

# PROTECTION OF PERSONAL INFORMATION ACT “POPIA”

Act No. 4 of 2013

Presented for the SAOU by  
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**“We have a basic responsibility to protect  
people’s data.  
And if we can’t do that, we don’t deserve to  
have the opportunity to serve people.”**



**DIE VERANDERING IN ONDERWYS  
THE CHANGE IN EDUCATION**

# Purpose of the Act – “Opt” in v “Opt” out

- A school may use, collect or deal with personal information of various data subjects for various reasons.
- This legislation aims to give effect to a person’s *Constitutional right to privacy* within this framework;
- *Main aim:*
  - *Safeguarding* the person’s personal information through the regulation of the *manner of lawful processing* by a responsible party – “data processing principle”

# Requirement of lawfulness

LEGAL DUTY ON RESPONSIBLE PARTY

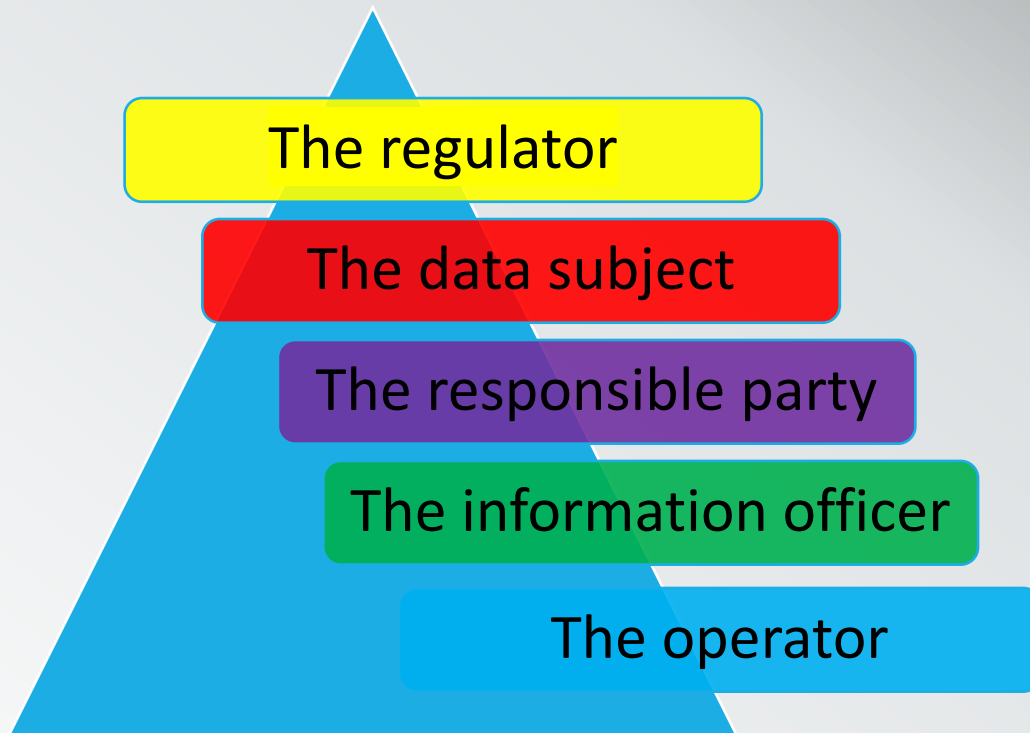
*to process personal information* of  
a data subject



within framework of *8 principles*  
of POPIA

for a *lawful* purpose

# The POPIA role players



## The responsible party and duties?

- The school and its management body determines the means and purpose of processing
- The Headmaster is the *Information officer* of the school
- Duties (sec 55 and Reg):
  - Compliance with and implementation of POPIA;
  - PIIA and compliance framework;
  - POPIA and PAIA Manual;
  - Internal measures to handle request for access to PI;
  - Awareness training and working with Regulator during investigations.

# Data subjects – who are they?

- Learners (children)
  - Parents
  - Teachers
- Employees of the school
  - The management body
- Visitors and third parties whose PI are being processed
  - Suppliers of services and goods
  - The Department of Education' employees

# The child as a data subject

- A *natural person* under 18 who is not legally competent without the assistance of a legally competent person to make decisions.
- Processing is prohibited unless authorised by section 35;
  - Prior consent;
  - Right or obligation in law;
  - International public law obligation;
  - Historical, statistical or research purposes
  - Deliberate publication by child with consent
- Public interest – Reg may authorise with publication in *Gazette*



# The principle of “consent”

The *voluntary, specific* and *informed expression* of will in terms of which permission is given for the processing of PI.

