EVERYDAY LEGAL
SOLUTIONS

FREE GUIDE · POPIA & DATA

# When do you need consent under POPIA? The lawful grounds explained

Consent is only one of six lawful grounds for processing personal information in section 11 of POPIA. You can also process information when it's necessary for a contract with the person, to comply with a law, to protect their legitimate interest, for a public body's legal duty, or for your own or a third party's legitimate interests. Consent matters most for electronic marketing to non-customers, and it's often the practical route for special personal information and children's information.

REVIEWED BY THE ELS TEAM

*Build on solid legal ground*

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AT A GLANCE

- Section 11 lists **six lawful grounds**. Consent is one of them.
- Most routine processing relies on **contract, legal obligation or legitimate interest**.
- Valid consent is **voluntary, specific and informed**, and you must be able to prove it.
- People can **withdraw consent** at any time.

## The six lawful grounds

Section 11(1) says personal information may be processed only if one of these applies:

| LAWFUL GROUND | EXAMPLE FOR AN ONLINE BUSINESS |
|---|---|
| The person consents | Subscribing to your newsletter |
| Necessary for a contract with the person | Using a buyer's address to deliver their order |
| Required by law | Keeping invoices and tax records |
| Protects the person's legitimate interest | Warning customers about a fraud attempt using your brand |
| Necessary for a public body's legal duty | Applies to public bodies, not usually to private businesses |
| Your or a third party's legitimate interests | Basic fraud prevention and site security |

Each purpose you process information for needs its own ground. Mapping them is step two in our POPIA compliance checklist.

## When consent is the right ground

- **Electronic direct marketing to non-customers.** Section 69 requires prior consent. See the section 69 rules.
- **Special personal information.** Information about health, religion, race, biometrics or criminal behaviour may be processed only on the grounds in sections 27 to 33. Consent is one of them, and often the practical one, for example for health details in a wellness booking.
- **Children's information.** Under sections 34 and 35, a child's information generally needs the consent of a competent person, such as a parent or guardian, unless another ground in section 35 applies.

- **Optional extras.** Using a customer's photo or review in your marketing, or tracking you can't otherwise justify, such as advertising cookies. See cookies and POPIA.

## What makes consent valid

POPIA defines consent as any voluntary, specific and informed expression of will by which a person gives permission for their information to be processed. In practice:

- **Voluntary.** Don't make it a condition of a service that doesn't need it.
- **Specific.** One consent per purpose. A single tick for "terms, marketing and sharing with partners" isn't specific.
- **Informed.** The person knows what will be collected, why and who will receive it.
- **Provable.** Under section 11(2)(a), the business carries the burden of proving consent, so keep a record of when and how it was given.

> **Withdrawal.** Under section 11(2)(b), a person may withdraw consent at any time. Processing before the withdrawal stays lawful, but you must stop any processing that relied on that consent.

## Why "get consent for everything" backfires

It's tempting to ask for consent for every use of data, just to be safe. It usually creates more risk, not less:

- If you ask consent for something you need to do anyway, such as processing an order, a withdrawal leaves you either breaking your word or unable to deliver.
- It misdescribes your real basis, which makes your privacy notice inaccurate.
- Long consent forms make it harder to show that any one consent was specific and informed.

Where you rely on legitimate interest, people can still object under section 11(3), on reasonable grounds relating to their particular situation, unless legislation provides for the processing. Once they object, section 11(4) says you may no longer process their information. Build that into how you handle requests.

## Five common consent mistakes

1. **Consent buried in the terms and conditions.** Agreeing to terms isn't a specific consent to anything else.
2. **Bundled tick boxes.** One box for several purposes undermines all of them.
3. **No records.** If you can't prove it, you can't rely on it.
4. **Asking for consent where a contract applies.** It creates a withdrawal problem you don't need.

5 **Ignoring objections.** Legitimate interest processing still has to respect a person's right to object.

## Frequently asked questions

**Do I need consent to store a customer's details to fulfil their order?**

No. Processing that's necessary to perform a contract with the person has its own ground in section 11(1)(b). Your privacy notice should still explain it.

**Can my employees consent to processing?**

POPIA doesn't rule it out, but consent given to an employer may not be truly voluntary. Most HR processing rests on the employment contract or legal obligations instead.

**Does consent have to be in writing?**

POPIA doesn't require a particular format for most consent, apart from the prescribed form for requesting direct marketing consent. Because you carry the burden of proof, a written or electronic record is the practical choice.

## Capture consent you can prove

The ELS POPIA Consent Form (R850) records valid, specific consent where consent is your lawful ground. The Web & Online Pack (R4,950) includes it with a privacy notice, internal policy, operator undertaking, PAIA manual and website terms. 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 22 November 2026.

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