

POLICY: PROTECTION OF PERSONAL INFORMATION

Name of policy:	UKZN Policy on Protection of Personal Information		
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Originator/Author: <i>(name and position)</i>	Compliance Officer		
Custodian: <i>(position/office)</i>	Registrar		
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Implementation responsibility:	The Office of the Registrar		
Implementation procedures approved by:	Structure: EMC	Date: 18 Feb 2021	

A: POLICY STATEMENT

1. Purpose statement

The Protection of Personal Information Act 4 of 2013 (hereinafter referred to as “POPIA” and/or “the Act”), was assented to in 2013. This legislation regulates the manner in which personal information is to be dealt with in both the public and private sectors.

2. Introduction and background

The University of KwaZulu-Natal (hereinafter referred to as “UKZN” and/or “the University”) is a public higher education institution (per the Higher Education Act 101 of 1997) and is committed to compliance with all applicable legislation and/or good governance practices.

As such, the University is obliged to strive to comply with POPIA and protect personal information that may be requested and retained (note that destruction of information may only take place per the KwaZulu-Natal Archives and Records Service Act 8 of 2011) pertaining to the various stakeholders of UKZN.

This document must be read together with the POPIA Regulations and Guidelines, all other UKZN policies and regulatory documents as well as the UKZN Promotion of Access to Information Act (hereinafter referred to as “PAIA”) manual.

3. Definition of terms (taken from the POPI Act, Act 4 of 2013)

Biometrics: means a technique of personal identification that is based on physical, physiological or behavioural characterisation including blood typing, fingerprinting, DNA analysis, retinal scanning and voice recognition.

Child: means a natural person under the age of 18 years who is not legally competent, without the assistance of a competent person, to take any action or decision in respect of any matter concerning him- or herself.

Competent person: means any person who is legally competent to consent to any action or decision being taken in respect of any matter concerning a child.

Consent: means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information. Such consent can be obtained at the outset of the relationship with UKZN, or later, if and as necessary.

Data subject: means the person to whom personal information relates.

De-identify: in relation to personal information of a data subject, means to delete any information that—

- (a) identifies the data subject;
- (b) can be used or manipulated by a reasonably foreseeable method to identify the data subject;
- or
- (c) can be linked by a reasonably foreseeable method to other information that identifies the data subject,

and “**de-identified**” has a corresponding meaning.

Direct marketing: means to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of—

- (a) promoting or offering to supply, in the ordinary course of business, any goods or services to the data subject; or
- (b) requesting the data subject to make a donation of any kind for any reason.

Information officer: The Information Officer for UKZN is the Vice-Chancellor.

Deputy Information Officer(s): The Deputy Information Officers for UKZN are the Registrar and the Director: Legal Services.

Operator: means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party.

Person: means a natural person or a juristic person.

Personal information: means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to—

(a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

(b) information relating to the education or the medical, financial, criminal or employment history of the person;

(c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;

(d) the biometric information of the person;

(e) the personal opinions, views or preferences of the person;

(f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the person; and

(h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

Processing: means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including—

(a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

(b) dissemination by means of transmission, distribution or making available in any other form; or

(c) merging, linking, as well as restriction, degradation, erasure or destruction of information.

PAIA: refers to the Promotion of Access to Information Act 2 of 2000.

Record: means any recorded information—

(a) regardless of form or medium, including any of the following—

(i) Writing on any material;

(ii) information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;

(iii) label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;

(iv) book, map, plan, graph or drawing;

(v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

(b) in the possession or under the control of a responsible party;

(c) whether or not it was created by a responsible party; and

(d) regardless of when it came into existence.

Re-identify: in relation to personal information of a data subject, means to resurrect any information that has been de-identified, that—

(a) identifies the data subject;

(b) can be used or manipulated by a reasonably foreseeable method to identify the data subject; or

(c) can be linked by a reasonably foreseeable method to other information that identifies the data subject, and “**re-identified**” has a corresponding meaning.

Responsible party: means UKZN.

Special personal information:

(a) the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or

(b) the criminal behaviour of a data subject to the extent that such information relates to—

(i) the alleged commission by a data subject of any offence; or

(ii) any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.

4. Scope

This document applies to all personal information, whether belonging to a natural or juristic person that may be collected, requested, retained and subsequently destroyed, pertaining to the various stakeholders of UKZN.

5. The Policy

5.1 Lawfulness of Processing, Minimality and Collection for a Specified Purpose

When processing personal information, UKZN must ensure that such processing takes place for a specified purpose (which relates to the activities of the University), lawfully and in a reasonable manner whilst not infringing on the rights of the data subject. Any personal information that is obtained and retained by the University must be used only for the purposes as notified to the data subject.

