Cookie Policy

Why do you need to have it?

According to Support Mozilla:

Cookies can store a wide range of information, including personally identifiable information (such as your name, home address, email address, or telephone number).

Businesses usually use this information to track a user's behaviour. They then use this insight as management information to improve the user's experience on the website.

The POPI Act was drafted in 2013 and was largely based on what was happening at that time. No one was able to foresee how technology would advance in the future. Even though the POPI Act does not specifically mention Cookies it does provide the following definitions in Section 1:

*''**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—*

c)   any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, or other particular assignment to the person;
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;

Therefore, should your website process (collect) any of the abovementioned personal information in the form of a cookie, you will need to first obtain the client's consent as per the requirements of the POPI Act. The POPI Act also says personal information should be processed lawfully and only minimal information should be obtained. This information needs to be protected and should not be shared with additional parties unless you have received consent from the client for further processing.

Further to this, you may not use the information stored in your cookies for unsolicited direct marketing unless the data subject has given you consent. Please see the definition of electronic communication and direct marketing below as per the POPI Act:

*''**electronic communication**'' means any text, voice, sound, or image message sent over an electronic communications network which is stored in the network or in the recipient's terminal equipment until it is collected by the recipient;*

If any of the communication stipulated under electronic communication is stored in your cookie it may not be used for direct marketing unless the data subject has given you consent. See Section 69 of the POPI Act below:

1)   The processing of personal information of a data subject for the purpose of direct marketing by means of any form of electronic communication, including automatic calling machines, facsimile machines, SMSs, or e-mail is prohibited unless the data subject—

a)   has given his, her or its consent to the processing;
b)   is, subject to subsection (3), a customer of the responsible party.

‘‘direct marketing’’ *means to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of—*

a)   promoting or offering to supply, in the ordinary course of business, any goods or services to the data subject; or
b)   requesting the data subject to make a donation of any kind for any reason;

As a result, should you approach a data subject through electronic communication to promote or offer any goods, it is prohibited unless you obtained consent from the data subject. This may include pop-up advertisements.

What is best practice?

As mentioned, one may process personal information if consent is obtained from the data subject. One way of obtaining consent is to have a cookie pop-up banner, which serves as a cookie notice, whenever data subjects make use of your company website. The cookie pop-up banner should allow users the option of accepting cookies or not. Therefore, directly asking them if they consent to accept cookies which will process their personal information before visiting your website. You may have seen this cookie pop-up banner on certain businesses' websites. As a result, we recommend that your IT service provider ensures that there is a cookie pop-up banner whenever users visit your website. A link to your Cookie Policy should also be provided, so that the user can clearly see what personal information you are collecting, for what purpose, and who else will have access to this personal information. If this information is being shared with any third parties for further processing, this information should be included in the policy. This way users are aware of who has access to their personal information. This then allows them to make an informed decision about whether or not they will accept the cookies.

In some cases, once you accept cookies, the cookie pop-up banner does not reappear. We recommend that your IT service provider ensure that the pop-up banner reappears regularly (e.g., quarterly) as a reminder to the data subject that their personal information is still being used. Further to this, whenever there are changes to the Cookie Policy the data subject would need to be notified and you would need to obtain consent again.

As we know, Section 18 of the POPI Act, stipulates if personal information is collected, the responsible party must take reasonably practicable steps to ensure that the data subject is aware of the information being collected and where the information is not collected from the data subject, the source from which it is collected; as well as the purpose for which the information is being collected. Therefore, this should be stated the Cookie Policy, which should be in the cookie pop-up banner, making this information easily accessible to the data subject.

Cookie Policy

What is a Cookie Policy?

The policy should stipulate the cookies which are active on the website, the data the cookie tracks, the reason and purpose for the tracking, and where the data is going or being sent to. It should provide the user with instructions on how to opt-out or how to adjust their settings about the cookies on the website.

Cookie Policy format

Instead of creating a separate Cookie Policy, many businesses include it into their existing privacy policy. However, one may have a standalone Cookie Policy. A Cookie Policy is a legal requirement in terms of the EU GDPR and Californian CCPA. As mentioned, even though the South African POPI Act does not specifically mention a Cookie Policy, it is a principle-based Act that requires businesses to notify data subjects when their personal information is being collected and to do everything reasonable to protect a data subject's personal information. Given that cookies collect personal information, the principles of the POPI Act should apply.

The Cookie Policy is usually a written document that can be accessed on the cookie pop-up banner through the company website. Due to cookies being able to collect, store and track certain personal information, it is a privacy risk. With technology evolving and maybe trends in the market evolving cookies may often change. As a result when cookies change the policy should also.

