

# CONTENTS

**PREFACE** \_\_\_\_\_ **P. 2**

**FOREWORD** \_\_\_\_\_ **P. 4**

## **THE GUIDE**

ENGLISH .....	6
AFRIKAANS .....	40
ISINDEBELE .....	75
ISIXHOSA .....	111
ISIZULU .....	145
SEPEDI .....	181
SESOTHO .....	215
SETSWANA .....	251
SISWATI .....	288
TSHIVENDA .....	324
XITSONGA .....	360

**PART 6 - PUBLIC BODIES FROM WHOM YOU CAN  
ACCESS RECORDS** \_\_\_\_\_ **P. 394**

**ISBN Number: 0-620-33617-X**

## PREFACE

Section 32(1) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution), provides that everyone has the right of access to records or/and information held by the state and any information held by another person and that is required for the exercise or protection of any rights. This section affirms the fundamental right of access to information and seeks to promote a culture of transparency and accountability in the private and public sector.



Section 32(2) of the Constitution provides for the enactment of a national legislation to give effect to this fundamental right. The Promotion of Access to Information Act 2 of 2000 (PAIA) is the national legislation contemplated in section 32(2) of the Constitution.

Section 10 of PAIA provides that the South African Human Rights Commission must compile simple and easily comprehensible guidelines on how to use the Promotion of Access to Information Act.

The Commission is proud to present this; the first publication of the Guide in compliance with its mandate in terms section 10 of PAIA. The narrative part of the Guide is published in all 11 official languages beginning with English and thereafter arranged in alphabetical order. While every effort has been made to ensure the accuracy of the information and data in the Guide, mobility of officials and change of addresses by public bodies may well have affected the currency of some of the information.

Due to the fact that some private bodies (private bodies other than public companies in terms of section 20 of the Companies Act) have been temporarily exempted from publishing section 51 manuals we have not included the contact details of the private bodies in this first publication of the Guide. An electronic version of the Guide will be kept on the website of the South African Human Rights Commission, [www.sahrc.org.za](http://www.sahrc.org.za) and will be updated monthly to keep the public abreast of developments and changes regarding the contact details of information officers of public bodies and general information on PAIA.

The Commission is committed to monitoring, promoting and ensuring the implementation of the right of access to information. PAIA is a legislative milestone in the light of the pre 1994 political environment of secrecy and human rights violations that characterised the system of government. The unique horizontal application of the Bill of Rights in the Constitution makes South Africa's freedom of information legislation unique in the world, in that PAIA is the only freedom of information legislation that permits access to records held by private bodies. We commend the drafters of PAIA for this futuristic unique feature of PAIA especially in the light of the considerable power that multinational companies wield in the global arena today, particularly the negative impact of some of their activities on fundamental human rights in some regions - especially the third world regions.

PAIA was significantly assented to during the first decade of democracy in South Africa. In recognition of this fact and in line with the national ten year celebration of democracy, the South African Human Rights Commission hosted the Second International Conference of Information Commissioners in Cape Town on 2 and 3 February 2004 which was attended by information commissioners from more than 25 countries from across the world. We were proud to share our experiences with old and

newcomers in the information regime. It was worth noting that access to information regimes were fast gaining momentum around the world. Countries such as Mexico, Pakistan and the United Kingdom that previously did not have access to information legislation now have such legislation. Mexico (which is the host of the 3<sup>rd</sup> International Conference of Information Commissioners in February 2005) adopted its Federal Transparency and Access to Public Government Information Law in 2002; Pakistan adopted its Freedom of Information Ordinance 2002 in October 2002 while the United Kingdom approved its Freedom of Information Act 2000 in November 2000.

This Guide is an important tool in the enjoyment of the constitutional right of access to information in our country, and it has been compiled with a deep sense of pride. We thus record our sincere thanks to the members of the Promotion of Access to Information Act Unit (PAIA Unit) within the Research and Documentation Department of the Commission who made it possible for this Guide to be compiled. These members are: Adv. Mothusi Lepheana (Manager of the Unit) for his contribution, guidance and motivation, Ms. Bernadette Kotelo for her invaluable administrative support, and the Research Team; Mr. Mziwodumo Rubushe, Mr. Kgositsoi Aubrey Sedupane and Ms. Sakuntala Veersamy for their invaluable contribution to the compilation of the Guide. We also wish to thank Ms. Clare Wyllie, the Commission's Publications Officer for her support. Thanks also to Dr Leon Wessels (Commissioner responsible for the right of access to information and Chairperson of the PAIA Committee in the Commission) for his guidance to the PAIA Unit and PAIA Committee. We thank Ms. Lindiwe Mokate (CEO and Information Officer of the Commission) for her contribution, guidance and support in the compilation of this Guide.

We hope that the Guide will provide assistance and will benefit all the people of South Africa, as well as both its public and private bodies.



**Narandran Jody Kollapen**  
Chairperson

## FOREWORD

It is with joy to present to the nation the first edition of the Section 10 Guide in terms of the Promotion of Access to Information Act No 2 of 2000 (PAIA). This Guide is the first on the African continent and the access to information right, as provided in our Constitution, is the only one in the world that applies to both public and private bodies. This Guide has also been translated into all the 11 official languages of the Republic of South Africa for easy access by all the people of our beautiful country.



To move from a deeply inculcated culture of secrecy and bureaucracy to a culture of transparency and accountability is a mammoth challenge. The prejudice against responsive and open governance is certainly not confined to the previous order. The current hostile and ignorant responses received by the Commission in respect of PAIA are proof of this observation.

It is of critical importance that the citizens be informed about PAIA and how the right of access to information can work for their benefit. Participation in democratic processes can only be effective if it is informed participation. Many of the tragedies in South African history could have been prevented had there been an access to information regime in operation. It is however important that PAIA reaches far beyond the traditional political civil rights and that it adds a new dimension to public debate on every day issues that citizens have to face.