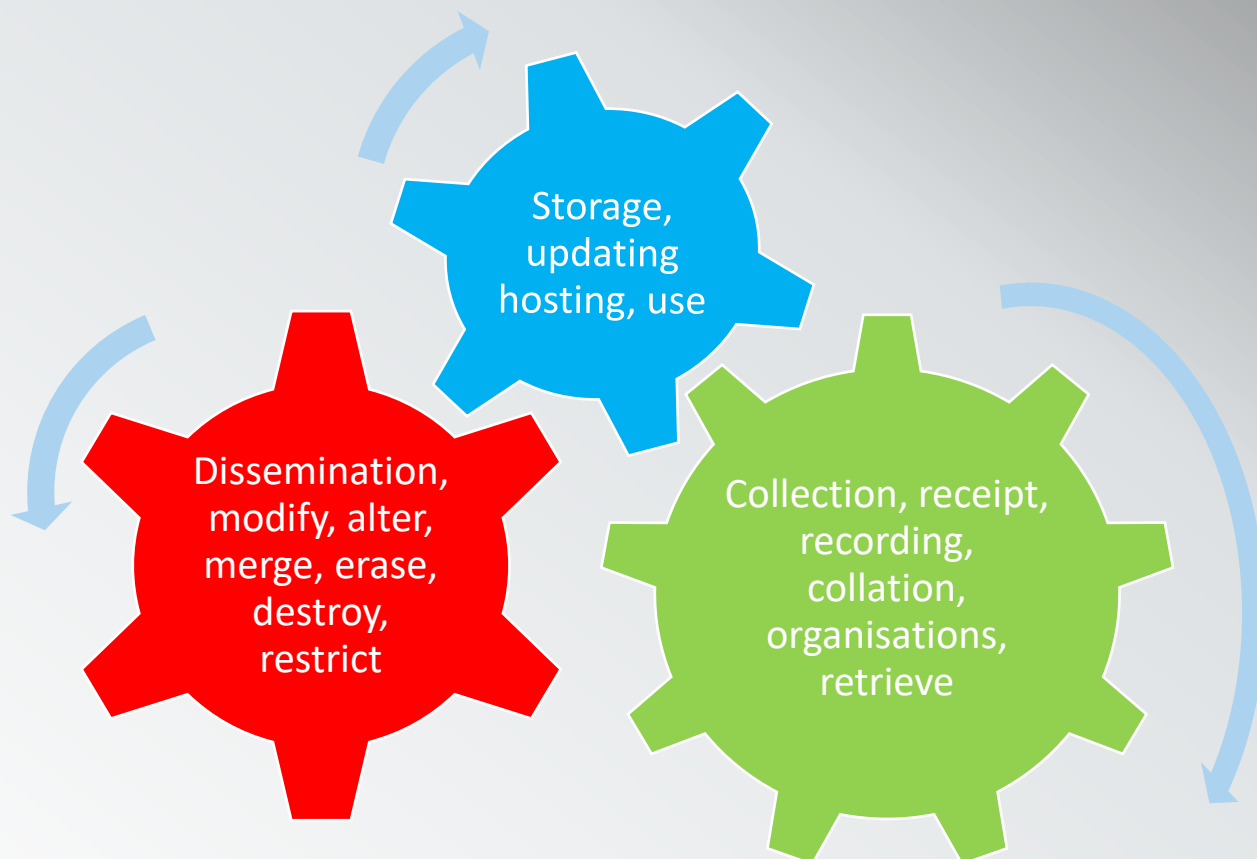
An absolute requirement or the golden thread?

# Personal Information - An extensive and wide definition!

An all-encompassing definition!

- information relating to an identifiable, living natural person and, where applicable, an identifiable, existing juristic person; including but not limited to :
  - 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;
  - information relating to the education, medical, financial, criminal or employment history of the person;
  - any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
  - the biometric information of the person;
  - the personal opinions, view or preferences of the person;
  - correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence revealing the same;
  - the view or opinions of another individual about the person;
  - and 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.

# What does Processing imply?



# Rights of data subjects

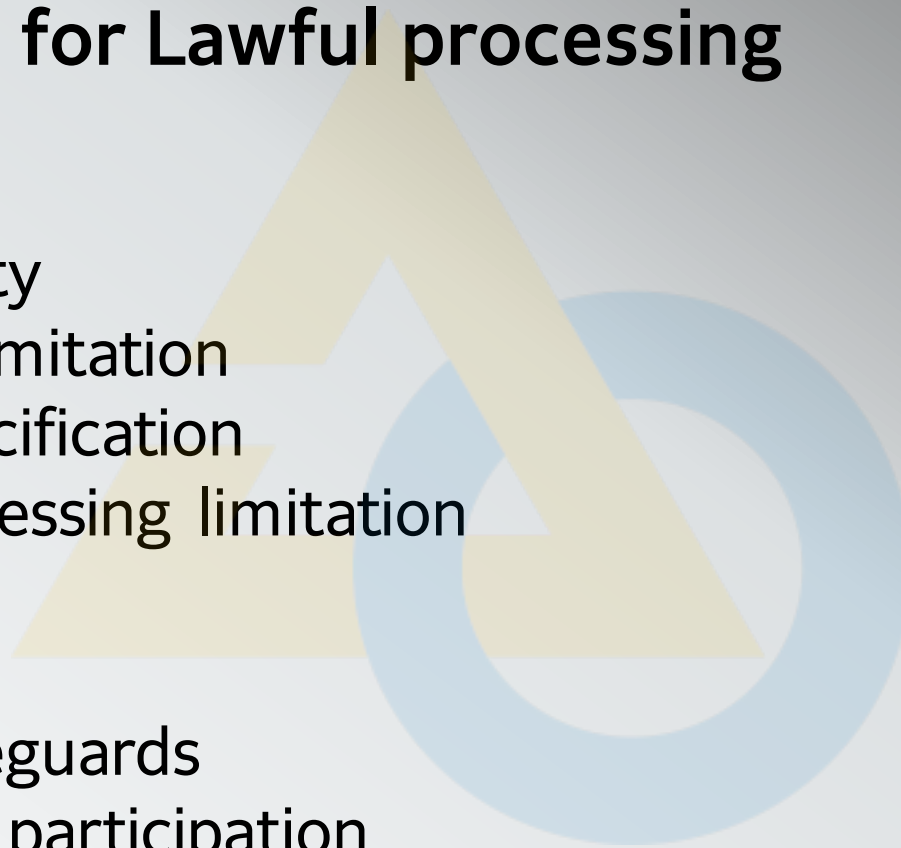
## Section 5

- The right of notification of collection before processing
- The right to be notified of the purpose of collection
- The right of notification of a breach of his/her PI
- The right to access PI and the right of participation
- The right to request amendment, deletion or restriction of PI
- The right to object to processing of PI
- The right to lodge a complaint with the Regulator
- The right to sue for damages

