



When No Means No!

Welcome back to the weekly series on PoPI.

Do you receive unwanted repetitive automated phone calls or marketing emails that do not seem to end regardless of how often you click unsubscribe or block the sender? This is considered “direct marketing”.

What is “Direct Marketing”?

The PoPI Act is there to regulate how your personal information will be collected, processed and safeguarded for the purposes of direct marketing.

The Act defines the term as *“any approach (in person, by mail or by electronic communication) for the direct or indirect purpose of promoting or offering (in the ordinary course of business) any goods or services to you, or requesting you to make a donation of any kind for any reason”*.

Direct marketing can include any form of electronic communication, including automatic calling machines, facsimile machines, SMSs or emails.

Unsolicited direct marketing is prohibited, unless *“the data subject has given his/her/its consent to the processing, or is a customer of the responsible party”*.

Whether or not you have provided consent to be contacted for the purposes of direct marketing, you are entitled to object to the processing of your personal information and/or request such personal information to be corrected, deleted or destroyed. The responsible party holding your personal information must comply with your request.

Withdrawal of Consent

What happens if the responsible party persists, despite you withdrawing your consent to such processing? These are the actions available to you:

1. You are entitled to lodge a written complaint to the Information Regulator. Such complaints will be investigated by the Information Regulator's team and you will be advised of the decision.
2. The Information Regulator may refer the complaint to the Enforcement Committee in order for an enforcement notice to be served on the responsible party. Failure to comply with an enforcement notice is an offence, subject to a fine or imprisonment.
3. You may also institute a civil action for damages against the responsible party for breach of the POPI Act

If you have any questions or concerns, you are welcome to get in touch with us.

By Melissa Hattersley (Myska): melissah@harty.law

The eFiles is a periodic newsletter which is distributed free of charge. To subscribe, e-mail efiles@harty.law with "Subscribe" as the subject. To unsubscribe, send an e-mail with "Unsubscribe" as the subject. This newsletter must not be considered as (and is not), legal advice. Your individual situation may not fit the generalisations discussed and you should seek legal advice as necessary. You may forward, distribute and copy this eFile as long as you distribute and copy it without any changes and you include all headers and other identifying information but you *may not* copy it to a website without our prior written consent. If you would like information about obtaining legal services from Harty Rushmere (including a presentation on this topic), you can contact Neil Harty at +27(0)11 884-0792 or visit our Web site at www.harty.law. © Harty Rushmere.