



# Liberty Fighters Network

Est. 2016 - A voluntary association without gain (*Universitas*)

**Office of the President: Reyno De Beer**

Cellular: +27(0)67 735 7288

Electronic Mail: [reyno@libertyfighters.org](mailto:reyno@libertyfighters.org)

Website: [www.libertyfighters.org](http://www.libertyfighters.org) / Telegram: @libertyfightersnews / Twitter: @LFN\_SouthAfrica /

Facebook: Libertyfightersnetwork / YouTube: @LibertyFighters

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Date: 28 May 2026

Attention: The Minister of Home Affairs

Dr Leon Amos Schreiber

c/o Ms Anthula Higgins (Acting)

Email(1): [Anthula.higgins@dha.gov.za](mailto:Anthula.higgins@dha.gov.za)

Email(2): [Carli.vanwyk@dha.gov.za](mailto:Carli.vanwyk@dha.gov.za)

Email(3): [Moses.Malakate@dha.gov.za](mailto:Moses.Malakate@dha.gov.za)

Email(4): [ministerialqueries@dha.gov.za](mailto:ministerialqueries@dha.gov.za)

Dear Minister Schreiber,

**REMINDER – FORMAL NOTICE OF CONSTITUTIONAL CONCERN AND DEMAND FOR URGENT INTERVENTION: IDENTIFICATION ACT, 1997 AND IDENTIFICATION REGULATIONS, 1998**

1. We address this correspondence on behalf of Liberty Fighters Network (“LFN”), a well-known voluntary association without gain acting in the public interest and on behalf of its members.
2. This letter follows LFN’s formal submission dated 25 May 2026 relating to the proposed draft amendments to the *Identification Regulations, 1998*, published under *Government Gazette No. 54610, Government Notice R. 7428 dated 4 May 2026*. That submission already identified substantial constitutional, statutory, privacy and administrative-law concerns in relation to the proposed Digital ID framework and the broader identity-information architecture.
3. Upon further detailed consideration of the current *Identification Regulations, 1998*, read together with section 21 of the *Identification Act, 1997 (Act No. 68 of 1997)*, LFN is compelled to formally place the Minister and the Department on terms regarding what now appears to be a far more serious constitutional dilemma embedded within the existing legislative and regulatory structure itself.
4. At the outset, LFN records that the concern is not merely whether the Department may lawfully charge administrative fees relating to verification services or identity-related transactions in terms of regulation 15(d). The deeper constitutional issue is whether the current statutory and regulatory framework unlawfully permits the disclosure, furnishing, dissemination, querying, verification and potential commercialisation of highly sensitive population-register information without Parliament itself prescribing constitutionally adequate safeguards, and further, without the Minister having lawfully prescribed the

restrictions, conditions, exclusions and directives contemplated by the empowering legislation itself.

5. Section 21(1) of the *Identification Act* creates a statutory confidentiality and secrecy protection over information obtained in the execution of functions under the Act. In plain terms, the Legislature recognised the extreme sensitivity of population-register information and expressly prohibited publication or communication thereof except in limited circumstances.
6. However, section 21(2) then creates broad exceptions permitting the Director-General to furnish information from the population register to various categories of entities, including banks, insurers, organs of state, and notably, “*any other organisation, body, society or institution*”, subject to “*the restrictions, conditions, exclusions, directives and fees as may be prescribed*”.
7. Section 21(3) further attempts to limit such furnishing by providing that information may only be furnished where it is required for the exercise or protection of rights, in the public interest, or for purposes of compiling a voters’ roll.
8. The constitutional concern arises because the *Identification Act* appears to contemplate that a detailed safeguard architecture would be prescribed through subordinate legislation in order to constitutionally regulate the limitation of privacy rights flowing from section 21(2).
9. However, the current *Identification Regulations, 1998*, do not appear to prescribe a constitutionally adequate safeguard regime governing the implementation of section 21(2).
10. In particular, the current Regulations do not adequately prescribe, *inter alia* —
  - 10.1. meaningful data-subject notification requirements;
  - 10.2. consent procedures and standards;

- 10.3. judicial oversight mechanisms;
- 10.4. independent review or appeal procedures;
- 10.5. data minimisation obligations;
- 10.6. retention and destruction standards;
- 10.7. restrictions on onward disclosure;
- 10.8. audit and transparency mechanisms;
- 10.9. proportionality standards;
- 10.10. safeguards against profiling and cross-linking;
- 10.11. breach-notification obligations;
- 10.12. independent supervisory structures;
- 10.13. procedures for challenging disclosures;
- 10.14. limitations on commercial use;
- 10.15. safeguards concerning biometric information;
- 10.16. procedures regulating batch verification and bulk querying;
- 10.17. safeguards regulating real-time access to population-register information;
- 10.18. effective remedies for unlawful disclosure or misuse;
- 10.19. standards for determining necessity or public interest;
- 10.20. meaningful procedures to ensure compliance with the *Protection of Personal Information Act, 2013* ("POPIA").

