

# South Africa's Protection of Personal Information Act 4 of 2013 (POPIA): Summary flowchart for health research

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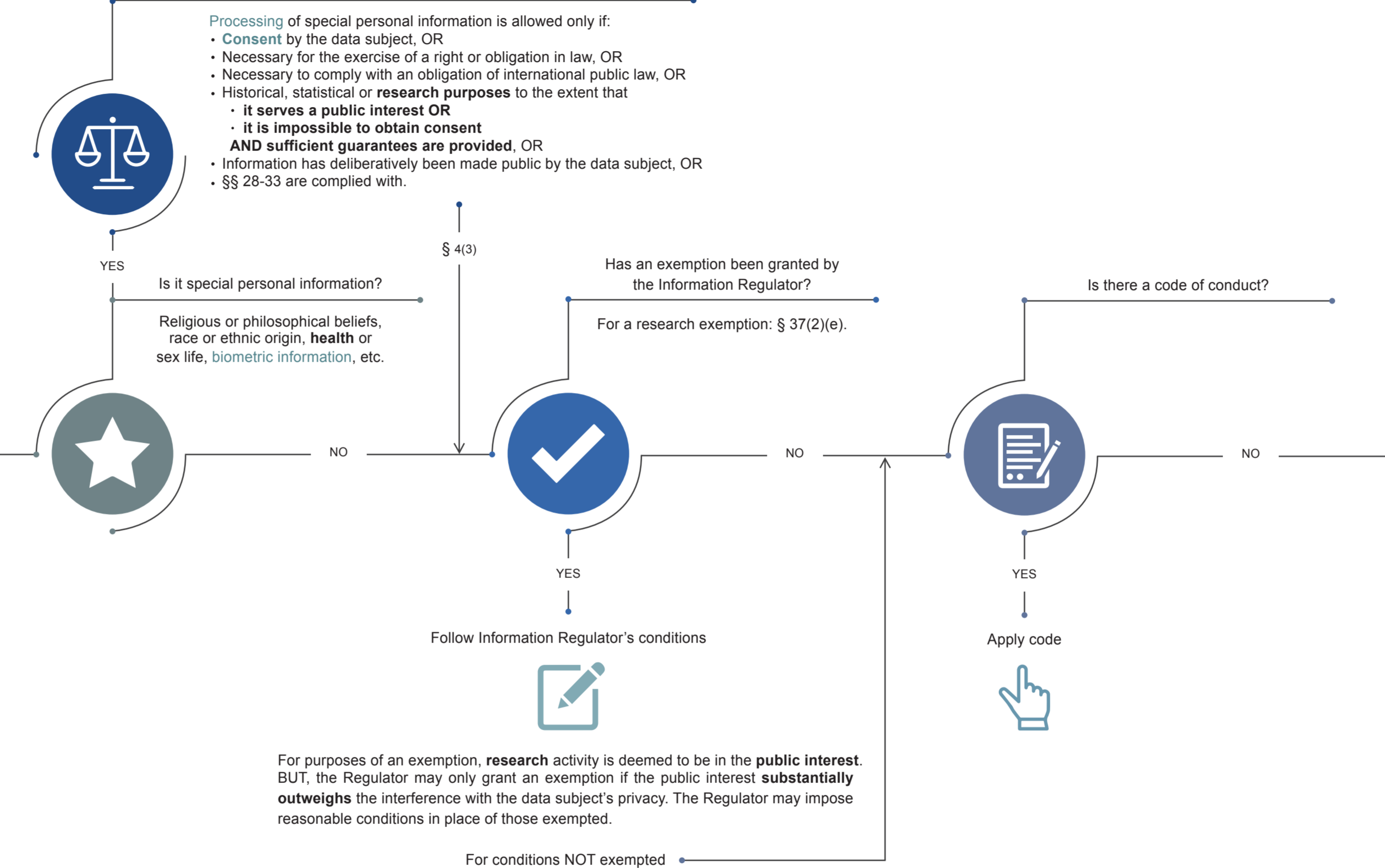
## CONDITIONS FOR LAWFUL PROCESSING

APPLY CONDITIONS 1-8



Additional layer of requirements (§ 27)

- Processing of special personal information is allowed only if:
- Consent by the data subject, OR
  - Necessary for the exercise of a right or obligation in law, OR
  - Necessary to comply with an obligation of international public law, OR
  - Historical, statistical or **research purposes** to the extent that
    - it serves a public interest OR
    - it is impossible to obtain consent AND sufficient guarantees are provided, OR
    - Information has deliberately been made public by the data subject, OR
    - §§ 28-33 are complied with.



For purposes of an exemption, **research activity** is deemed to be in the **public interest**. BUT, the Regulator may only grant an exemption if the public interest **substantially outweighs** the interference with the data subject's privacy. The Regulator may impose reasonable conditions in place of those exempted.

For conditions NOT exempted

**PURPOSE**

- To give effect to the constitutional right to privacy.
- To regulate the manner in which personal information is processed.
- To provide persons with rights and remedies to protect their personal information from unlawful processing.

**RIGHTS OF THE DATA SUBJECT**

- Right of notification.
- Right to request access to information.
- Right to request correction, destruction, deletion.
- Right to object to processing.
- Right to institute civil processings.

**PRIOR AUTHORIZATION**

Prior authorization from the regulator to process unique identifiers of data subjects for purposes other than collection intention and linking the information together with information processed by other responsible parties (§ 57(1)(a)).

Prior authorization is required to transfer special personal information to a foreign party that does not provide an adequate level of protection (§ 57(1)(d)).

**CROSS BORDER TRANSFERS**

Only permitted with:

- Consent, OR
- Binding corporate rules or a binding agreement that provides an adequate level of protection, that is substantially similar to the conditions for lawful processing, OR
- Contractual obligations, OR
- Benefit of the data subject and not practicable to obtain consent.

Consider material transfer agreement / data sharing agreements.

**'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;

**'consent'** means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information;

**'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;

**'unique identifier'** means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party.