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REGULATORY

The sword finally falls, ironically on justice itself | DoJ fine by Information Regulator

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What is the price that one pays for not having antivirus software? R5 million according to the Information Regulator of South Africa (**Regulator**). That is the fine that has been levied against the Department of Justice and Constitutional Development (**DoJ**) for not having appropriate security measures to protect the personal information it holds. It is also the first fine issued by the Regulator against an organisation for failure to comply with the Protection of Personal Information Act 4 of 2013 (**POPIA**).

In a previous article we talked about how the DoJ had suffered a data breach wherein its systems were encrypted by cyberhackers, preventing employees of the DoJ from accessing over 1,204 files necessary for service delivery.

In light of risks to personal information, including the risk of a data breach, POPIA requires organisations (public and private) to secure the integrity and confidentiality of personal information in their possession or under their control. In other words, reasonable measures must be implemented both on an organisational (people) and technical (systems and processes) level to protect personal information. This was not the case when the Regulator investigated the DoJ following the data breach it suffered. Amongst others, it was found that the DoJ had failed to renew the licenses to its security incident and event monitoring system, intrusion detection system, and antivirus software in 2020 (a year prior to the data breach). Had those licenses been renewed then the breach may have been prevented.

Following its investigation the Regulator issued an enforcement notice in May 2023 requiring the DoJ to show proof within 31 days that it had renewed its security software licenses. This was an opportunity for the DoJ to remedy its lack of appropriate security measures and perhaps avoid a fine. However, it failed to abide by the enforcement notice which constitutes an offence under POPIA, hence the R5 million fine.

Consequently, it is important for organisations to note that suffering a data breach is not in and of itself an offence in terms of POPIA. Rather, it is the failure to have appropriate security measures in place to protect personal information that will be cause for concern. Worse yet, where the Regulator points out to an organisation that it has fallen short from a data protection perspective and indicates where remedial action should be taken, and such remedial action is not taken by the organisation, a fine will most likely follow. Accordingly, this should serve as a sounding warning to all organisations to get their proverbial data protection house in order and, if so required, abide by enforcement notices from the Regulator!

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