# 8 Conditions for Lawful processing

Section 4 (1):

- Accountability
- Processing limitation
- Purpose specification
- Further processing limitation
- Info quality
- Openness
- Security Safeguards
- data subject participation



```
graph TD; A[Responsible?] --> B[Accountable?]; B --> C[The Responsible party must process lawfully, fairly and within the 8 conditions]; C --> A;
```

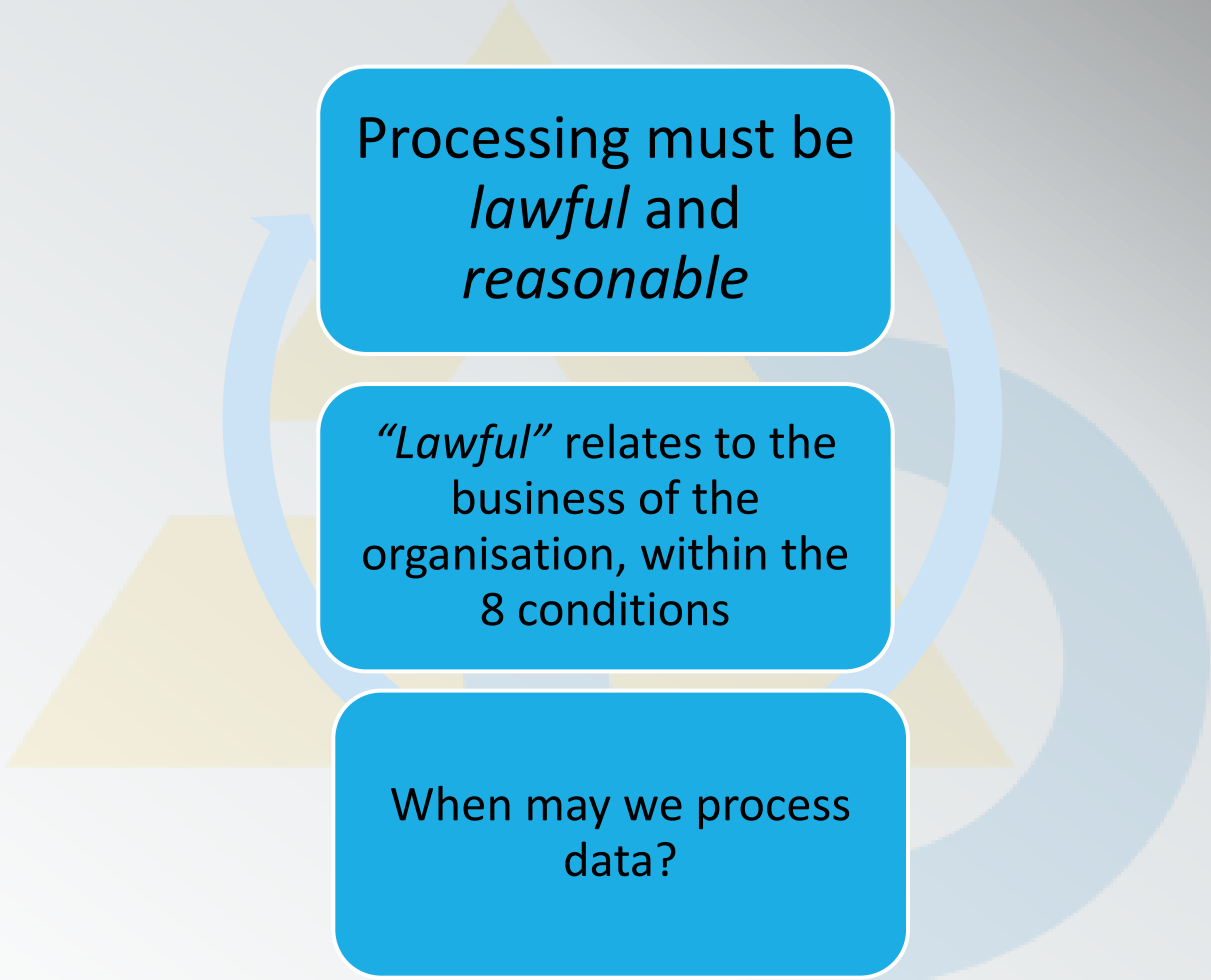
The Responsible party must process lawfully, fairly and within the 8 conditions

Responsible?

Accountable?

**CONDITION 1**

**Accountability**



Processing must be  
*lawful* and  
*reasonable*

*“Lawful”* relates to the  
business of the  
organisation, within the  
8 conditions

When may we process  
data?