The data subject must also be provided with the relevant and mandatory notification per the POPIA Regulations and Guidelines.

5.2 Consent, Collection of Personal Information and Notification to the Data Subject

Personal information may only be processed by UKZN where the data subject (or in the case where the data subject is a child, from a competent person) has consented to such processing and such information must be collected directly from the data subject (or the competent person, as the case may be).

The data subject must be made aware of the reasons for the necessity to provide the requested personal information and the consequences of not consenting and/or objecting to the processing of the relevant personal information e.g. not being able to proceed with an application for admission or employment. Only information that is necessary and directly related to a particular cause may be solicited by the University.

5.3 Retention; Restriction of Records; Security of Information

UKZN may retain personal information:

- for as long as the lawful purpose for which the University requires the personal information remains; and/or
- as a practice of good governance; and/or

- as proof that the that the objective for which the personal information was obtained and subsequently processed has been achieved; and/or
- for historical, statistical and/or research purposes of UKZN.

UKZN may retain the personal information in the above circumstances, for periods in excess of those required of legislation, so long as appropriate security measures are in place and/or implemented, for both electronic and paper-based formats that may be utilised for processing personal information, to avoid any and all instances of security breaches.

Personal information may only ever be processed by persons authorised to do so by the University and must at all times be kept in a confidential, safe and secure manner so as to avoid exposure to unauthorised persons. It is recommended that where relevant, staff sign non-disclosure agreements to ensure the confidentiality of information.

All personal information processed by the University and which remains in active use by the University must be maintained in an archival facility within the particular division that is utilising the information eg. the Finance Division must have a centralised archival point for the personal information that is being processed (and which is in active use) by each of the areas reporting into the Division. The personal information must be properly categorised and stored for ease of reference and retrieval. Where practicable, the use of hardcopy formats of information should be limited, to streamline the process of maintaining the confidentiality and integrity of the information. Such archival points must be maintained in such a manner so as to ensure that the personal information is kept in a confidential, safe and secure manner so as to avoid exposure to unauthorised persons.

When the personal information is no longer in active use, and the University is still required to retain same (by applicable legislation or as a good governance practice), such information must be sent to a centralised archival point where same must be properly categorised and stored for ease of reference and retrieval. Such centralised archival point must be maintained in such a manner so as to ensure that the personal information is kept in a confidential, safe and secure manner so as to avoid exposure to unauthorised persons.

Once the personal information may no longer be retained for the reasons mentioned above, same must be destroyed/de-identified (the process must still facilitate and maintain the confidentiality of the information), by persons authorised to do so at the University, in manner that ensures that the personal information cannot be reconstructed or re-identified. The University is to retain proof and/or record of the destruction.

Note that the above may only take place upon the authorisation of the KwaZulu Natal Provincial Archivist per section 18(2) of the KwaZulu Natal Archives and Records Service Act 8 of 2011.

The University will follow any guidelines and/or directions as issued by the Information Regulator and/or KwaZulu Natal Provincial Archivist's Office that pertain to retention and/or destruction practices.

5.4 Information processing by Operators (including the Transfer of Personal Information outside the Republic)

Should UKZN engage the services of an operator in relation to the processing and/or destruction of personal information, the University is to ensure that the operator is contractually obligated to comply with the requirements of POPIA and process and/or destroy the personal information as stipulated by the Act (this applies to instances of further processing as well).

5.5 Information processing by Third Parties (including the Transfer of Personal Information outside the Republic)

Personal information that is not de-identified and anonymised may only be provided to a third party if provision of such information is a legislative and/or reporting requirement. Personal information may be shared with bodies tasked with, *inter alia*, funding students; programme and/or qualification approval; the regulation of professions for accreditation; registration of professionals; verifying qualifications; verifying employment status; however, such information, may only be shared with such bodies, with the consent of the relevant data subjects, unless the sharing of the information forms part of the scope of the implicit operations of UKZN.

The sharing of students' personal information with third parties who may be canvassing the student body for candidates for specified bursaries and/or employment may only take place with the explicit consent of the relevant students.

Should a third party wish to obtain student information for the purpose of fund raising that will have an effect on the general student population, only de-identified and fully anonymised information is to be provided.

In the above instances the third parties are to be contractually bound to comply with the requirements of POPIA (this applies in instances of further processing as well).