11. Instead, the current regulatory framework appears primarily to prescribe fees for the furnishing of information under regulation 15(d), including real-time and batch furnishing of information from the population register to “*any person, organisation, body, society or institution*”.
12. LFN respectfully submits that this creates a profound constitutional defect.
13. Parliament may not permissibly create a broad statutory gateway into highly sensitive identity and population-register information affecting dignity, privacy, bodily integrity, equality and civic participation, and thereafter leave the essential constitutional safeguard architecture to subordinate legislation without sufficient legislative precision and guidance.
14. Further alternatively, even if such delegation were constitutionally permissible, the Minister appears not to have prescribed the full safeguard framework contemplated by section 21(2), thereby rendering the present disclosure regime incomplete, irrational, constitutionally deficient, ultra vires and inconsistent with the principle of legality.
15. The present position accordingly appears to be that the confidentiality protection granted by section 21(1) may in practice be substantially undermined through section 21(2), absent the constitutionally necessary and statutorily contemplated safeguard framework.
16. This concern is materially aggravated by the fact that the population register contains highly sensitive personal information, including unique identity numbers, citizenship information, residential particulars, marital particulars, photographs, fingerprints and other civic-status information.
17. The concern is further aggravated by the emergence of proposed Digital ID infrastructure, biometric verification systems, APIs, trusted entities, batch verification models, real-time querying, machine-readable credentials and expanded data-sharing mechanisms contemplated within the draft amendments to the Regulations.

18. LFN accordingly places the Minister on terms to urgently address this constitutional dilemma.
19. In particular, LFN requests that the Minister, within 30 days of receipt of this letter —
  - 19.1. provide written reasons explaining the constitutional and statutory basis upon which the Department currently furnishes information from the population register in terms of section 21(2);
  - 19.2. identify all restrictions, conditions, exclusions and directives currently relied upon by the Department in implementing section 21(2);
  - 19.3. identify all current categories of entities receiving real-time, batch, API-based or other verification access to population-register information;
  - 19.4. confirm whether biometric information is furnished, queried, verified, matched or otherwise processed in relation to any private or non-state entities;
  - 19.5. provide copies of all applicable directives, internal policies, agreements, standards, memoranda, protocols or access frameworks governing such furnishing of information;
  - 19.6. confirm whether the Department has obtained, considered or sought prior authorisation from the Information Regulator in terms of POPIA where required;
  - 19.7. confirm whether privacy-impact assessments, cybersecurity assessments or constitutional-compliance assessments have been conducted;
  - 19.8. identify the statutory and constitutional safeguards relied upon to prevent commercialisation, profiling, unlawful disclosure, secondary use, cross-linking, mass querying or abuse of population-register information;

- 19.9. indicate whether the Minister intends introducing constitutionally compliant regulations comprehensively governing the implementation of section 21(2);
  - 19.10. indicate whether the Minister intends suspending, restricting or reconsidering the current implementation of section 21(2) pending constitutional review and regulatory reform.
20. Kindly further take notice that should the Minister fail to adequately address the constitutional concerns identified herein within 30 days from date of receipt hereof, LFN intends approaching the High Court for appropriate constitutional and declaratory relief, which may include, *inter alia* —
- 20.1. a declaration that section 21(2), alternatively portions thereof, are unconstitutional;
  - 20.2. alternatively, a declaration that the current regulatory regime governing section 21(2) is constitutionally deficient and unlawful;
  - 20.3. alternatively, a declaration that the current implementation of section 21(2) is unlawful due to the absence of constitutionally adequate prescribed safeguards;
  - 20.4. review and setting aside relief in relation to regulation 15(d) and/or related disclosure practices;
  - 20.5. structural interdictory relief;
  - 20.6. mandatory relief compelling the prescription of constitutionally compliant safeguards;
  - 20.7. further ancillary and alternative relief.

21. LFN trusts that the Minister appreciates the gravity of the constitutional issues raised herein. These concerns affect not merely administrative procedure, but the foundational relationship between the State, identity infrastructure, constitutional privacy, personal autonomy and the lawful protection of civic identity information belonging to every individual in the Republic.
22. LFN reserves all rights *in toto*.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Reyno D. De Beer', with a large, sweeping flourish at the end.

**Reyno D. De Beer**

President: Liberty Fighters Network

On behalf of our members and acting in Public Interest