Public and private bodies must understand that their responsibilities under PAIA are not intended to be a costly burden but an essential mechanism to ensure good governance and the transformation of our society. The right, as well as the other entrenched rights should not only be approached in an adversarial manner but rather used as a vehicle to change our society and an opportunity to deal with the vestiges of apartheid.

PAIA is central to the transformation of our society. The rule of law and the democratic constitutional state will perish if there is not open and accountable government. The importance and magnitude of the Commission's constitutional role to monitor and report annually on the realization of socio-economic rights is matched by its obligation under PAIA.

I would be failing in my duty if I don't express my special thanks to the PAIA Unit for the countless hours they have given towards the compilation of this Guide. You have through this Guide contributed towards healing the wounds of the past and enhancing our new democracy. We will rejoice if ordinary citizens of our country use this Guide and thereby give more meaning to their freedoms for which they have fought so hard.

Yours sincerely

**Dr Leon Wessels**  
**Commissioner responsible for the Promotion of Access to Information Act**  
**South African Human Rights Commission**



**MS. LINDIWE MOKATE**  
*Chief Executive Officer of the  
South African Human Rights  
Commission and Information  
Officer*



**THE PROMOTION OF ACCESS TO INFORMATION ACT UNIT OF THE  
SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

*Left to right: Adv. Mothusi Lepheana (Manager), Ms. Sakuntala Veersamy (Re-  
searcher), Mr. Kgositoi Aubrey Sedupane (Researcher), Ms. Bernadette Kotelo (former  
Administrative Secretary), Mr. Mziwodumo Rubushe (Researcher)*

## TABLE OF CONTENTS

### PART 1

<b>USEFUL TERMS</b>	<b>8</b>
<b>1. WHY ACCESS TO INFORMATION?</b>	<b>12</b>
Introduction	12
1.1 The Constitution	12
1.2 The Promotion of Access to Information Act	12
1.3 The Regulations	12
1.4 The South African Human Rights Commission	13

### PART 2

<b>2. ACCESS TO INFORMATION</b>	<b>15</b>
2.1 Sources of information	15
2.1.1 The Guide	15
2.1.2 The Guide distribution centres	15
2.2 The manuals	16
2.2.1 Private bodies	16
2.2.2 Public bodies	17
2.3 Notices of Public and Private Bodies	18
2.3.1 Section 15 notice	18
2.3.2 Section 52 notice	19

### PART 3

<b>3. HOW TO MAKE A REQUEST FOR ACCESS TO INFORMATION</b>	<b>20</b>
3.1 Manner of request	20
3.2 Cost of requests – Public body	21
3.2.1 Public bodies	21
3.2.2 Private bodies	22
3.3 The assistance available from the information officer of a public body	24
3.4 Legal remedies	25
3.4.1 Public bodies	25
3.4.2 Private bodies	27
3.4.3 Decision on applications to court	27

### PART 4

<b>4. WHEN ACCESS TO A RECORD MAY BE REFUSED</b>	<b>29</b>
4.1 Grounds upon which access to a record of a public body may be refused	29
4.2 Grounds for refusal for access to records of a private body	34

**TABLE OF CONTENTS**

**PART 5**

**5. GENERAL INFORMATION** \_\_\_\_\_ **37**

5.1 Amendments to the Act ..... 37

5.2 Amendments to the Regulations ..... 37

5.3 Government notices ..... 37

5.4 Reports ..... 39

**PART 6**

**6. PUBLIC BODIES FROM WHOM YOU CAN ACCESS RECORDS** \_\_\_\_\_ **394**

## USEFUL TERMS

The following definitions and interpretations are used to define various terms used in the Act. They have been attached here to assist with the meaning which should be attached to these words in the Act and in this Guide.

**“access fee”** means a fee prescribed for the purposes of reproduction and for search and preparation, and for time reasonably required in excess of the hours prescribed to search for and to prepare the record for disclosure;

**“court”** means –

- (a) the Constitutional Court acting in terms of section 167 (6) (a) of the Constitution of the Republic of South Africa, 1996; or
- (b)
  - (i) a High Court or another court of similar status; or
  - (ii) a Magistrate’s Court, either generally or in respect of a specified class of decisions in terms of PAIA, designated by the Minister; by notice in the Gazette and presided over by a magistrate or an additional magistrate designated in terms of section 91A, within whose area of jurisdiction –
    - (aa) the decision of the information officer or relevant authority of a public body or the head of a private body has been taken;
    - (bb) the public body or private body concerned has its principal place of administration or business; or
    - (cc) the requester or third party concerned is domiciled or ordinarily resident;

**“Guide”** means the book produced by the Human Rights Commission in terms of s10 of the Promotion of Access to Information Act, No. 2 of 2000, for the purposes of reasonably assisting a person who wishes to exercise any right in terms of the Act;

**“head”** of, or in relation to, a private body means –

- (a) in the case of a natural person, that natural person or any person duly authorised by that natural person;
- (b) in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;
- (c) in the case of a juristic person –
  - (i) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or
  - (ii) the person who is acting as such or any person duly authorised by such acting person;

**“Human Rights Commission”** means the South African Human Rights Commission;

**“information officer”** of, or in relation to a public body means –

- (a) in the case of a national department, provincial administration or organisational component –
  - (i) mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3



- opposite the name of the relevant national department, provincial administration or organisational component or the person who is acting as such;
- (ii) Not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component respectively or the person who is acting as such;
  - (b) in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act, No. 117 of 1998) or the person who is acting as such; or
  - (c) in the case of any other public body, means the chief executive officer or equivalent officer, of that public body or the person who is acting as such;

**“Minister”** means the Cabinet Minister responsible for the administration of justice;

**“official”** in relation to a public body or private body means –

- (a) any person in the employ (permanently or temporary and full time or part-time) of the public or private body, as the case may be, including the head of the body, in his or her capacity as such; or
- (b) a member of the public or private body, in his or her capacity as such;