5.6 Security Breaches

The operator and/or third party must be contractually obligated to immediately inform the University of any and all threatened and/or actual security breaches which may/will affect any and all personal information that the University processes itself or via contractual agreement with an operator and/or third party. Such threatened and/or actual security breaches either within the University environment and/or that of the operator and/or third party must be reported to the Registrar, acting in the capacity as Deputy Information Officer so that the measures in terms of POPIA may be instituted.

5.7 Quality of Information

The University is at all times to ensure that the personal information obtained and retained from the data subject is complete, accurate, not misleading and up to date (the forms are contained in the UKZN POPIA Regulations and Guidelines).

To facilitate the above:

- Regular communication with all UKZN stakeholders may take place in a paper based or electronic format to ensure that same are aware of their obligation to ensure that the University has their correct personal information at all times;
- Such stakeholders must be able to access to their personal information to verify the authenticity of same; and
- Should such stakeholders wish to correct their information, the University must provide the platform to enable the correction with the consent of the stakeholder.
- All requests for updating personal information must be sent to Informationoffice@ukzn.ac.za (or any other email address and/or process as identified by the Registrar) to enable an objective assessment of such requests to take place.
- With regard to any supporting documentation that may be required for the updating of personal information, the University will follow any applicable guidelines that may be issued by the Office of the Information Regulator as and when same are published.

Where relevant, requests for access to personal information and the correction thereof, must be facilitated via the PAIA process.

5.8 Further Processing

Further processing of personal information may only take place if the reason for the further processing is compatible with the reason for which the personal information was originally processed eg. A student who has graduated from UKZN, has returned to the University to pursue another degree, the personal information processed in the first instance may be used for the subsequent registration.

5.9 Special Personal Information

The processing of special personal information may only take place in the following instances:

- Processing is carried out with the data subject's consent (or the competent person, as the case may be);
- Processing takes place under the auspices of relevant South African and/or international public law;
- Processing takes place for historical, statistical or research purposes, within the UKZN context, to the extent that:-
 - The processing is necessary for the relevant purpose and serves a public interest; or
 - It appears to be impossible or would have a disproportionate effort to ask for consent

and UKZN ensures that the processing does not affect the individual privacy of the data subject to a disproportionate extent; or

- The personal information has been made public by the data subject.

5.10 Direct Marketing

UKZN may only make contact with data subjects for the purposes of direct marketing:

- With the consent of the data subject prior to the commencement of direct marketing initiatives and such consent may only be requested once. The prescribed forms (contained in the UKZN POPIA Regulations and Guidelines) must be used to request consent; or
- If:
 - UKZN obtained the contact details of the data subject in the context of the sale of a product or service to the data subject (eg. the data subject paid for and attended a course offered by the University which may be construed as the sale of a product by the University to the data subject);
 - The purpose of the direct marketing is to offer data subject similar products that UKZN has on offer; and
 - The data subject, at the time that the personal information was collected and on each subsequent occasion when the data subject is contacted for direct marketing purposes, the data subject is offered a reasonable opportunity to object, free of charge, in a convenient and easily accessible manner, to the direct marketing (eg. an opt out option via e-mail).
- Each and every marketing communication must clearly identify the University and stipulate the details of the opt out mechanism.

5.11 Contractual Agreements, Other Documents and Processes

All contractual agreements; documents and/or processes which the University is a party to and/or may utilise to conduct its business, must be vetted by Legal Services to ensure that same give effect to the requirements of POPIA (ie. by the insertion of a relevant clause in the agreement and/or document. In the case of a process same must be vetted to ensure that it does have the potential to cause a breach of the Act).

5.12 Requests for Access to, Processing and/or Destruction of Personal Information

All requests to access/process/destroy personal information must be directed to the Office of the Registrar for consideration via the email address: Informationoffice@ukzn.ac.za.

All personal information must be treated as strictly confidential and may only be processed with the consent of the data subject and/or per the direction of the Office of the Registrar.

5.13 Amendment of Personal Information Held by UKZN

All requests for the amendment, correction and/or deletion of personal information must be directed to Informationoffice@ukzn.ac.za for an objective assessment to take place. Where the request for amendment, correction and/or deletion is declined a note to such effect will be entered into the relevant University record.

5.14 Matters and/or Incidences that may occur Outside the Scope Covered by this Document

The Registrar, acting in the capacity as Deputy Information Officer, must be contacted for direction should any matters and/or incidences occur, which this document does not address, with regard to personal information.

6. Non-Compliance

Failure to comply with this policy may result in disciplinary action.

7. Review

This document may be periodically reviewed every 3 years from the date of Council approval or to coincide with changes to POPIA and/or the University environment. Should a review take place as a result of the latter instance, the requirements of POPIA must still be met in the reviewed document.