

# Driver Information Bureau (DIB) and the Law

Your legal questions answered

Brought to you by **DIB**

[http://www. http://www.centraldriverdatabase.com](http://www.http://www.centraldriverdatabase.com)

South Africa

Drafted by **Michalsons** – leading legal insight on information, communications, and technology (ICT)  
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## Contents

Contents.....	2
Summary .....	2
Key points and possible actions .....	2
What information does DIB process about drivers? .....	3
Why does DIB process driver information? .....	3
Is it lawful to use DIB to check whether a driver can drive?.....	3
By using DIB, is a user lawfully processing personal information? .....	3
Could a driver claim damages from the user? .....	3
Is it lawful for a provider of driver information to provide driver information to DIB?.....	3
Is the provider at risk if DIB holds some driver information without getting the driver's consent first?.....	3
Could a driver successfully claim damages (for defamation) from the provider (or DIB) if they don't get a job because of a DIB report?.....	4
Does DIB infringe a drivers rights? .....	4
Is it lawful for DIB to process driver information?.....	4
Does DIB secure the driver information? .....	4
Does DIB breach the conditions for the lawful processing of personal information in POPI? .....	4
What are useful links for more information?.....	4
About this guide .....	5
End Notes.....	5

## Summary

This guide will answer your frequently asked questions (**FAQ**) about the legal issues related to DIB. As a transporter, the risk of being held liable for damages suffered by people due to your failure to check whether a driver can drive safely are far higher than the risks of using DIB. The risks of being fined because DIB is unlawful or being successfully sued for damages by a driver are very low, if not non-existent. DIB does not unfairly discriminate, nor does it infringe the constitutional rights of drivers.

## Key points and possible actions

1. DIB is lawful. It is lawful to provide driver information to DIB and to use DIB.
2. The benefits of DIB far outweigh the risks. The risks are very low.
3. It is very unlikely that anyone will go to jail for unlawfully processing personal information.

### Key benefits of DIB

- Transport goods effectively by employing good drivers.
- Keep other road users safe.
- Save money by reducing damage to vehicles.

## What information does DIB process about drivers?

Driver information means information concerning a driver's:

1. driving history,
2. education, criminal, employment, career history,
3. biometric information, and
4. identity.

## Why does DIB process driver information?

To ensure the employment of drivers with the appropriate skills, which leads to:

- road safety that protects the public, and
- a reduction in cost by reducing wear on vehicles.

## Is it lawful to use DIB to check whether a driver can drive?

Yes, it is lawful for a transport company who is an authorised user of DIB to find out information about a driver. The transport company who is using DIB is processing the personal information of a driver, but they are doing it lawfully. The user has a legitimate interest in the driver information to reduce accidents and costs. Users are both protecting your legitimate interests and protecting the public. A user can (and in fact should) check the driving history of a driver with DIB before enabling the driver to drive again. Transport companies have an obligation to put defensible truth on paper.

This is just like a credit provider checking the credit worthiness (credit history and identity) of a consumer with a credit bureau before granting further credit. A credit provider is legally obliged to do this under the National Credit Act (NCA)<sup>i</sup>.

## By using DIB, is a user lawfully processing personal information?

Yes, a user is lawfully processing the driver's personal information.

## Could a driver claim damages from the user?

No. A user does not infringe the driver's rights if they do not let a driver drive after checking their history on DIB. It is not unfair discrimination. Users are not infringing their right to privacy. It is not an unfair labour practice.

## Is it lawful for a provider of driver information to provide driver information to DIB?

Yes. A transport company who provides information about a driver can both collect<sup>ii</sup> and share the driver information with DIB<sup>iii</sup> without the driver's consent. The provider is justified in processing because it is protecting its legitimate interests and those of the user of the driver information<sup>iv</sup>. The provider collected it directly from the driver. The processing of the driver information by DIB is compatible with the purpose for which the provider collected it and the provider is therefore limiting further processing. The provider is open about its processing. DIB's access to and processing of the driver information is lawful<sup>v</sup>. Once DIB receives the driver information, DIB lawfully processes it<sup>vi</sup>.

## Is the provider at risk if DIB holds some driver information without getting the driver's consent first?

No. Consent is not necessary. The law recognises that there should not be unnecessary impediments to the free flow of information<sup>vii</sup>. The law<sup>viii</sup> does not require someone to get another's consent before

processing his or her personal information<sup>ix</sup>. If driver information is collected before the driver consents to its disclosure, it does not make it unlawful. Also the driver does not own the driver information.

DIB only shares driver information to authorised users of DIB, once the driver consents to DIB sharing their information.

## Could a driver successfully claim damages (for defamation) from the provider (or DIB) if they don't get a job because of a DIB report?

No. It is not defamation if the driver information is the truth or in the public interest. The provider (and DIB) takes reasonable steps to check that the driver information is the truth. Drivers can access their information and correct it. The information has also not been published. DIB only provides lawful access to the information to authorised users of DIB. Before DIB shares the driver's information, the driver signs a waiver and acknowledges the risks associated with giving consent for their information to be disclosed to an authorised user of DIB.

## Does DIB infringe a drivers rights?

No. A driver has constitutional rights, but those rights are not absolute. They can be limited where it is justified and it is justified in this case. The rights include the right not to be unfairly discrimination against the right to privacy and the right to fair labour practices.

## Is it lawful for DIB to process driver information?

Yes<sup>x</sup>. DIB takes reasonable practicable steps to ensure that the driver information is of good quality<sup>xi</sup>. DIB aims to never provide inaccurate driver information to anyone. DIB does not say a driver cannot drive merely because DIB has no information about the driver. DIB is open about its processing. DIB allows drivers to access their driver information and correct it<sup>xii</sup>. DIB is authorised to process information concerning the criminal behaviour of drivers because it is necessary to defend and exercise the rights and obligations of users of DIB<sup>xiii</sup>.

## Does DIB secure the driver information?

DIB takes appropriate and reasonable measures to secure the driver information<sup>xiv</sup>. DIB (and its directors) have a proven track record in protecting information. And is trusted by hundreds of people..

## Does DIB breach the conditions for the lawful processing of personal information in POPI<sup>xv</sup>?

No. POPI does not stop anyone processing personal information, it just lays down the conditions for lawfully processing it.

## What are useful links for more information?

- [www.michalsons.co.za](http://www.michalsons.co.za)
- [www.informationregulator.co.za](http://www.informationregulator.co.za)

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## End Notes

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<sup>i</sup> Section 69 of the National Credit Act.

<sup>ii</sup> In this context the provider is a responsible party as defined in POPI.

<sup>iii</sup> DIB is another responsible party as defined in POPI and is not an operator for the provider.

<sup>iv</sup> Section 11(1)(f) of POPI.

<sup>v</sup> Section 19(1)(b) of POPI.

<sup>vi</sup> Section 19(1)(b) of POPI.

<sup>vii</sup> Preamble to POPI.

<sup>viii</sup> The National Credit Act does not apply to DIB because no credit is being provided. DIB is not a credit bureau as defined in the National Credit Act.

<sup>ix</sup> In section 11(1) of POPI there are six ways in which you can justify why you process personal information. One of which is consent. You can rely on any one of them. You do not have to get consent.

<sup>x</sup> Section 11(1)(f) and 12(2)(d)(v) of POPI.

<sup>xi</sup> Section 16 of POPI.

<sup>xii</sup> Condition 8 of POPI.

<sup>xiii</sup> Section 27(1)(b) of POPI.

<sup>xiv</sup> Section 19 and 21 of POPI.

<sup>xv</sup> The Protection of Personal Information Act, 2013.