**“person”** means a natural or a juristic person;

**“personal requester”** means a requester seeking access to a record containing personal information about the requester;

**“private body”** means –

- (a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;
- (b) a partnership which carries or has carried on any trade, business or profession; or
- (c) any former or existing juristic person; but excludes a public body;

**“public body”** means –

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere; or
- (b) any other functionary or institution when –
  - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any other legislation;

**“record”** of, or in relation to, a public or private body, means any recorded information –

- (a) regardless of the form or medium;
- (b) in the possession or under the control of that public or private body respectively; and
- (c) whether or not it was created by that public or private body, respectively;

**“relevant authority”** in relation to:

- (a) a public body referred to in paragraph (a) of the definition of “public body” in the national sphere of government, means –
  - (i) in the case of the Office of the Presidency, the person designated in writing by the President; or
  - (ii) in any other case, the Minister responsible for that public body or the person designated in writing by that Minister;
- (b) a public body referred to paragraph (a) of the definition of “public body” in the provincial sphere of government, means –
  - (i) in the case of the Office of the Premier, the person designated in writing by the Premier; or
  - (ii) in any other case, the member of the Executive Council responsible for that public body or the person designated in writing by that member; or
- (c) a municipality, means –
  - (i) the mayor;
  - (ii) the speaker; or
  - (iii) any other person, designated in writing by the Municipal Council of that municipality;

**“request for access”** in relation to:

- (a) public body, means a request for access to a record of a public body in terms of section 11 of PAIA;
- (b) a private body, means a request for access to a record of a private body in terms of section 50 of PAIA;

**“requester”** in relation to –

- (a) a public body, means –
  - (i) any person (other than a public body contemplated in paragraph (a) or (b) (i) of the definition of “public body”, or an official thereof) making a request for access to a record of that public body; or
  - (ii) a person acting on behalf of the person referred to in subparagraph (i);
- (b) a private body means –
  - (i) any person, including, but not limited to, a public body or an official thereof, making a request for access to a record of that private body; or
  - (ii) a person acting on behalf of the person contemplated in subparagraph (i);

**“third party”** in relation to a request for access to –

- (a) a record of a public body, means any person (including, but not limited, to the government of a foreign state, an international organisation or an organ of that government or organisation) other than –
  - (i) the requester concerned; and
  - (ii) a public body or
- (b) a record of a private body, means any person (including, but not limited to, a public body) other than the requester, but for the purposes of section 34 and 63 of PAIA, the reference to “person” in paragraphs (a) and (b) must be construed as a reference to “natural person”;

**“working days”** means any days other than Saturdays, Sundays or public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act, No. 36 of 1994).

In this Guide, words importing any one gender shall include the other two genders, and the singular shall include the plural, unless the context indicates otherwise.

**PART 1****1. WHY ACCESS TO INFORMATION?****INTRODUCTION**

Section 32(1)(a) of the Constitution of the Republic of South Africa Act, No. 108 of 1996 (hereinafter referred to as “the Constitution”) provides that everyone has a right of access to any information held by the state and any information held by another person that is required for the exercise or protection of any rights.

**1.1 The Constitution**

The Constitution states that South Africa is a sovereign and democratic state that is founded on the advancement of human rights and an accountable, responsive and transparent system of governance as part of its values. The system of government in South Africa before 27 April 1994 amongst others, resulted in a secretive and unresponsive culture in both public and private bodies which often led to the abuse of power and human rights violations. It is in this regard that section 32(1) of the Bill of Rights in the Constitution, provides for the right of access to information held by the state; and any information held by another person that is required for the exercise or protection of any rights. Section 32(2) of the Constitution in turn provides for the enactment of national legislation that will give effect to this right, by respecting, protecting, promoting and fulfilling this right.

**1.2 The Promotion of Access to Information Act**

The Promotion of Access to Information Act, No. 2 of 2000 (hereinafter referred to as “PAIA”, or “the Act” interchangeably) is the national legislation which was enacted to give effect to the constitutional right of access to information. PAIA came into operation on 9 March 2001, with the exception of sections 10, 14, 15 and 51, which came into operation on 15 February 2002.

**1.3 The Regulations**

In terms of Section 92 of PAIA, the Minister may by notice in the Government Gazette, make regulations among others regarding any matter required or permitted by PAIA to be prescribed, any matter relating to fees payable and any notice required by the Act.

The following is a list and brief description of Government Notices containing the Regulations made in terms of Section 92 of PAIA.

**1.3.1 Government Notice: No. R. 1244**

Date: 22 September 2003

Subject: Amendment to the Regulations published by Government Notice No. R187 with regard to availability of manuals by public bodies and availability of manuals by private bodies. In terms of the amended regulations, the information officer of a public body must immediately after the manual has been compiled, make available a copy of the manual in each of the three

official languages to the South African Human Rights Commission, every office of that public body, and make the manual available on the website, if any, of the public body. The information officer may publish the manual in three official languages in the Gazette.

Immediately after a manual has been compiled by a private body, the head of a private body must make a copy of the manual available to the South African Human Rights Commission, to the controlling body of which that private body is a member, if applicable; must make the manual available on the website, if any, of the private body and the head of a private body may publish the manual in the Government Gazette.

### **1.3.2 Government Notice: No. R. 187**

Date: 15 February 2002

Subject: Regulations 187 of 15 February 2002 promulgated in terms of section 92 of PAIA makes provision for procedures pertaining to the availability of the section 10 Guide, availability of the manuals of public and private bodies, request fees and reproduction fees in respect of public and private bodies, and request forms.

### **1.3.3 Government Notice: No. R. 223**

Date: 9 March 2001

Subject: The Notice contains Regulations promulgated in terms of section 92 of PAIA relating to fees payable for the records of public bodies and private bodies.

