EVERYDAY LEGAL
SOLUTIONS

FREE GUIDE · POPIA & DATA

Cookies and POPIA: does your South African website need a cookie banner?

South Africa has no specific cookie law, and POPIA doesn't mention cookies. But POPIA lists online identifiers as personal information, so where cookies or tracking pixels collect information linked to a person, POPIA applies to that processing. In practice, you need to explain your cookies in your privacy notice, have a lawful ground for each type, and get consent for tracking you can't otherwise justify, especially advertising and marketing cookies.

REVIEWED BY THE ELS TEAM

Build on solid legal ground

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AT A GLANCE

- POPIA doesn't mention cookies, but **online identifiers** are personal information.
- Strictly necessary cookies can usually rely on a ground **other than consent**.
- Advertising and cross-site tracking are the hardest to justify **without consent**.
- Explain your cookies in your **privacy notice**, whatever approach you take.

Are cookies personal information under POPIA?

Often, yes. POPIA's definition of personal information includes any identifying number, location information and "online identifier" assigned to a person. Cookies, pixels and similar tools that assign a visitor an ID, track their behaviour across visits or pass data to advertising platforms usually collect exactly that.

Not every cookie does. A cookie that stores a language choice, and isn't linked to anyone, may not involve personal information at all. That's why it pays to know which cookies your site actually sets before deciding how to handle them.

Cookie types and the usual lawful ground

Section 11 of POPIA requires a lawful ground for processing. Consent is one ground, but not the only one. This is how the common cookie types usually line up:

COOKIE TYPE	WHAT IT DOES	USUAL APPROACH
Strictly necessary	Shopping cart, login, security, load balancing	Justified because the site can't deliver what the visitor asked for without them. Tell visitors in your notice
Preferences	Remembers language, region or display settings	Often a legitimate interest. Explain them in your notice
Analytics	Measures visits and how people use the site	Legitimate interest can work for basic analytics; consent is safer where third parties use the data for their own purposes
Advertising and retargeting	Tracks visitors across sites and builds ad audiences	Consent is the safer ground, given how closely this tracking is tied to marketing

The Information Regulator's Guidance Note on Direct Marketing, published in December 2024, lists cookies, push notifications and direct messages among the methods of electronic communication it

covers. That's another reason to treat advertising cookies as consent-based. Read when you need consent under POPIA.

So, do you need a cookie banner?

POPIA doesn't require a banner as such. But if consent is your ground for any cookies, you need a way to get that consent before those cookies load, and a banner is the usual way to do it. Under POPIA, consent must be a voluntary, specific and informed expression of will, so:

- Non-essential cookies shouldn't load until the visitor has chosen.
- Rejecting should be as easy as accepting.
- Pre-ticked categories and "by continuing to browse you agree" notices are weak evidence of consent.
- You should be able to show what each visitor chose, and let them change their mind.

If your site uses only strictly necessary cookies, a clear explanation in your privacy notice is usually enough.

> **Visitors from Europe and the UK.** If you target visitors in the EU or UK, their cookie rules generally require consent for most non-essential cookies, and especially for advertising cookies. A consent banner may be needed for those visitors regardless of POPIA.

What your privacy notice should say about cookies

- Which types of cookies and tracking technologies the site uses.
- Why you use each type, and the lawful ground you rely on.
- Which third parties receive data from them, such as analytics and advertising platforms.
- Whether that data leaves South Africa.
- How long the cookies last.
- How visitors can manage, refuse or withdraw consent.

A privacy notice is a section 18 document, so it should be in place before you collect information. Read the difference between a privacy notice and a privacy policy.

Five common cookie mistakes

1. **A banner with only an "Accept" button.** A choice with one option isn't a choice.
2. **Pixels firing before the visitor chooses.** The banner says one thing while the site does another.

3 **A privacy notice that's silent on cookies.** Section 18 requires you to explain what you collect and why.

4 **Relying on implied consent from browsing.** It's hard to call that a specific, informed expression of will.

5 **Forgetting embedded tools.** Video embeds, chat widgets and booking tools can set their own cookies.

Frequently asked questions

Do I need consent for Google Analytics?

It depends on how it's set up and what the data is used for. Basic, privacy-conscious analytics explained in your notice can often rest on legitimate interest. Where analytics data feeds advertising features, consent is the safer ground.

Is there a specific fine for cookies?

No. There's no cookie-specific offence, but cookie tracking that breaks POPIA's conditions falls under the Information Regulator's general powers, including administrative fines of up to R10 million.

Do I need a separate cookie policy?

Not necessarily. Cookies can be a section of your privacy notice, or a separate cookie policy linked from it. What matters is that the information is clear and easy to find.

Explain your cookies properly

The ELS POPIA Privacy Notice (R950) tells visitors how you collect and use their information, including through your website. The Web & Online Pack (R4,950) adds your website terms, a consent form, internal policy, operator undertaking and PAIA manual. Not sure what you need? Take the free Legal Health Check.

VIEW THE PRIVACY NOTICE

SEE THE WEB & ONLINE PACK

INFORMATION, NOT ADVICE

ELS provides legal information, not legal advice. Nothing in this guide creates an attorney-client relationship. For advice on your specific situation, consult a qualified attorney. The law is stated as at 20 November 2026.

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