## CONDITION 2

**Limitations on  
processing**

01

When the data subject  
Consents to processing

02

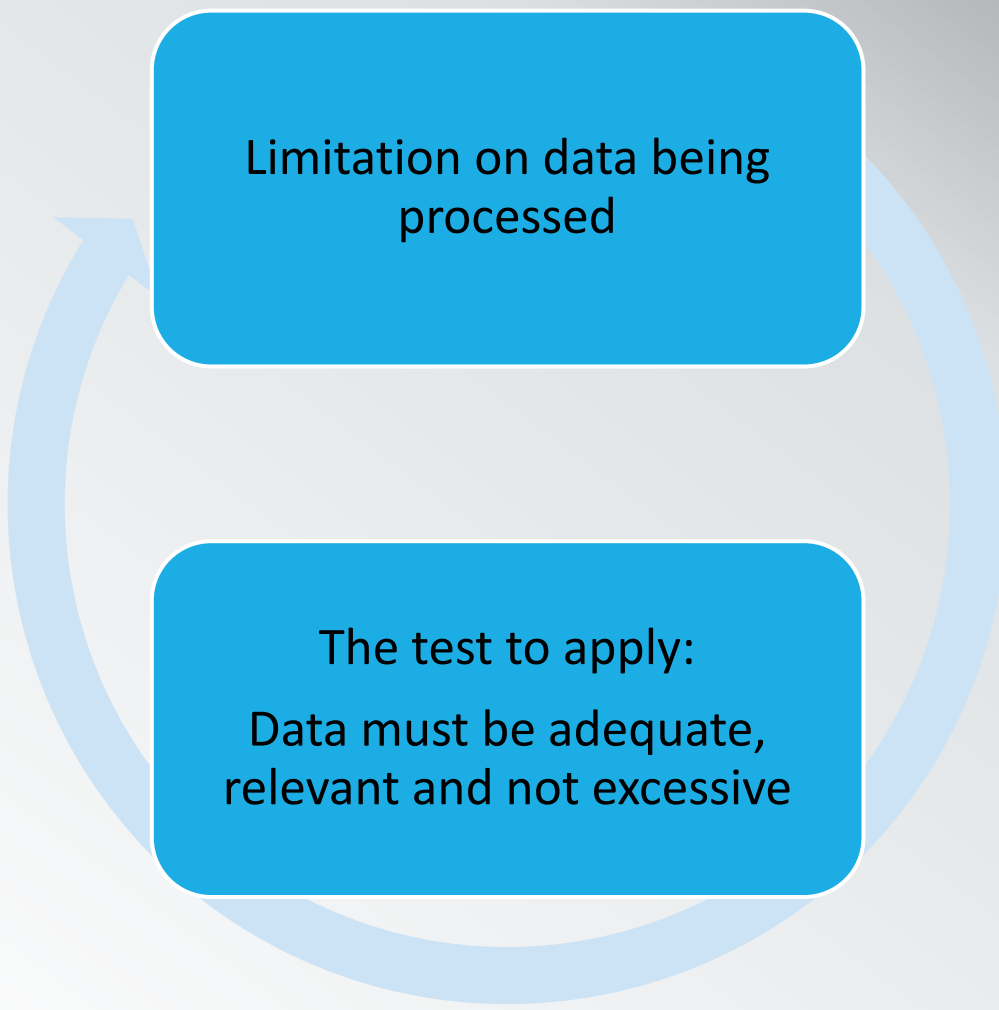
When there is a legal or  
contractual  
requirement

03

When the  
responsible party  
or a third party  
has a legitimate  
interest in  
processing