## **1.4 The South African Human Rights Commission**

The South African Human Rights Commission (“the Commission”) is a national institution, responsible for promoting respect for human rights and a culture of human rights; for promoting the protection, development and attainment of human rights; and for monitoring and assessing the observance of human rights in the Republic.

### **1.4.1 The role and responsibility of the South African Human Rights Commission in terms of PAIA**

As a national institution responsible for protecting, promoting and monitoring the enjoyment of human rights, the Commission is obliged to assist where reasonably possible any person who wishes to exercise a right in terms of PAIA.

#### **1.4.1.1 The following are the functions and obligations of the Commission:**

- To make a copy of the Guide available to the public;
- To the extent that financial and other resources are available, develop and conduct educational programmes to advance the understanding of PAIA by the public, in particular to teach disadvantaged communities about PAIA and how to use it and how to exercise their rights in terms thereof;
- To the extent that financial and other resources are available, encourage public and private bodies to participate in these

programmes, and undertake their own educational programmes on the understanding of PAIA;

- To train information officers and deputy information officers of public bodies;
- To make recommendations to public and private bodies that they change the manner in which they administer PAIA, as the Commission considers advisable;
- To consult with and receive reports from public and private bodies on the problems they have encountered in complying with PAIA;
- To obtain advice from and to consult with, or receive and consider proposals or recommendations from any public or private body, official of such a body or member of the public in connection with the Commission's functions in terms of PAIA;
- To receive reports from public bodies regarding the implementation of PAIA;
- To compile and submit a report to Parliament annually on the enjoyment of the right of access to information in the Republic and the implementation of PAIA in general;
- As stated above, the Commission is obliged to assist any person wishing to exercise the right contemplated in PAIA.

**PART 2****2. ACCESS TO INFORMATION**

PAIA gives all South Africans the right to have access to records held by the state, government institutions and private bodies.

The following are the objectives which PAIA seeks to achieve:

- To ensure that the state takes part in promoting a human rights culture and social justice;
- To encourage openness and to establish voluntary and mandatory mechanisms or procedures which give effect to the right of access to information in a speedy, inexpensive and effortless manner as reasonably possible; and
- To promote transparency, accountability and effective governance of all public and private bodies, by empowering and educating everyone to understand their rights in terms of PAIA so that they are able to exercise their rights in relation to public and private bodies, to understand the functions and operation of public bodies, and to
- Effectively scrutinise, and participate in decision making by public bodies that affects their rights.

**2.1 Sources of information**

This book is a guide on how to use PAIA. It provides you with all the information you need to access any records. It also lists the contact details of government departments and institutions that keep records for the state.

**2.1.1 The Guide**

This Guide was compiled by the Commission specifically to assist you to access records and exercise your right to information. An update of this Guide will be published within 2 years from the publication of this copy.

**2.1.2 The Guide distribution centres**

This Guide is available in each official language free of charge for public inspection during office hours at various places mentioned below. Any person may request to have a copy of the Guide. You have to pay only if you want to make copies. The fee payable is R0,60c per every photocopy of an A4 size page or part thereof.

Copies of the Guide are available at the following places:

- At the office of the head of the national department responsible for government communication: Government Communications and Information Services (GCIS);
- At the following places of legal deposit as defined in section 6 of the Legal Deposit Act of 1997 (Act No. 54 of 1997):
  1. Library of Parliament, Cape Town;
  2. The South African Library, Cape Town;

3. Natal Society Library, Pietermaritzburg;
4. The State Library in Pretoria;
5. City Library Services, Bloemfontein;
6. The National Film, Video and Sound Archives, Pretoria;
7. Any other library or institution prescribed by the Minister of Justice and Constitutional Development for the purposes of certain prescribed categories of documents; and
8. Every tertiary education institution established by or under any law.

Copies of the Guide are also available in all official languages at the following offices:

1. Office of information officers of public bodies;
2. All offices of public bodies;
3. All Magistrate's Offices;
4. All offices of the Department of Justice and Constitutional Development;
5. All post offices;
6. In the Government Gazette.

The Guide is also available at all offices and on the website of the South African Human Rights Commission, ([www.sahrc.org.za](http://www.sahrc.org.za)).

## 2.2 The manuals

The manuals are books or documents in any form which are produced by all public bodies as well as private bodies. The manuals contain information on how to use PAIA to access the records of public and private bodies. If you want to know about the records that are held by a private body or public body you simply ask for their information manual.

### 2.2.1 Private body information manuals

All private bodies in the Republic are required to compile a manual in terms of section 51 of PAIA.

#### 2.2.1.1 How to obtain access to a manual of a private body

All private bodies are required to make available a copy of the information manual in the following places: South African Human Rights Commission, at the office of head of the private body and to the controlling body of which that private body is a member, if applicable; and on the web site, if any, of the private body. The head of a private body may also publish the manual in the Government Gazette. The aim of the various distribution centres is to enable any person to obtain access to the manual of the private body.



### 2.2.1.2 Contents of the information manuals

The information manuals should contain the following information:

- The postal and street address, phone and fax number and, if available, electronic mail address of the head of the private body;
- A description of this Guide compiled by the South African Human Rights Commission and how to access it;
- The latest notice, if any, regarding the categories of records of the private body which are available without a person having to request access in terms of PAIA;
- A description of the records which the private body keeps in compliance with any other legislation;
- Enough information to assist you in making a request for access to a record held by a private body;
- A description of the subjects on which the private body holds records, and the categories of records held on each subject;
- For security, administrative or financial reasons, the Minister may, on request and by notice in the Government Gazette exempt any private body or category of private bodies from compiling a manual for such period that the Minister thinks fit.

In this regard the Minister has exempted all **private companies** from compiling a manual for the period 1 September 2003 to 31 August 2005.