Protective measures

When businesses make use of third parties for further processing they usually include a link to those businesses ' privacy policies. These policies usually then provide users with information relating to how their personal information is protected. For example, whether the personal information is encrypted, or if the business makes use of a 2-step verification process before one can access the personal information. Additional information such as whether the business has confidentiality agreements in place with staff and contractors are usually contained in these business' privacy policies. Section 21 of the POPI Act stipulates that the responsible party must, in terms of a written contract between the responsible party and the operator, ensure that the operator which processes personal information for the responsible party establishes and maintains the security measures referred to in Section 19. Section 19 (1) stipulates that a responsible party must secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical, and organisational measures to prevent (a) loss of damage to or unauthorised destruction of personal information; and (b) unlawful access to or processing of personal information. Section 19 (2) further stipulates that the responsible party must (c) regularly verify that the safeguards are effectively implemented; and (d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards. These are not all, please consult Section 19 of the POPI Act for a comprehensive list. Therefore, should one of the operators experience a breach, the accountability will remain with you as the responsible party.

How to create your Cookie Policy

Process Step	Step Details	How
1. Notify the user that the business collects cookies	- Confirm that the business collects cookies - Explain what a cookie is - Explain for which purposes the business is collecting the cookies. For example: - to tailor the user's website experience - to improve performance	
2. List the types of cookies the business collects	- List and define the types of cookies the website uses. For example: - Essential cookies - Functional cookies - First Party Cookies - Third-Party Cookies - Explain the function of each cookie	Find out which cookies your website uses by: Using tools such as CookieServe or CookieMetrix It is best to consult an IT specialist on this.

Process Step	Step Details	How
	• Explain how long the cookie will remain on the user's device	
3. Explain the user's control of cookies	• Explain how users can remove or change the settings of the cookies	How to remove cookies in Google Chrome: • Open Google Chrome. • Click on the three dots in the top-right corner of your browser. A drop-down menu will appear. • Click on Settings in the drop-down menu. Settings will open in a new tab. • Click on 'Clear browsing data'. • A new tab will open. The tab will be called 'Basic'. • It will provide a list of items you can delete e.g., browsing history, cached images, and files, etc. You need to select 'Cookies and other site data'. Choose the time from when you would like to delete your browsing history e.g., all-time, last hour, etc. • If you have logged into your Gmail account on the device, be sure to sign out, or else the cookies (and possibly history, whichever options you selected) on other devices you are signed into will be deleted too. • Once you have selected 'Cookies and other site data' and the time range, you can click on 'Clear data'. For how to delete cookies on other browsers please see: https://www.digitaltrends.com/computing/how-to-delete-cookies/
4. Identify what type of personal information is collected	• List what personal information is collected	
5. Usage and disclosure	• Explain how the individuals personal information will be used • Explain who will have access to the information and when it will be disclosed	
6. Website analytics	• Explain if personal information is collected for website analytics e.g. to improve the website • List what information is collected for the analytics	
7. Links to social networking	• Specify if the business uses social networks e.g. LinkedIn, Facebook • Explain whether they collect personal information and the risks related	
8. The user's rights	• Explain that the individual can access their personal information, correct it and unsubscribe	

Process Step	Step Details	How
	• Provide details of where to submit their request to correct it, access it or be removed from subscriptions	
9. Provide the business' contact details	• List your contact details, should the data subject have any queries	

10. Notify the user of possible changes	• Explain that the Cookie Policy may be changed in future	• If the user accesses the company's website after changes have been made to the Cookie Policy:
		  ○ a cookie banner must pop-up notifying the user that changes have been made to the policy
		  ○ the banner needs to request consent to use the cookies
		  ○ a link to the new Cookie Policy should be included in the banner
		It is best to consult an IT specialist on this.

11. Create a cookie banner on the company website	• Make the data subject aware that the website uses cookies • Ensure that the user can access the Cookie Policy	• Ensure a cookie banner pops-up whenever a user enters the website • Ensure the banner asks the user for consent to use the cookies • Ensure the banner provides a link to the Cookie Policy It is best to consult an IT specialist on this.

Cookie Policy Example

We have provided an example of a what a Cookie Policy should look like below. However, it is best to consult with an IT specialist when setting up the cookie pop-up banner on your website and when drafting your personal Cookie Policy. As specialists in their field, they have the knowledge, skills, expertise, and tools to ensure it is set up correctly.

> **[FSP Name] Cookie Policy**
>
> This is our Cookie Policy which works hand-in-hand with our Privacy Policy *[provide a link to your Privacy Policy]*. This policy is intended to provide you with a description of what cookies are, what it will be used for, and a guidance on how to manage it when browsing our website.
>
> **What are cookies?**
>
> When visiting our website, small text files, referred to as 'cookies', could be stored on your device. Even though these cookies do not store personal information, it may collect personal identifiers such as your name or email address which allow us to link personal information with your device. This ultimately allows us to recognise your device whenever you visit our website.
>
> **Why the cookies are used?**

The cookies on our site are used to:

- Tailor and improve your experience on our website by remembering your preferences, location and device;
- Provide you with content that suits your preferences
- Ensure advertisements are tailored to your preferences

Which cookies are used?