**When may we process data?**





Limitation on data being  
processed

The test to apply:  
Data must be adequate,  
relevant and not excessive

## **CONDITION 2**

**Limitations on  
processing**

## CONDITION 3

### Purpose Specification

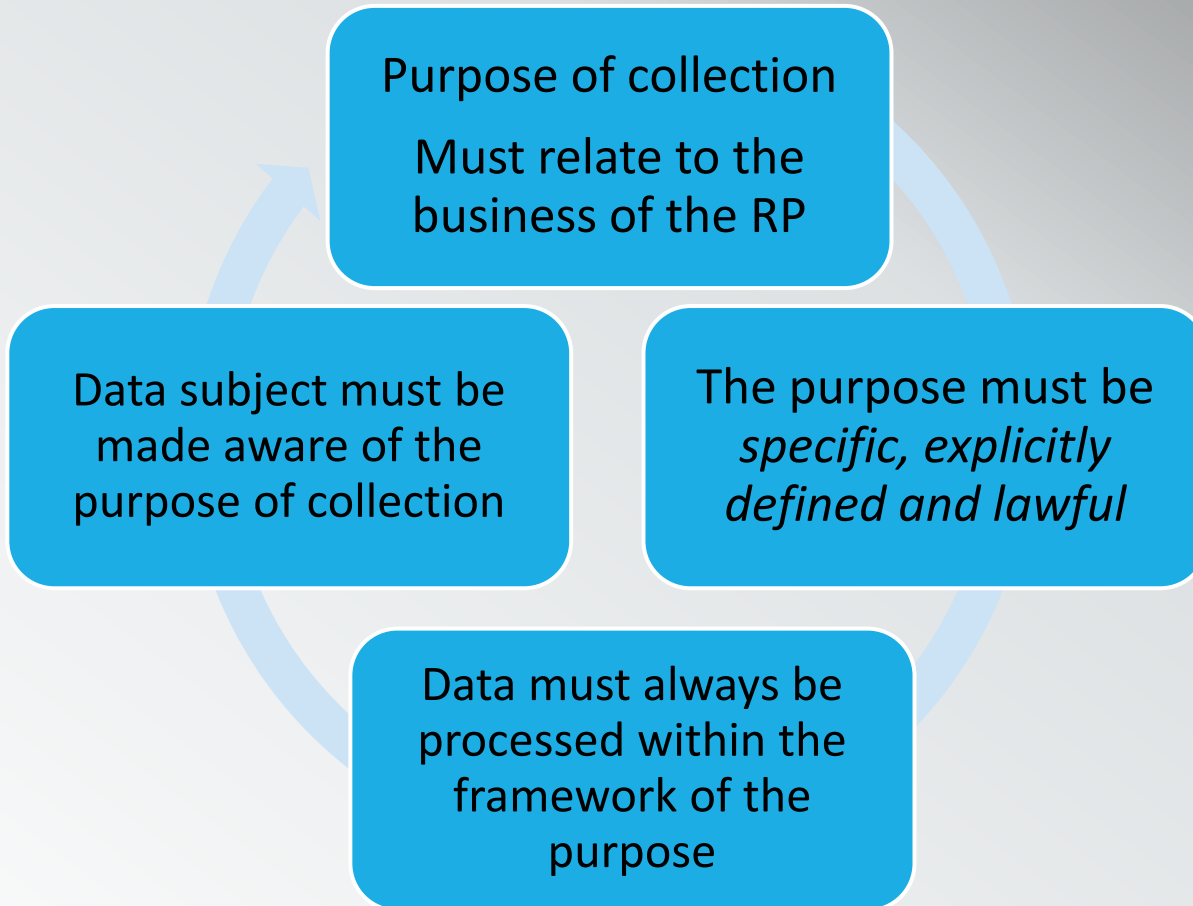
Purpose of collection

Must relate to the  
business of the RP

Data subject must be  
made aware of the  
purpose of collection

The purpose must be  
*specific, explicitly  
defined and lawful*

Data must always be  
processed within the  
framework of the  
purpose



Retention of records are  
allowed only to achieve the  
purpose for which it was  
collected

May only keep longer with  
consent or within legal  
requirements

## **CONDITION 3**

### **Retention of records**

Further processing  
limitations

Purpose must be  
compatible with  
original purpose for  
which it was collected

Further processing  
must *ALSO* comply with  
POPIA

**CONDITION 4**

**Further  
processing  
limitations**

## CONDITION 5

### Information quality



Take reasonable practicable steps

The RP must have regard to the purpose for which PI is collected or further processed; and

ensure that the personal information is *complete, accurate, not misleading and updated where necessary..*

```
graph TD; A["A responsible party must maintain a record of all processing operations"] --> B["Openness and notification before processing"]; B --> C["Take all reasonable practicable steps before processing to notify"]; C --> A;
```

A responsible party must maintain a **record** of all processing operations

Openness and notification **before** processing

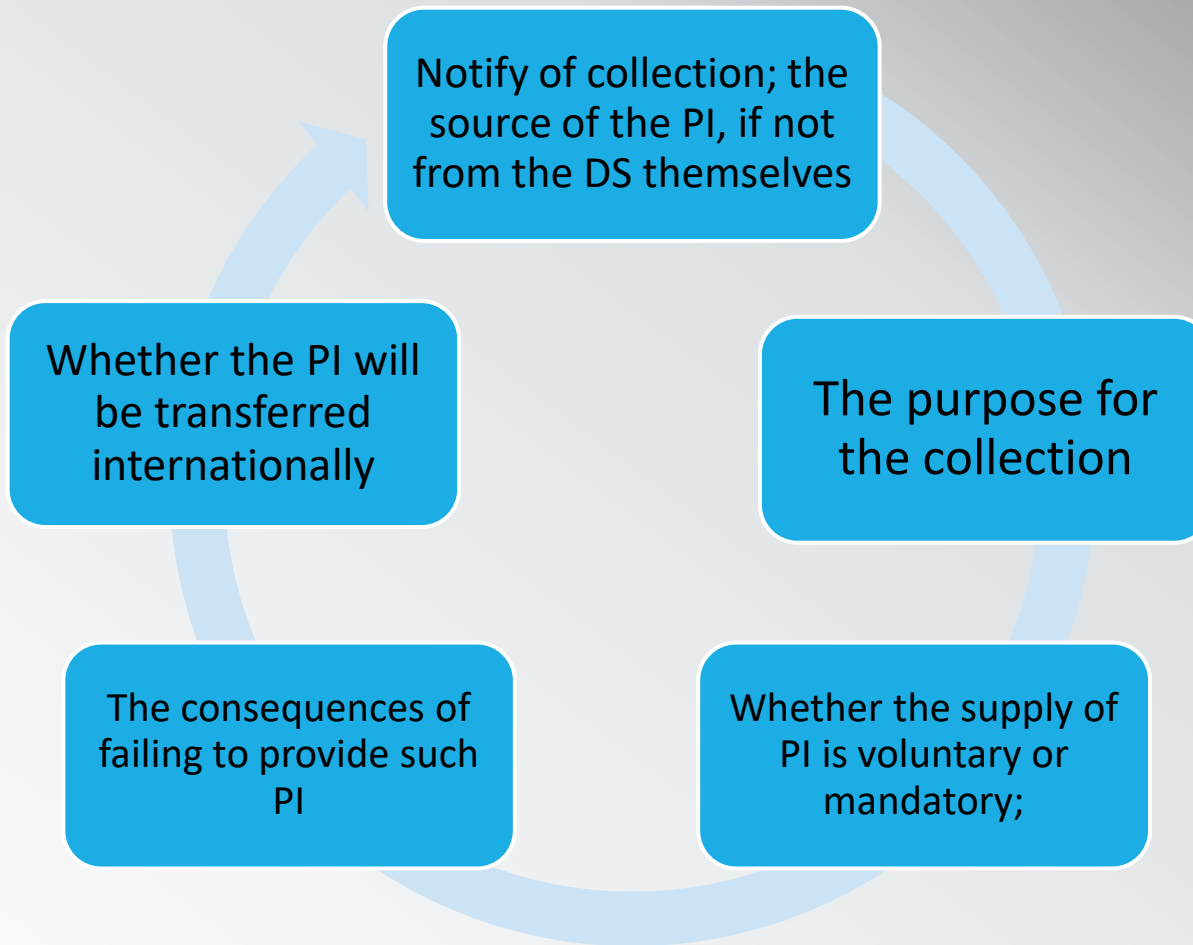
Take all reasonable practicable steps before processing to notify

