



Legal Services

FINANCIAL SERVICES



ON THE SCALES 2 OF 2019

Regulations to the Protection of Personal Information Act

On 13 December 2018, the Information Regulator ('the Regulator') issued regulations to the Protection of Information Act ('Regulations'). The Regulations are final but they have not yet commenced. The commencement date for the Regulations will be aligned with the commencement date of the Protection of Personal Information Act ('the Act'). We believe that the Act and Regulations will commence later this year, with a one year transition period for implementation.

Summary

The Regulations deal with the following:

- How a data subject can object to the processing of their personal information.
- How a data subject can request the correction or deletion of information.
- The responsibilities of an information officer.
- How to apply for the regulator to issue a code of conduct.
- How to request direct marketing consent.
- How to submit a complaint to the Regulator.
- How the Regulator will act as a conciliator in investigations.
- What the Regulator must do before it investigates you.
- How the Regulator will try to settle complaints.
- How the Regulator will conduct assessments.
- How the Regulator will notify people during investigations.

On the Scales is produced by Alexander Forbes Legal Services department to provide clients with information on employee benefits. The issues need to be carefully considered taking into account the specific circumstances of each of our clients.

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How to object to processing personal information and request for deletion of personal information

The Regulations contain the forms that must be submitted by a data subject who wishes to lodge an objection to the processing of personal information. They also prescribe forms which a data subject must complete to request a correction or deletion of personal information. In both instances the responsible person or designated person is required to provide reasonable assistance to the data subject in completing the forms where necessary, free of charge.

Application for issuing a code of conduct

A private or public body with sufficient representation in any industry or profession may apply for the issuing of a code of conduct to the Regulator in the prescribed form.

How to request direct marketing consent

A responsible party has to apply to the data subject in the prescribed form to obtain consent to process information for the purposes of direct marketing. The request is only necessary for electronic communications. These requests only apply to potential customers and not current customers.

What are the new additional responsibilities of an information officer?

Information officers have been given additional responsibilities over and above the responsibilities provided in the Act. According to the Regulations an information officer must ensure that:

- a compliance framework is developed, implemented, monitored and maintained;
- a personal information impact assessment of whether adequate measures and standards exist is done;
- a Promotion of Access to Information Act manual is developed, monitored, maintained and copies made available;
- there are adequate systems and internal measures to process requests for information or access to information;
- that internal awareness sessions are conducted.

An information officer will be required to provide copies of the manual to any person when requested to do so. The Regulator will publish the fees payable by any person who request copies of the manual.

How to submit a complaint to the Regulator

The Regulations provide different prescribed forms for lodging a complaint with the Regulator. There are forms prescribed for any other person and forms prescribed for a responsible party or a data subject.

Can the Regulator act as conciliator?

The Regulator may act as a conciliator and may combine separate complaints relating to the same interference with the protection of personal information by the same responsible party in the same conciliation proceedings. The Regulator must issue a conciliation certificate within a reasonable time after the conciliation meeting.

Informing parties of pre-investigation proceedings

Where the Regulator intends on investigating a person, the Regulator is required to inform the person prior to the investigations. The Regulator also has to inform a responsible person of their right to submit a written response to a complaint.

Can the Regulator settle complaints?

If the Regulator foresees a possibility of a settlement, the Regulator may arrange a settlement meeting. The Regulator must issue a settlement certificate at the end of the settlement meeting.

If no settlement is reached the Regulator may proceed with the matter as prescribed by the Act.

How the Regulator will conduct assessments

A request for an assessment of whether a case of processing personal information complies with the Act can be made in a prescribed form. The Regulator has to inform the requester in a prescribed form whether it will conduct the assessment on its own initiative or as requested.

Notification to the parties regarding investigations

During investigations the Regulator is required to keep the parties informed of the developments of the investigation and the results thereof. The parties to an investigation must be served with a notice to their designated address in the prescribed forms of the action that has been taken by the Regulator.

Comments: The Regulations are helpful as they provide various forms to be completed for requests, complaints and certificates which can be made in terms of the Act.

If you need more information, please contact your consultant.
