



POPIA and FUNDRAISING

By Ricardo Wyngaard

ABOUT NPO LEGAL ISSUES:

This is an electronic newsletter published by: **RICARDO WYNGAARD ATTORNEYS** which is aimed at updating the non-profit sector on relevant legal issues.

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By: Ricardo Wyngaard

RICARDO WYNGAARD ATTORNEYS is a law practice that specialises in rendering advice and assistance on non-profit law and governance.

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DETAILS:

Postal:
P.O. Box 35131, Menlo Park, 0102

Tel: +27 21 859 1111
Fax: +27 86 538 8435
ricardo@nonprofitlawyer.co.za

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POPIA and NPOs

When: Friday, 28 May

Time: 11am to 1pm

Cost: R550 p/p

The word '**donation**' is contained once within the Protection of Personal Information Act (POPIA). This will likely change the fundraising game for NPOs in South Africa.

Section 1 of POPIA defines '*direct marketing*' and provides that it means, amongst other, to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of requesting the data subject to make a donation of any kind for any reason.

Effectively, the solicitation of donations (fundraising) is now deemed 'direct marketing' under POPIA. This relates to unsolicited electronic communications.

What does it mean?

The processing of personal information of a potential donor (data subject) by means of unsolicited electronic communications for purposes soliciting donations is effectively outlawed – unless the NPO complies with the requirements pertaining to direct marketing (section 69).

Under section 69 of POPIA and its Regulations:

1. The data subject must give his, her or its **written consent** to the processing;
2. The NPO that wishes to process personal information of a data subject for the purpose of direct marketing by electronic communication must in terms of Regulation 6 submit a **request for written consent**
3. The written request must be in the **prescribed manner and form** (Form 4).
4. The NPO can approach the data subject (who has not previously withheld such consent) **only once** in order to request the consent of that data subject.
5. The NPO may only process the personal information of a potential donor if *he or she or it* has been a 'customer' of the NPO, whose details have been: obtained in the context of a sale of a product or service; for the purpose of direct marketing of the NPO's similar products or services and the potential donor has been given a reasonable opportunity to object to such use of his or her or its electronic details

Non-compliance with section 69 constitutes an 'interference' and a data subject may, amongst other, submit a complaint to the Information Regulator with regards to such an interference.

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