**CONDITION 6**

**Openness**

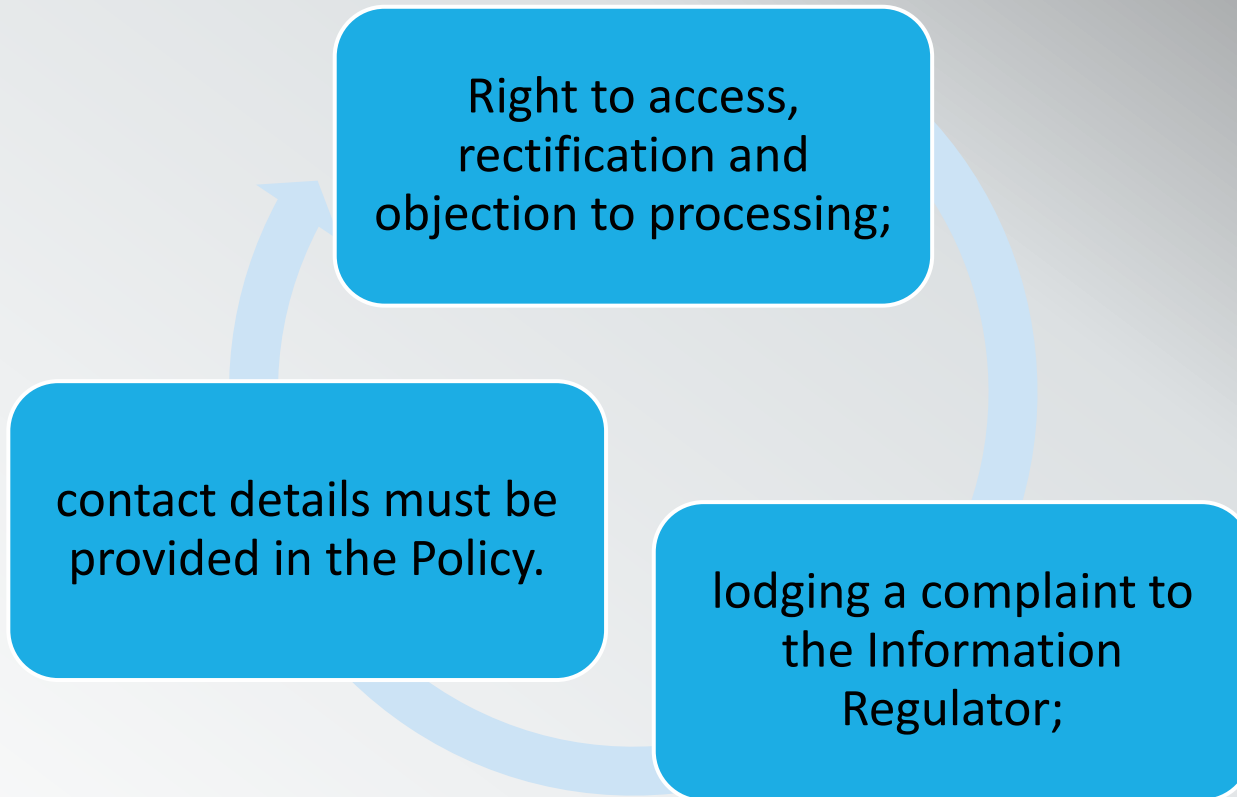
## CONDITION 6

**Openness  
before  
processing**



## CONDITION 6

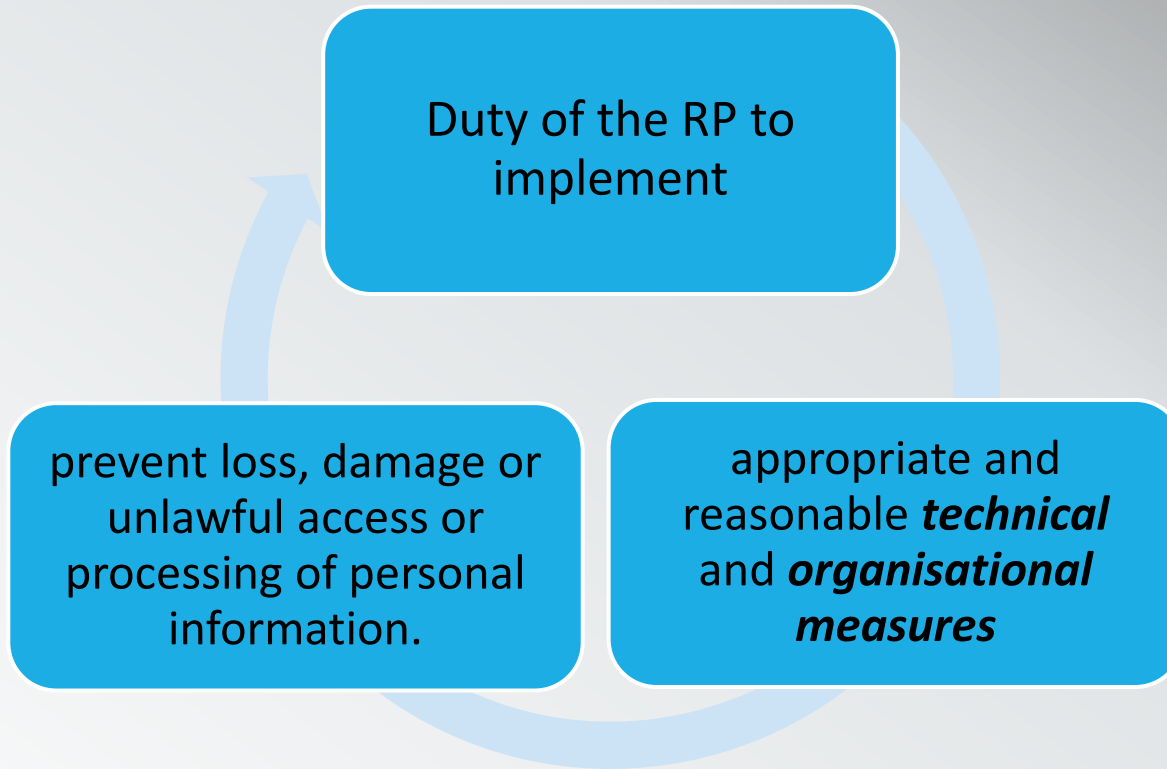
**Openness  
before  
processing  
Inform the DS  
of rights**





## CONDITION 7

### Security safeguards





1

All reasonably foreseeable internal or external risks to PI are identified.

2

Establish appropriate safeguards against identified risks.

3