### 2.2.2 Public bodies

All public bodies must have information manuals in terms of section 14 of PAIA, to assist you on how to request access to records of public bodies. The public bodies' manuals must be published in 3 of the official languages. The information manuals should contain the following information regarding the public bodies:

- The structure and functions of the public body;
- The postal and street address, phone and fax number and, if available, the electronic mail address of the information officer of the body, as well as of every deputy information officer of the public body;
- A description of this Guide compiled by the South African Human Rights Commission and how to access it;
- Adequate information to assist in facilitating access to a record held by a public body. The public body must therefore describe the subjects on which it holds records, and the categories of records held on each subject;
- Some information is readily available without a person having to request access in terms of PAIA. The manual of the public body must indicate this information which is readily available;
- A description of the services available to members of the public from the public body, and how to gain access to those services;
- A description of any arrangement or provision for a person to either consult, make representations or participate in or influence the formulation of policy; or the exercise of powers or performance of duties by the public body;

- The action you may take if the information officer of the public body refuses to give you access to information.

Where necessary; information manuals must be updated annually.

### 2.2.2.1 How to obtain access to a manual of a public body

All public bodies are obliged to make the manual available to you in the following manner:

- By making a copy available at every office of that particular public body during office hours;
- By making available the manual on the website, if any, of the public body;
- By making a copy available to the South African Human Rights Commission;

The information officer of a public body may also publish the manual in three official languages in the Government Gazette.

## 2.3 Notices of Public and Private Bodies

Public bodies must have a list of information that is automatically available without you having to make a formal request. This list is called a **section 15 notice** or **voluntary disclosure notice**. The information officer of a public body is required to develop the voluntary disclosure notice for the public body, and make it available at the offices of the public body and also publish it in the Government Gazette. The voluntary disclosure notice is updated every year.

The head of a private body may on a voluntary and periodic basis develop a list of information that is automatically available from the private body without you having to make a formal request. This list is called a **section 52 notice** or **voluntary disclosure notice**. After compiling the notice, the head of a private body may forward it to the Minister of Justice and Constitutional Development who would decide whether to publish it in the Government Gazette or not.

The voluntary disclosure notice assists members of the public to differentiate between records or information that is automatically available, and records that should be requested formally. The notice will also assist both private and public bodies in that members of the public would not serve formal requests for records or information, which would otherwise be automatically available, such as annual reports, publications and any other records or information about the private body which is already in the public domain.

### 2.3.1 Section 15 notice (voluntary disclosure notice - public body)

The voluntary disclosure notice contains categories of records and description of those records that are automatically available:

- For inspection in terms of any legislation other than PAIA;
- For purchase or copying from the public body; and
- From the public body free of charge.

The voluntary disclosure notice of a public body must describe how to access the records that are voluntarily disclosed and automatically available.

**Note:** The information officer may delete any part of the record listed in the voluntary disclosure notice if he/she believes that it falls under information, which upon a request for access, may or must be refused in terms of the grounds for refusal of access to records.

### **2.3.2 Section 52 notice (voluntary disclosure notice - private body)**

The categories of records that are automatically available must include a description of those records that are available:

- for inspection in terms of legislation other than PAIA;
- for purchase or copying from the public body; and
- from the public body free of charge.

The head of a private body may delete any part of a record which on a request for access, may or must be refused in terms of the grounds for refusal of access to records.

The head of the private body must describe how to access such records that are voluntarily disclosed and automatically available.

If appropriate, the Minister must on a periodic basis and, by notice in the Government Gazette publish any description of the records so submitted and update any such description.

The only fee payable, if any, for access to a record that is voluntarily disclosed and automatically available is a prescribed fee for reproduction.

**PART 3****3. HOW TO MAKE A REQUEST FOR ACCESS TO INFORMATION**

A request for access to a record is made by completing a request form called **Form A** for public bodies and **Form C** for private bodies. A copy of the forms is attached at the back of the Guide. The request forms must be completed and submitted to the information officer of the public body or head of the private body from whom access to a record is sought. The information officer of a public body or the head of a private body must respond to the request within 30 days. The forms are available from the offices and website of the South African Human Rights Commission at [www.sahrc.org.za](http://www.sahrc.org.za).

**3.1 Manner of request**

A requester has a right of access to a record of a public body or a private body and must be given access to a record of a public body or private body if the requester complies with the following procedural requirements:

- That the request is made on the request form to the information officer of the public body or head of a private body;
- That the completed request form is faxed or electronically mailed or hand delivered to the information officer of the public body or head of the private body concerned;
- That access to the requested record is not refused in terms of any of the grounds for refusal under PAIA.

**3.1.1 How to fill in the request form - public and private bodies**

A request for access to a record of a private or public body is made, by filling in a form called a request form. The request must be made to the information officer of the public body or head of the private body at his address, fax number or electronic mail address.

In the request form, the requester is required to provide the following information:

- Sufficient particulars to enable an official of the public body or the head of a private body to identify the requester;
- Sufficient particulars to enable an official of the public body or head of a private body to identify the record, including the reference number, if that is known to the requester. If the space in the request form is not adequate, the requester may continue on a separate folio and attach it to the request form. The requester must sign all additional folios;
- Clearly indicate the form of access or nature of the record in which the record should be provided;
- The preferred language in which the record should be provided in the case of a public body;
- The postal address or fax number of the requester in the Republic;
- State the manner in which the requester would like to be informed about the decision on the request;

- If the request is made on behalf on another person, to submit proof of the capacity in which the requester is making the request;
- In the case of a private body; the requester must state the right that is to be exercised or protected and why the record requested is required for the exercise or protection of such right.

**Note:** Requesters who cannot read or write can make oral requests to the information officer of a public body who must fill in the request form for the requester.

### **3.1.2 Who can make a request for access to a record?**

A requester may make a request for access to records of a private or public body. The requester’s right of access to a record of a private or public body includes a right of access to a record containing personal information about the requester, or a person on whose behalf the request is made.

A public body may make a request for access to a record of a private body for the exercise or protection of any rights other than its rights, only if it is acting in the public interest.

