

NATIONAL ASSEMBLY

FOR WRITTEN REPLY

QUESTION 3094

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(INTERNAL QUESTION PAPER NO 33-2022)

3094. Ms Z Majozi (IFP) to ask the Minister of Police:

Considering that the Information Regulator has issued summons to the SA Police Service (SAPS) regarding details relating to the alleged release of personal information of the Krugersdorp rape victims by SAPS, what (a) protocols are in place for the safe keeping of victims personal information, (b) are the (i) tools used to capture data on crime scenes and (ii) detailed overview of how the data capturing tools are safeguarded and (c) are the various penalties that SAPS have implemented for breaching information protocols related to the Protection of Personal Information Act, Act 4 of 2013?

NW3660E

REPLY:

(a) The South African Police Service (SAPS) has the following protocols in place for the safekeeping of personal information:

- The National Commissioner issued National Instruction 5 of 2021: Protection of Personal Information: Lawful Processing of Personal Information in the SAPS;
- Minimum Information Security Standards (MISS);
- National Instruction 14 of 2019 (Promotion of Access to Information);
- National Instruction 2 of 2013 (The management of fingerprints, body-prints and photographic images);
- National Instruction 21 of 2019 (Archives and Records Management);
- National Instruction 5 of 2017 (Media Communication in the South African Police Service);
- Policy No 14 of 2017 (System User Access Management in the SAPS);
- Policy No 4 of 2016 (Information System/Information Communication Technology (IS/ICT) Security Policy);
- Policy No. 11 of 2017 (Crime Administration System (CAS)/Investigation Case Docket Management System (ICDMS): User Account Management in the SAPS);

- Policy No. 3 of 2019 (SAPS Security Policy);
- National Instruction 3 of 2011: Registration of Case Dockets on the Crime Administration System (CAS);
- National Instruction 2 of 2012: Victim Empowerment;
- National instruction 1 of 2015: Crime Scene Management;
- National Instruction 13 of 2017: Case Docket Management; and
- National Crime Combating Forum (NCCF) Instruction 4 of 2021: Handling and Communication of Sensitive Operational Information.

The NCCF Instruction 4 of 2021 (Handling and Communication of Sensitive Operational Information), *inter alia*, requires the following:

- Officers and members are further reminded that Section 70 of the SAPS Act, 1995 (Act No. 68 of 1995) provides that a member who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Service (SAPS) of its powers or its functions is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.
- Members are furthermore required to comply with the MISS and ensure that any document and information is treated in accordance thereof.

National Instruction 5 of 2017 (Media Communication in the SAPS) regulates media communication in the Service.

- The National Instruction also deals with matters relating to social media platform.
- Paragraph 19(10) of the National Instruction specifically addresses the use of social media in the Service on social media, unless he or she was designated by Corporate Communication and Liaison to communicate or post comments on an official social media profile/account of the Service.
- Furthermore, insofar as a private social media profile/account is concerned, par 19(10)(f) of the National Instruction provides that members must be mindful of the perception that their opinions shared on social media sites, may be viewed as an official position of the Service. Members are

accordingly reminded that they may also be held accountable and legally responsible for any comments posted on social media sites. This may also result in disciplinary steps taken against the member concerned.

- In addition, par 19(10)(f)(iv) of the National Instruction provides that personal social media access and accounts may not be used to post any confidential or proprietary information of the Service.
- Members are also required to familiarise themselves with the content of any non-disclosure agreement that they signed when they joined the Service as well as the MISS to ensure that their media activities are aligned with the applicable legal requirements.
- Nothing in this instruction should be interpreted as prohibiting communication between serving SAPS members on operational matters that occurs on duly approved and properly managed/moderated and controlled (including access approval) messaging platforms, although the attachment of documents referenced in this instruction is strictly forbidden.
- The prohibition relates specifically to the sharing of communication and information with persons who are not employed by the Service as well as those that are in the Service but not entitled to access / view such information.

Henceforth, all sensitive documents containing operational information, inclusive of operational and contingency plans, operational instruction, situation reports, force levels, early warning and alerts, intelligence reports, limited to the classification of open, restricted or confidential, must only be communicated via the official SAPS email system. Every sensitive document attached, within the aforementioned levels of classification, must be password protected from inception of its creation/drafting.

(b)(i) The following protocols and systems are, *inter alia*, in place to capture the person information of victims on a crime scene:

- In terms of paragraph 14 of National instruction 1 of 2015 (Crime Scene Management) investigation activities refer to both the gathering of all physical evidence as well as relevant information. The Crime Scene

Commander must:

- coordinate the communication of information to all role players;
 - give regular reviews and updates to guide all the role players and determine their effectiveness;
 - ensure the identification of witnesses and their protection;
 - ensure that the proper crime scene documentation is utilised;
 - identify and communicate relevant needs to the Commander of the Command centre (CCC);
 - ensure crime scenes are optimally examined;
 - ensure, if practically possible, that the same Crime Scene Examiner is utilised if a specific case (same station and CAS number or same modus operandi) consists of more than one crime scene;
 - ensure that the first responder and all members playing a role on the crime scene stay until released from the scene, to make sure all questions are asked and all actions are completed;
 - ensure that examiners from the Forensic Science Laboratory attend drug processing sites and that all exhibits, chemicals, items or articles collected by the examiners and taken directly to the laboratory have been recorded in the exhibit log and a copy thereof is obtained and recorded in the SAPS 13 register; and
 - ensure that the necessary arrangements are made for the adequate storage of any chemical or equipment if the investigating unit has specifically requested that it not be disposed of by the Forensic Science Laboratory.
- **The Crime Scene Supervisor must:**
 - manage the team processing the crime scene and ensure collection of appropriate forensic evidence;
 - ensure that the crime scene is photographed or recorded to provide visual representation of the scene (the scene must be photographed or recorded in the condition found and before it is altered in any way, all physical evidence must be photographed or recorded in its original position and the condition of the scene must be photographed or recorded after the conclusion of the process);