Ensure safeguards are continually updated.

4

Verify regularly that safeguards are implemented.

## CONDITION 7: Duties re appropriate measures

1

Accessible by  
authorised  
personnel only

2

Backups of hard  
drives

3

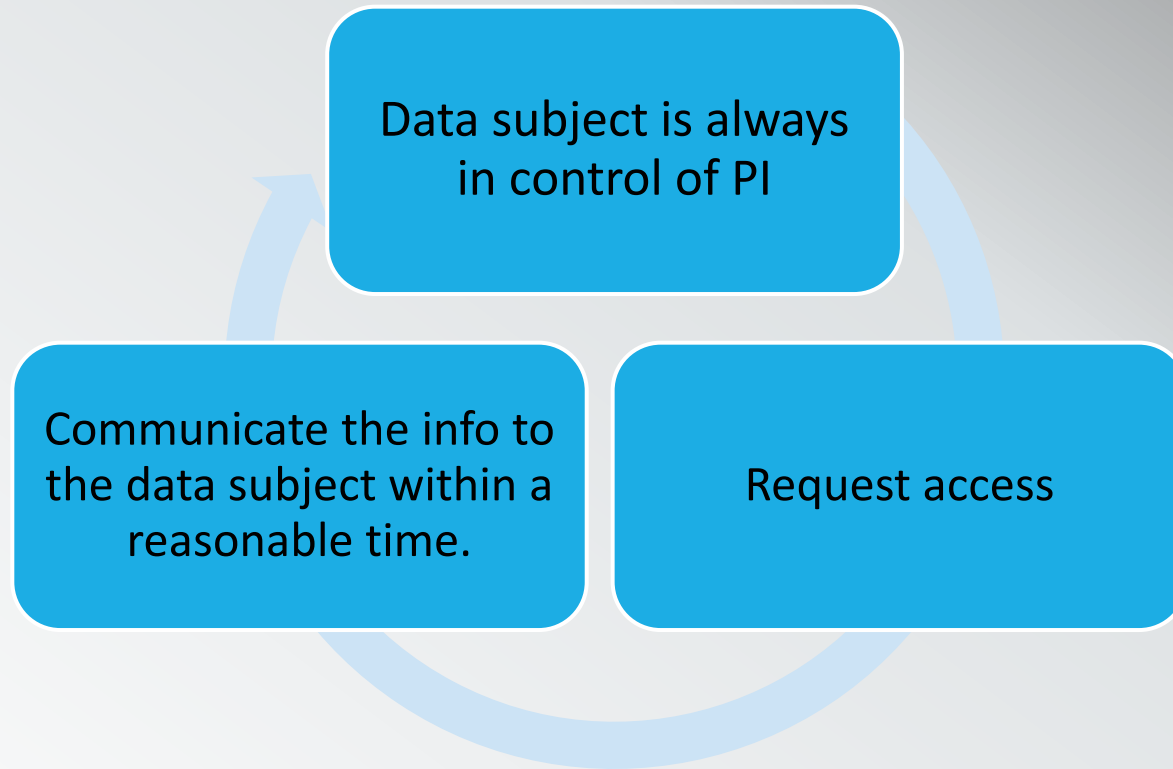
Updated anti-virus  
software; firewalls  
regular IT  
maintenance

4

Breach by  
unauthorised person  
- *notify* the  
Information Regulator  
and the data subject  
as soon as possible.

