardless of whether the breach or non-compliance was intentional or negligent.](#)
3. What follows are important aspects to highlight in this regard.

B. WHAT MAY YOU BE SUED FOR?

4. The responsible party may be sued for an interference with the protection of personal information of the data subject. This includes:
 - 4.1. [Any breach of the conditions of lawful processing](#) (accountability, processing limitation, purpose specification, further processing limitation, information quality, openness, safeguards, and/or data subject participation).
 - 4.2. Non-compliance with the duties of the responsible party to notify the data subject or the regulator of any security compromises;
 - 4.3. Prohibited and unsolicited [direct marketing](#); and/or
 - 4.4. Unlawful use of automated decision-making which result in legal consequences for the data subject.

C. WHO MAY SUE?

5. The [data subject](#) (which may include a company, client, member of a body corporate, etc) may sue directly. Alternatively, [the information regulator may sue on behalf of the data subject](#) if the data subject requests this.

D. WHO MAY BE SUED?

6. The responsible party may be sued. This may include a business, a person, or an organisation.
7. In terms of the principle of vicarious liability, the employer may be held responsible for certain conduct of their staff.

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E. HOW MUCH CAN BE AWARDED?

8. Any amount the Court deems **just and equitable** which can include :
 - 8.1. **Aggravated damages**;
 - 8.2. Damages for monetary/property loss;
 - 8.3. **Damages for non-monetary loss such as emotional shock, impact on reputation dignity, etc**;
 - 8.4. Interest in favour of the data subject; and
 - 8.5. The legal costs incurred by the data subject in respect of attorneys, advocates, sheriffs, and other litigation related expenses.

F. DEFENCES & OUR-OF-COURT SETTLEMENT?

9. What are the defences section the defences are limited in terms of POPI.
10. Naturally, prevention is better than cure, hence compliance may be the first line of defence against such lawsuits. Furthermore, **it is a statutory responsibility of the information officer to ensure that training and internal awareness are conducted regarding the provisions of POPI.**
11. Unlike in most civil cases, where settlement agreements may remain confidential and do not have to be made orders of court. In terms of POPI, **settlement agreements have to be made an order of court** if the settlement is only reached after the civil action has been instituted. Furthermore, the **agreement may have to be published** in the government Gazette and other public media that the court considers appropriate.

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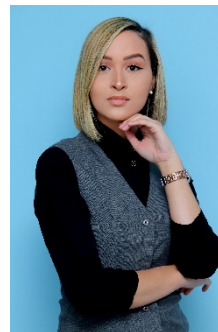
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