- coordinate the processing of the scene for physical evidence, including:
 - the assigning of an Exhibit Official and ensure exhibit logs are completed;
 - determining likely evidential value of exhibit material for collection;
 - ensuring that all presumptive and confirmatory body fluid tests are performed;
 - ensuring that all evidence collected have been logged and handled according to the directives for the collection and packaging of exhibits (exhibits must be sealed at the crime scene if practically possible);
 - determining the evidence numbering convention; and
 - ensuring continuity of possession (chain of evidence) and integrity of the evidence;
- coordinate the gathering of information for the purpose of determining the point of entry and event reconstruction. This information may also assist in determining where skin cells need to be collected for DNA analysis;
- in a death investigation, collaborate with the pathologist or forensic pathology officer to ensure that they remove the deceased at the crime scene.
- The Investigating Officer must:
 - ensure that all the required documentation to open and maintain a case docket is available;
 - complete all documentation needed to accompany a corpse, if applicable;
 - manage the investigation team to gather information on the incident;
 - maintain the investigation diary and case docket;
 - attend the post mortem and collect the exhibits from the Pathologist for forensic examination or court purposes;
 - if the identity of the deceased is unknown, take fingerprints on a SAPS 91 form in order for it to be processed to establish if the deceased can

be identified through the Department of Home Affairs or linked to other cases. (If the identity of the deceased cannot be established, other tissue samples such as dental and DNA reference samples must be taken.);

- if the identity of the deceased is known, take fingerprints on a SAPS 192 form for comparison purposes; and
- consolidate all reports for court and legal purposes.

In terms of National Instruction 2 of 2012 (Victim Empowerment) any person who is a victim must be treated with sensitivity, dignity, care and respect.

- Every member conducting interviews, writing statements or conducting investigations must listen attentively to the victim's account of events and refrain from blaming the victim or making comments and must also avoid facial expressions that can make the victim feel responsible for what has happened to him or her.
- Members must ensure that a victim does not suffer secondary victimisation.

In cases of victims of domestic violence and sexual offences, the victim should be treated in accordance with the Domestic Violence Act, 1998 (Act No 116 of 1998) read with Domestic Violence National Instruction 7 of 1999 or the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007) read with the Sexual Offences National Instruction 3 of 2008.

A member receiving a complaint from a victim at the Community Service Centre must determine whether the victim should be interviewed publicly at the centre, or should rather be taken to the victim-friendly room or a private room, and act accordingly (depending on the nature of the crime or the condition of the victim). Should the victim be in need of medical assistance or trauma counselling, it must be arranged immediately with due consideration to the protection of evidence. If any victim is in need of protection, a member interacting with such a victim must ensure the victim's safety by taking the necessary steps to that effect.

(b)(ii) Data capturing tools are safeguarded by means of adherence to, *inter alia*, the following:

- Policy No. 11 of 2017 CAS/ICDMS: User Account Management in the South African Police Service) (which limits access to case/ investigation details of a particular matter);
- National Instruction No. 13 of 2017 Case Docket Management (the content of active case dockets/ investigations are limited to the investigation officer, his or her commander and the State Prosecutor.)
- National instruction 1 of 2015 (Crime Scene Management) (Relevant crime scene reports, logs, statements, medical evidence, etc. is filed in the case docket).

(c) The SAPS has implemented the following penalties for breaching information protocols related to the Protection of Personal Information Act, Act 4 of 2013: Possible criminal charges including for breaching the relevant protocols:

- Contravention of section 70 of the South African Police Service Act, 1995 (Act No. 68 of 1995), in terms of which any member who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Service of the powers or the functions referred to in 205(3) of the Constitution, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.); and defeating the ends of justice.

Disciplinary steps, in terms of the SAPS Discipline Regulations, 2016 (different forms of misconduct is set out in regulation 5(3) and 5(4) of the mentioned Regulations.)

Reply to question 3094 recommended/~~not~~ recommended

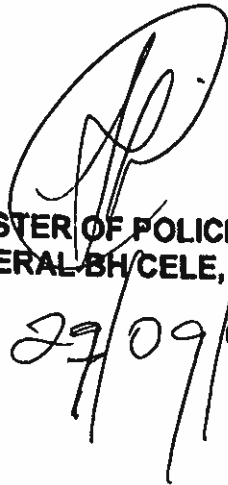


NATIONAL COMMISSIONER: SOUTH AFRICAN POLICE SERVICE
SF MASEMOLA

GENERAL

Date: 2022-09-22

Reply to question 3094 approved/not approved



MINISTER OF POLICE
GENERAL BH/CELE, MP

Date: 27/09/2022.