## **3.2 Cost of requests - public body**

When you make a request for access to a record of a public body, the information officer will inform you in writing of the request fee. In the case of a personal requester, the request fee is not payable. However, a personal requester must pay the prescribed access and reproduction fees.

### **3.2.1 Prescribed fees in respect of public bodies**

The following is the breakdown of the costs for accessing the records of a public body as prescribed in the Regulations.

Part II of Regulation 187 published in the Government Gazette on 15 February 2002:

1. The fee for a copy of the manual as contemplated in Regulation 5(c) is R0,60 for every photocopy of an A4-size page or part thereof.
2. The fees for reproduction referred to in Regulation 7(1) are as follows:

	<b>R</b>
(a) For every photocopy of an A4-size page or part thereof	0,60
(b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	0,40
(c) For a copy in a computer-readable form on –	
(i) stiffy disc	5,00
(ii) compact disc	40,00
(d) (i) For a transcription of visual images, for an A4-size page or part thereof	22,00
(ii) For a copy of visual images	60,00

- (e) (i) For a transcription of an audio record, for an A4-size page or part thereof 12,00  
(ii) For a copy of an audio record 17,00
3. The request fee payable by every requester, other than a personal requester, referred to in Regulation 7(2) is R35,00.
4. The access fees payable by a requester referred to in Regulation 7(3) are as follows:

	<b>R</b>
(1) (a) For every photocopy of an A4-size page or part thereof	0,60
(b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	0,40
(c) For a copy in a computer-readable form on -	
(i) stiffy disc	5,00
(ii) compact disc	40,00
(d) (i) For a transcription of visual images, for an A4-size page or part thereof	22,00
(ii) For a copy of visual images	60,00
(e) (i) For a transcription of an audio record, for an A4-size page or part thereof	12,00
(ii) For a copy of an audio record	17,00
(f) To search for and prepare the record for disclosure, for each hour or part of an hour, excluding the first hour, reasonably required for such search and preparation.	R15,00
(2) For purposes of section 22(2) of the Act, the following applies:	
(a) Six hours as the hours to be exceeded before a deposit is payable; and	
(b) One third of the access fee is payable as a deposit by the requester.	
(3) The actual postage is payable when a copy of a record must be posted to a requester.	

If the information officer believes that the search and preparation of the record requires more than a period of six hours, the information officer must by notice require the requester (excluding a personal requester) to pay a deposit of one third of the access fee.

### 3.2.2 Costs of requests - private bodies

The head of a private body to whom the request is made will notify you in writing to pay the prescribed request fee, if any, before processing the request. If you require access to records of your personal information, you do not have to pay a request fee.

The following is a breakdown of the fees structure for the purposes of determining the manner in which fees relating to a request for access to a record of a private body are to be calculated.

Part III of Regulation 187 published in the Government Gazette on the 15 February 2002:

1. The fee for a copy of the manual as contemplated in regulation 9(2)(c) is R1, 10 for every photocopy of an A4-size page or part thereof.

2. The fees for reproduction referred to in regulation 11(1) are as follows:

	<b>R</b>
(a) For every photocopy of an A4-size page or part thereof	1,10
(b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	0,75
(c) For a copy in a computer-readable form on -	
(i) stiffer disc	7,50
(ii) compact disc	70,00
(d) (i) For a transcription of visual images, for an A4-size page or part thereof	40,00
(ii) For a copy of visual images	60,00
(e) (i) For a transcription of an audio record, for an A4-size page or part thereof	20,00
(ii) For a copy of an audio record	30,00

3. The request fee payable by a requester, other than a personal requester, referred to in Regulation 11(2) is R50,00.

4. The access fees payable by a requester referred to in Regulation 11(3) are as follows:

	<b>R</b>
(1) (a) For every photocopy of an A4-size page or part thereof	1,10
(b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	0,75
(c) For a copy in a computer-readable form on -	
(i) stiffer disc	7,50
(ii) compact disc	70,00
(d) (i) For a transcription of visual images, for an A4-size page or part thereof	40,00
(ii) For a copy of visual images	60,00
(e) (i) For a transcription of an audio record, for an A4-size page or part thereof	20,00
(ii) For a copy of an audio record	30,00
(f) To search for and prepare the record for disclosure, R30,00 for each hour or part of an hour reasonably required for such search and preparation.	

(2) For purposes of section 54(2) of the Act, the following applies:

- (a) Six hours as the hours to be exceeded before a deposit is payable; and
- (b) one third of the access fee is payable as a deposit by the requester.

- (3) The actual postage is payable when a copy of a record must be posted to a requester.

### 3.3 The assistance available from the information officer of a public body

- When a requester informs the information officer of a public body that he or she wishes to make a request for access to a record of that particular public body or of another public body, the information officer must render such reasonable assistance, free of charge, as is necessary, to enable the requester to complete the prescribed form.
- Where the request for access does not comply with the provisions of PAIA, the information officer may not refuse the request because of such non-compliance, unless the information officer has notified the requester in writing of the intention to refuse the request, together with the reasons for the intention to refuse the request and further, that the information officer or other official will provide assistance to the requester so that the request is made in such a form, where there would no longer be a ground for refusal.
- Where reasonably possible, the information officer must also furnish the requester in addition to the information requested (to which access may be granted or may be refused) with any other information that is held by the public body, and which are relevant to the request.
- The information officer must afford the requester a reasonable opportunity to either confirm or alter the request, so that it complies with the formalities of the form of requests.
- If after the information officer receives a request for access, it becomes apparent that the request should have been made to another public body, the information officer must render such necessary assistance so as to enable the person to make the request to the information officer of the appropriate public body; or must transfer the request to the relevant information officer, whichever is the more expedient.
- Where a request for access is made to the information officer of a public body and the record is not in the possession or under the control of that body, but in the possession of another public body; or where the subject matter of the requested record is more closely connected with the functions of another public body, the information officer must within 14 days after the request is received, transfer the request to the information officer of that other relevant public body. The information officer must notify the requester of this in writing.
- The information officer must respond to a request for access within 30 days after the receipt of the request. The information officer may extend the period of 30 days, for a further period of 30 days, if he has given notice to the requester of the extension. The information officer may only extend this period once, and under certain conditions, which include *inter alia*, the request being for a large number of records, consultation among divisions within the public body or with another public body is required, or if the requester has consented thereto in writing.
- The information officer must decide whether to grant the request for access, and must give notice to the requester of this decision.
- If the request for access is granted, the requester must be given a notice stating the access fee (if any) that must be paid upon access, and the form in which access will be given. The notice must also state that the requester may lodge an internal appeal or an application with a court, against the access fee or the form of access granted.



