

DIRECT MARKETING IN SOUTH AFRICA

1. OVERVIEW

Direct marketing has long been a contentious topic in South Africa, often sparking frustration over unsolicited phone calls and emails. With the implementation of the Protection of Personal Information Act 4 of 2013 (POPIA), the rules governing direct marketing have become stricter, aiming to balance business interests with individual privacy rights. This article discusses the particulars of direct marketing under POPIA and what the latest Guideline from the Information Regulator contains.



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2. WHAT IS DIRECT MARKETING?

Under POPIA, [direct marketing](#) refers to any approach made to a data subject, whether in person, by mail, or through electronic communication, aimed at:

- promoting or offering goods or services to the data subject; or
- requesting donations for charitable or other purposes.

Direct marketing under POPIA includes both non-electronic (e.g., postal mail, in-person communication) and electronic methods (e.g., email, SMS, phone calls). POPIA specifically regulates unsolicited electronic communications, requiring prior consent from the data subject or an established customer relationship.

The primary goal is to ensure that data subjects' privacy rights are protected and that personal information is processed responsibly in all direct marketing activities.

3. THE DEFINITION OF ELECTRONIC COMMUNICATION: A CONTENTIOUS ISSUE



The Information Regulator of South Africa has issued a comprehensive [Guidance Note](#) to clarify the application of POPIA concerning direct marketing practices. This guideline aims to assist responsible parties in aligning their direct marketing strategies with POPIA's stipulations, ensuring the protection of personal information and upholding data subjects' privacy rights. It has been a contentious issue whether telephone calls are included under the definition of 'electronic communication' in the Act, and the Guideline is clear in its inclusion.

4. UNDERSTANDING DIRECT MARKETING UNDER POPIA

As defined by POPIA, direct marketing involves approaching a data subject – either in person, via mail, or through electronic communication – to promote or offer goods or services, or to solicit donations. The [Guidance Note](#) distinguishes between two primary forms of direct marketing:

4.1. Non-electronic communications

This involves traditional methods such as in-person solicitations and postal mail. While POPIA permits these approaches, responsible parties must ensure that the processing of personal information adheres to the Act's eight conditions for lawful processing.

4.2. Electronic communications

This includes emails, telephone calls, SMS, direct messages on social media and automated calling machines. Section 69 of POPIA specifically addresses unsolicited electronic communications, stipulating that such communications may only be sent with the data subject's consent, unless there is an existing customer relationship and specific criteria are met.

Here are the highlights:



5. WHAT BUSINESSES SHOULD KNOW

To align with the Act's requirements, organisations engaging in direct marketing must:

- **Obtain explicit consent**

Before initiating direct marketing, organisations must secure voluntary, specific, and informed consent from data subjects. This consent should be documented and retained as evidence of compliance.

- **Provide opt-out mechanisms**

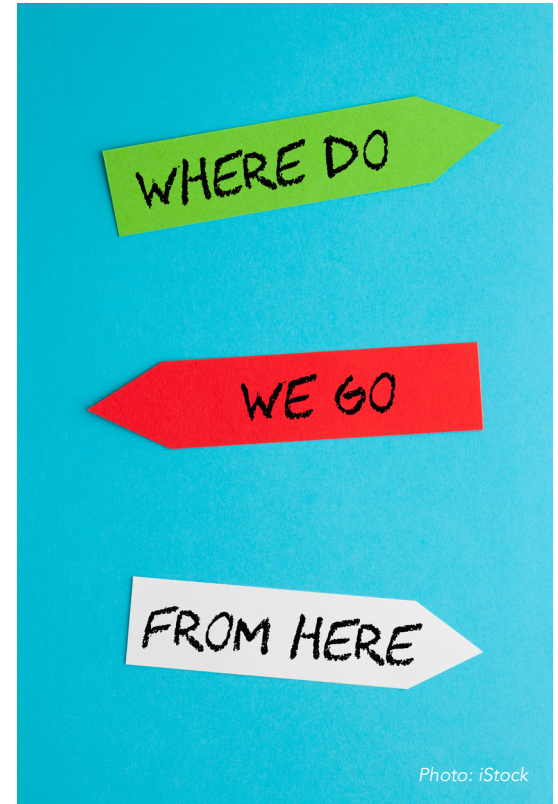
Every direct marketing communication must offer a clear and user-friendly option for recipients to withdraw their consent or opt out of future communications. Organisations are obligated to honour these requests promptly.

- **Maintain a do-not-contact registry**

Organisations should regularly update their databases to exclude individuals who have opted out or registered a pre-emptive block against direct marketing communications, as per section 11 of the Consumer Protection Act (CPA).

- **Adhere to processing conditions**

All personal information utilised for direct marketing must be processed in line with POPIA's eight conditions for lawful processing, ensuring transparency, security, and respect for data subjects' rights.



6. WHAT WILL HAPPEN IF YOU DO NOT COMPLY

Non-adherence to POPIA's provisions can result in significant repercussions, including administrative fines and reputational damage. The Information Regulator is authorised to issue enforcement notices and impose penalties on entities that fail to comply with the Act's requirements.

Last year, the Information Regulator issued an enforcement notice against FT Rams Consulting after responding to a direct marketing complaint from a data subject to whom they sent continuous unsolicited messages. Read more about the direct marketing complaint [here](#).

7. WHAT NEXT?



For more information on direct marketing under POPIA, see:

- [Chapter 16](#) – Direct marketing;
- [Guidance Note on Direct Marketing](#); and
- [Telemarketing in South Africa: Navigating the POPIA landscape](#).