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SOLUTIONS

FREE GUIDE · POPIA & DATA

Email, SMS and WhatsApp marketing under POPIA: the section 69 rules

Under section 69 of POPIA, you may send direct marketing by electronic communication, such as email, SMS, WhatsApp and, in the Information Regulator's view, phone calls, only to someone who has consented or to an existing customer. Existing customers must have given you their details in the context of a sale, and must have been given a chance to opt out. You may approach a non-customer only once to ask for consent, and every marketing message must identify you and offer a way to opt out.

REVIEWED BY THE ELS TEAM

Build on solid legal ground

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AT A GLANCE

- Non-customers must **opt in** before you market to them electronically.
- You may approach a non-customer **once** to ask for consent.
- Existing customers can receive marketing for **similar products or services**, with an opt-out.
- The Information Regulator treats **phone calls** as electronic communication.

What counts as direct marketing?

POPIA defines direct marketing as approaching a person, personally or by mail or electronic communication, to promote or offer goods or services, directly or indirectly, or to ask for a donation. A newsletter with offers, a WhatsApp broadcast about a sale and a "we've missed you" discount email all count.

Purely transactional messages, such as order confirmations, invoices and delivery updates, aren't direct marketing, as long as they don't slip in a promotion.

The two routes: consent or existing customer

RECIPIENT	WHAT SECTION 69 REQUIRES
Non-customers	Prior consent. You may approach them once to ask for consent, in the prescribed manner and form (Form 4 of the POPIA Regulations, or a form substantially similar to it), and only if they haven't already refused
Existing customers	You got their contact details in the context of a sale of a product or service; you market only your own similar products or services; and they had a reasonable, free and simple opportunity to object when you collected their details and on every message since

The customer route is narrower than many businesses assume. Someone who only made an enquiry, entered a competition or downloaded a free guide hasn't bought anything, so they aren't a customer for section 69 purposes.

What every marketing message must include

Under section 69(4), every electronic marketing message must contain:

- **Who it's from.** The identity of the sender, or the business on whose behalf it's sent.

- **How to stop it.** An address or other contact details where the recipient can ask for the messages to stop, such as an unsubscribe link or a “reply STOP” option.

Building a mailing list the right way

- Use an unticked opt-in box that’s separate from accepting your terms.
- Say what you’ll send and how often, so the consent is specific and informed.
- Record when, where and how each person consented. Under section 11(2)(a), you carry the burden of proving consent.
- Don’t buy or borrow lists. Those people consented to someone else, if at all.
- Honour opt-outs promptly and keep a suppression list, so unsubscribed people aren’t re-added later.
- Apply the same rules to WhatsApp broadcasts and SMS as to email.

> **Opting out isn’t the same as consenting.** In April 2026, when new Consumer Protection Act regulations on unsolicited marketing were gazetted, the Information Regulator stressed that POPIA still applies in full. A person who hasn’t registered on an opt-out list hasn’t consented to marketing just by not opting out.

Phone calls and the Regulator’s guidance

The Information Regulator’s Guidance Note on Direct Marketing, published in December 2024, treats telephone calls as electronic communication. On that view, cold-calling non-customers to sell to them also needs prior consent. The marketing industry disputes this reading, and the guidance note is not binding law. In 2026 the Regulator referred two direct marketing matters, involving OUTsurance and MTN, to its Enforcement Committee, and said they may settle the question. Until then, the guidance note shows how the Regulator will approach complaints.

Non-electronic marketing, such as post or approaching someone in person, falls outside section 69. It still needs a lawful ground under section 11, and people can object to it.

Five common direct marketing mistakes

1. **Consent hidden in the terms and conditions.** Consent bundled with something else is hard to call voluntary or specific.
2. **Marketing to enquirers.** An enquiry isn’t a sale, so the existing customer route doesn’t apply.
3. **Bought or shared lists.** You can’t rely on consent someone gave to another business.
4. **Missing or broken opt-outs.** Every message needs a working way to stop further messages.

5 **Asking for consent again and again.** Section 69 allows one approach to a non-customer, and none after a refusal.

Frequently asked questions

Is a WhatsApp Business broadcast direct marketing?

If it promotes your products or services, yes. The same section 69 rules apply as for email and SMS.

Can I email someone who gave me their business card at an event?

Handing over a card isn't a purchase, so the customer route doesn't apply. You may approach them once to ask for consent to marketing, in the prescribed form.

Do the rules apply to business-to-business marketing?

Yes. POPIA's protection extends to juristic persons as well as individuals, and section 69 doesn't exclude business recipients.

Does an existing customer stay a customer forever?

Section 69 doesn't set a time limit, but marketing should stay relevant to what they bought and they must be able to opt out every time. Long-dormant contacts are also a retention question under section 14.

Collect marketing consent that holds up

The ELS POPIA Consent Form (R850) captures valid, specific consent where consent is your lawful ground. The Web & Online Pack (R4,950) includes it, with a privacy notice that explains your marketing and opt-out, plus website terms, internal policy, operator undertaking and PAIA manual. Not sure what you need? Take the free Legal Health Check.

VIEW THE CONSENT FORM | 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 21 November 2026.

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