The notice must also indicate the procedure and the period for the lodging of the internal appeal or the court application.

- If the request for access is refused, the notice must state the adequate reasons for the refusal, including the provisions of PAIA relied upon. The notice must also state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal of the request and must indicate the procedure and the period, for lodging the internal appeal or application, as the case may be.

### 3.4 Legal remedies

You have a right to take further legal steps if the information officer of a public body or head of a private body refuses you access to a record you have requested, and you had complied with all the requirements of the Act in making the request.

#### 3.4.1 Public bodies

The Act makes a provision for an internal appeal procedure which must be exhausted before the matter may be taken to court. The internal appeal procedure is applicable to national and provincial departments and municipalities only; all other public bodies do not have an internal appeal structure or/and procedure.

##### 3.4.1.1 Who may lodge an internal appeal?

If your request for access to a record of a public body has been refused for whatever reason, you have a right to make an internal appeal to the relevant authority by completing a form called **Form B**.

A third party may lodge an internal appeal with the relevant authority, against a decision of the information officer of a public body, to grant a request for access.

##### 3.4.1.2 When may you lodge an internal appeal?

The following are the grounds upon which a requester may lodge an internal appeal with the relevant authority, against a decision taken by the information officer of the public body:

- When the requester is not satisfied with the fees that are required to be paid in respect of the request.
- When the requester is not satisfied with the extension of the period to deal with request; the Act provides that the information officer may extend the period of 30 days only once for a further period of 30 days if for example the request for is a large number of records and if the requester consents to such extension.
- If the form of access in which the records are provided are not in line with the particular form in which the requester preferred; and the requester is satisfied that the record could be provided in the preferred form without unreasonably interfering with the administration of the public body concerned; or be detrimental to the preservation of the

record or amount to infringement of copyright not owned by the state or the public body concerned.

### 3.4.1.3 Manner of lodging an internal appeal

- A requester may lodge an internal appeal by filling in a form called **Form B** within 60 days from the date when the request was refused. If the request was made to a national government department, you appeal to the Minister of that department.
- If the request was made to a provincial department, you appeal to the Member of the Executive Council of the department. If the request was made to a municipality, you appeal to the mayor of the municipality, or the speaker or any person designated by the Municipal Council of that municipality. The appeal form itself is submitted to the same information officer who refused the request; who must then submit it to the relevant authority.
- If notice to a third party is required (this is where the disclosure of the information sought would involve the unreasonable disclosure of personal information about a third party, certain records of the South African Revenue Services (SARS), confidential information of a third party, specific commercial information of a third party, and research information of a third party, or of a public body), then the internal appeal must be lodged in the prescribed form within 30 days after notice is given to the appellant of the decision that is being appealed against, or if notice to the appellant is not required, then 30 days after the decision was taken.
- The requester must deliver the internal appeal form or send it to the information officer of the public body at his address, fax number or electronic mail address.
- The internal appeal must identify the subject of the internal appeal, state the reasons thereof and may include any other relevant information that is known to the appellant.
- Should the requester wish to be informed of the decision of the internal appeal in another manner, in addition to a written reply, he/she must state such manner, and provide the necessary particulars of such manner.
- The internal appeal lodged must specify a postal address or fax number of the requester.

### 3.4.1.4 What happens when an appeal is lodged after the expiry of the prescribed period?

- If there is good cause shown, the relevant authority must allow an internal appeal that was lodged late; that is after the expiry of the period allowed for the lodging of the internal appeal.
- Where the relevant authority disallows the late lodging of an internal appeal, it must give notice of that decision to the person who lodged the appeal.

### 3.4.1.5 Prescribed fees for internal appeals

A requester who lodges an internal appeal must pay the prescribed appeal fee, if any. If such fee is in fact payable, the decision on the internal appeal may be deferred, until the fee is paid.

### 3.4.1.6 Application to court against the decision of the information officer of a public body or relevant authority

Where a requester has been unsuccessful in an internal appeal to the relevant authority, or is aggrieved by a decision of the relevant authority to disallow the late lodging of an internal appeal, or is aggrieved by the decision of the information officer to refuse a request for access, or is aggrieved by a decision of the information officer taken in terms of section 22 relating to fees, section 26(1) relating to the extension of period to deal with the request or section 29(3) relating to access and forms of access, the requester may within 30 days, and by way of an application, apply to court for appropriate relief.

**Note:** A requester or third party may only apply to court for appropriate relief after the requester or third party has exhausted the internal appeal procedure against a decision of the information officer where applicable.

## 3.4.2 Private bodies

Where a requester or a third party is aggrieved by a decision of the head of a private body to refuse a request for access, or by a decision taken in terms of section 54 relating to fees payable for and in connection with access to records of a private body, section 57(1) relating to the extension to deal with the request, or section 60 relating to the form of access, the requester may within 30 days, and by way of an application, apply to court, for appropriate relief. The court will then review the request and decide whether in fact the head of the private body should give you the information you requested or not.

**Note:** Once the Rules Board for Courts has produced the rules and procedures for access to information cases, all access to information matters will be heard in the Magistrates' Court as a court of first instance (section 79 of PAIA).