## IT Security and risk and compliance:

The responsible party must have due regard to *generally accepted information security practices* and procedures which may apply to it generally, or be required in terms of a specific industry or professional rules and regulations.



## **CONDITION 8**

### **Data subject participation**

# Special personal information of children and other data subjects

- **Definition: section 26**

- Personal information relating to the *religion, race or ethnic origin, trade union membership, political persuasion, health, sex life, biometric information or criminal behaviour of an data subject.*
- A responsible party *may not process* such information unless general authorisation is granted or if a listed exception applies for specific categories of special personal information.

## Special personal information (Cont.)

- Prohibition to special personal information does not apply if : -
  - Prior *consent* of data subject;
  - Info was made public by data subject;
  - Processing is necessary to comply with an obligation of law/International public law;
  - Historical, statistical or research (public interest);  
(Some exceptions see section 27)
- Authorised by Reg and published in *Gazette*

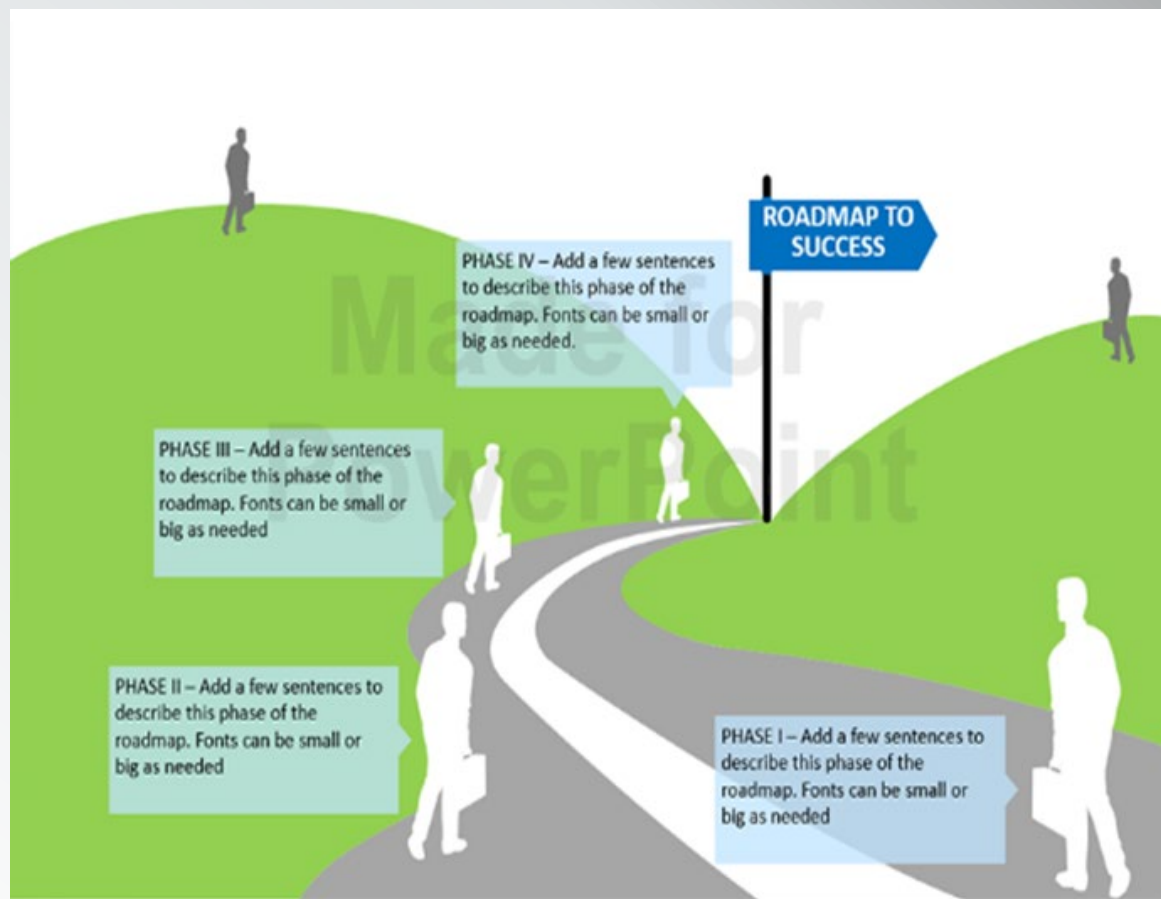
# Offences, penalties and fines

Fine or imprisonment of up to 12 months or up to 10 years or both fine and imprisonment for criminal offences.

- Fines will be handed down by Magistrates court;
- The Regulator may issue administrative fines (not a criminal offence) in an infringement notice up to 10 million;
- Failure to pay – enforceable by court.

# The critical question?

WHERE DO I START on the road to compliance?





# SmartPrivacy GAP assessment methodology

## Compliance by 1 July 2021