Our websites make use of an array of cookies. Not all cookies used on our website are installed by us, some of these are from third parties *[In your Privacy Policy you need to state that certain information is shared with third parties and why].* You are able to remove these cookies at your own discretion. For example, you may decide to delete the cookie as soon as you leave our website or maybe only in a month's time. These cookies will remain on your device until you delete them.

The following cookies are used on our website:

- **Essential cookies:** This is necessary to ensure the website is able to function properly.
- **Functional cookies:** These cookies help our website to remember information about you such as your preferences or log-in details e.g. username and password.

Personal Information

Our cookies collect the following personal information from you:

- Name and surname;
- Contact details (cellphone and email);
- Log-in password;
- [insert]

No other personal information is collected on our website unless you provide this to us by either:

- Lodging a complaint
- Providing feedback/ a compliment
- Uploading a CV
- [insert]

Your email and other contact details will be processed when logging a complaint or providing feedback/ a compliment. If you upload your CV, all of the personal information included therein will be processed.

Usage and disclosure

The information provided will be used in accordance with the purpose you provided it to us. As mentioned not all cookies used on our website are installed by us, some of these are from third parties [In your Privacy Policy you need to state that certain information is shared with third parties and why]. As a result, the personal information collected from our Cookies will be accessible by the Third Parties listed in our Privacy Policy.

But the other information specifically provided to us when you for example, submit a complaint, will not be disclosed to anyone outside of [Name of Business]. Your personal information will only be disclosed

to Third Parties where circumstances are limited and where it is in accordance with the POPI Act requirements e.g. for legal proceedings.

Website Analytics

[Name of business] website servers will collect the IP address you use to visit our website. This information is then used to analyse specific information such as e.g. determining how many individuals visited the website, how long they stayed on the website etc. Our Third Party, e.g. Google Analytics uses this information to improve [Name of business] website.

Below is a list information collected when visiting our website, which is used for its improvement:

- When you visited the website [date and time]
- Your IP address
- The pages you accessed
- Your web browser e.g. Google Chrome, Microsoft Edge etc.

The website will does not override any settings on your browser e.g. 'do not track'

Links to Social Networking Services

[Name of business] makes use of LinkedIn to communicate with its clients about its work. LinkedIn may collect your personal information for its own purpose, should you communicate with us via this platform.

LinkedIn may track your use of our website if you clicked on a link to our website through LinkedIn. If you are logged into LinkedIn or even your Gmail account while you are on [Name of business] website, if they track you, their tracking will be linked to your profile with LinkedIn or Gmail.

LinkedIn and other social networking services have their own Privacy Policies which are not related to [Name of business] Privacy Policies.

Your rights

You are allowed to access your personal information kept by [Name of business]. You have the right to ask that [Name of business] corrects the existing personal information kept of you. To submit a request for correcting your personal information, please contact [Name of person] at [insert email]. You may also submit a request to be removed from [Name of business] subscription lists at your convenience.

How to delete the cookies?

It is possible, that your browser may be set to automatically accept cookies. However, you are able to manually delete the cookies. We have provided steps on how to delete cookies in Google Chrome below.

How to remove cookies in Google Chrome:

- Open Google Chrome.
- Click on the three dots in the top-right corner of your browser. A drop-down menu will appear.
- Click on Settings in the drop-down menu. Settings will open in a new tab.
- Click on 'Clear browsing data'.
- A new tab will open. The tab will be called 'Basic'.
- It will provide a list of items you can delete e.g., browsing history, cached images, and files, etc. You need to select 'Cookies and other site data'. Choose the time from when you would like to delete your browsing history e.g., all-time, last hour, etc.

- If you have logged into your Gmail account on the device, be sure to sign out, or else the cookies (and possibly history, whichever options you selected) on other devices you are signed into will be deleted too.
- Once you have selected 'Cookies and other site data' and the time range, you can click on 'Clear data'.

For how to delete cookies on other browsers please see: https://www.digitaltrends.com/computing/how-to-delete-cookies/

Please note, not accepting cookies may lead to you being able unable to access our website or specific content displayed on the website.

Will this policy be updated?

This policy may be updated and changes may be made when necessary. In the event that material changes are made, we will ensure that you receive a notice hereof when returning to our website.

Queries

If you have any queries relating to our Cookie Policy, please contact us at: [FSP email]

Source:

CookieBot. (2020, October 27). GDPR and cookie consent | Compliant cookie use. Retrieved from: https://www.cookiebot.com/en/gdpr-cookies/?gclid=CjwKCAiA17P9BRB2EiwAMvwNyD-Ii9SiBFZpE4-7BqzXOtxciNwwAnCwa0F5UCOP1Lqj98yYRyX6LxoC5OsQAvD_BwE

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