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*When Data is said to be the New Oil
of the Digital Economy it is not
Strange to see that Even Santa Claus is
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The Privacy Regulator is to fine Santa a staggering R10 million for an alleged violation of the Protection of Personal Information Act 4 of 2013 (POPIA). A spokesperson for the Regulator commented, and said: *"The magnitude of the fine reflects the seriousness of Santa's blatant violation of POPIA."*

When data is said to be the new oil of the digital economy it is not strange to see that even Santa Clause is benefitting from its value.

Santa, operating from the North Pole, seemingly labours under the misapprehension that the Protection of Personal Information Act (POPIA) does not apply to him. Sources say that incompetent and insufficiently trained staff, including that of Mrs Claus and at least 100 elves over 60 years of age, contributes to the struggling, yet operational organisation.

POPIA applies to the processing of personal information that is or has been, manually or automatically entered into a record by a responsible party that is either domiciled in the union or not domiciled in the union but who makes use of means that are situated in the union.

Applying this to Santa's processing operations, we can easily conclude that POPIA applies to his personal information processing activities.

Looking at how he collects and uses information, one immediately notices that Santa's processing operations fall far short of the conditions for lawful processing of personal information as enshrined in article 4. In particular, the following conditions are violated:

1. Processing limitation

By not requesting consent from parents or guardians for the processing of children's data, Santa has been violating the condition of processing limitation for years. What is more, POPIA requires data to be collected directly from data subjects, i.e. children. However, from an investigation, it seems like Santa has been collecting the data from other sources, oftentimes not even from the parents of children (who are competent to provide consent on behalf of children). The fact that Santa's target market is mainly younger than 7 years complicates this matter as the Children's Act 38 of 2005 now also needs to be considered.

2. Purpose specification

Santa failed to take steps to ensure that children are notified, in plain language tailored to their standards, about the purpose of the collection of their data.

3. Information quality

There is no evidence to demonstrate that Santa takes reasonably practical steps to ensure that the personal information he collects of children is complete, accurate, not misleading and up to date. This is especially important when profiles of children are created based on the information collected to conclude whether such children have been naughty or nice.

4. Openness and profiling

Santa has failed to maintain a record of the personal data processing operations under his responsibility and failed to take reasonable steps to ensure that data subjects are aware of the fact that information about them is being collected from other sources, his address, the fact that he applies profiling techniques to the information collected to determine whether children have been naughty or nice.

5. Accountability

Judging from the aforementioned, it is clear that Santa has failed to ensure that the conditions in Chapter 3 of POPIA have been met.

According to Mr Jim Carry, Associate at the firm The Gringe Inc., *"Difficulty in complying with the law is not an excuse for not complying with the law. Nobody is making Santa process this data – he chooses to do so. And if he chooses to do so, then he has to accept the compliance responsibilities that come with it."* The Gringe Inc. is known for taking on trying cases and made news headlines again recently with their ongoing fight in the "WHO stole Christmas (and 90% of 2020)" case.

In light of this planned enforcement action, a spokesperson for Santa confirmed that Santa would review his organisation's privacy compliance obligations worldwide and would encrypt letters sent down chimneys, soon. More funds will also be allocated to staff training and system upgrades.

A close eye will be kept on the development of this matter. I foresee labour issues in terms of unmade beds and long naughty lists in future should no presents be present on Christmas morning!