## 3.4.3 Decision on applications to court

The court hearing an application in terms of PAIA may grant any order that is just and equitable including orders:

- Confirming, amending or setting aside the decision which is the subject of the application;
- Requiring the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action, as the court considers necessary within the period mentioned in the court order;

- Granting an interdict, interim or specific relief, a declaratory order or compensation;
- Granting an order as to costs.

**PART 4****4. WHEN ACCESS TO INFORMATION MAY BE REFUSED**

PAIA balances the requester's constitutional right to information against the information officer's or a head of a private body's right to refuse access to information, if granting the information would harm the public or private body in question on any of the grounds mentioned below.

**4.1 Grounds upon which access to a record of a public body may be refused**

The information contained in this section relates to the grounds upon which a public body is entitled to refuse access to its records. The information is intended to provide a requester with clarity as to the reasons why a request may be refused by the public body. The list is a summary of the grounds contained in Part 2, Chapter 4 of PAIA, and is by no means exhaustive.

**4.1.1 Mandatory protection of privacy of a third party who is a natural person**

The information officer of a public body must refuse a request for access to a record of that public body, if the disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

However, a record may not be refused if it consists of information:

- about an individual who has consented in writing to the disclosure of the information;
- given to the public body by the individual to whom it relates, and that individual is informed by the public body before it is disclosed, that the information belongs to a class of information that might already be publicly available;
- that is already publicly available;
- relating to an individual's physical or mental health, or well-being, who is under the care of the requester, and who is under the age of 18 years or is incapable of understanding the nature of the request, and further that the giving of access would be in the individual's best interests;
- about an individual who is deceased and the requester is the individual's next of kin, or is making the request with the written consent of the individual's next of kin;
- about an individual who is or was an official of a public body, and the information relates to the position or functions of the individual.

**4.1.2 Mandatory protection of certain records of South African Revenue Service**

The information officer must refuse a request for access to a record of the South African Revenue Services (SARS), if it contains information obtained or held by SARS for the purposes of enforcing legislation concerning the collection of revenue in terms of the South African Revenue Service Act, No. 32 of 1997; unless the record requested consists of information about the requester or the person on whose behalf the request is being made, in which case the record may not be refused.

#### **4.1.3 Mandatory protection of commercial information of a third party**

The information officer of a public body must refuse a request for access to a record if it contains:

- Trade secrets of a third party;
- Financial, commercial, scientific or technical information other than trade secrets of a third party, where the disclosure thereof would be likely to cause harm to the commercial or financial interests of that third party;
- Information supplied by a third party in confidence, and if disclosed would reasonably be expected to place the third party at a disadvantage in contractual or other negotiations; or prejudice the third party in commercial competition.

However, a record may not be refused if it consists of information:

- Already publicly available;
- About a the third party who has consented in writing, to its disclosure to the requester;
- About the results of any product or environmental testing (not the results of preliminary testing or investigations conducted for developing methods of testing) or other investigation carried out by or on behalf of a third party; where the disclosure thereof would reveal a serious public safety or environmental risk.

#### **4.1.4 Mandatory protection of certain confidential information, and protection of certain other confidential information of a third party**

The information officer must refuse a request for access to a record of that public body, if the disclosure thereof would constitute a breach of a duty of confidence owed to a third party in terms of an agreement.

The information officer of a public body may refuse a request for access to a record of that body, if the record consists of information supplied in confidence by the third party, and if disclosed, could prejudice the future supply of similar information or information from the same source and it is in the public's interest that the information from the same source continue to be supplied.

However, a record may not be refused if it consists of information:

- Already publicly available;
- About the third party concerned and the third party has already consented in writing, to its disclosure to the requester.

#### **4.1.5 Mandatory protection of safety of individuals and protection of property**

The information officer of a public body must refuse a request for access to a record of that body, if its disclosure could reasonably be expected to endanger the life or physical safety of an individual. The information officer of a public body may refuse a request for access to a record of that body, if its disclosure would likely prejudice or impair:

- The security of a building, structure, or system, including a computer or communication system, a means of transport or any other property;

The information officer of a public body may refuse a request for access to a record of that body, if its disclosure would likely prejudice or impair the methods, systems, plans or procedure for the protection of:

- An individual under a witness protection scheme;
- The safety of the public, or any part of the public;
- The security of a building, structure, or system, including a computer or communication system, a means of transport or any other property.

#### **4.1.6 Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings**

The information officer of a public body must refuse a request for access to a record of the body, if the access to that record is prohibited in terms of section 60(14) of the Criminal Procedure Act, No. 51 of 1977. The information officer has a discretionary ground of refusal in terms of section 39(1)(b) of PAIA.

#### **4.1.7 Mandatory protection of record privileged from production in legal proceedings**

The information officer of a public body must refuse a request for access to a record of a public body if the record is privileged from production in legal proceedings, unless such privilege has been waived.

#### **4.1.8 Defence, security and international relations of the Republic**

The information officer of a public body may refuse a request for access to a record of that body, if its disclosure could reasonably be expected to cause prejudice to:

- The defence of the Republic;
- The security of the Republic;
- The international relations of the Republic.

The information officer of a public body may refuse a request for access to a record of that body, if its disclosure would reveal information:

- Supplied in confidence by or on behalf of another State or an international organisation;
- Supplied by or on behalf of the Republic to another State or international organisation in terms of an arrangement or international agreement with that state or organisation, which requires the information be held in confidence;
- Required to be held in confidence by an international agreement or customary international law contemplated under sections 231 or 232 of the Constitution.

#### **4.1.9 Economic interests and financial welfare of the Republic and commercial activities of public bodies**

The information officer of a public body may refuse a request for access to a record of that body, if its disclosure would likely materially jeopardise the economic interests or financial welfare of the Republic, or the ability of the government to manage the economy of the Republic effectively, in the best interests of the Republic.

The information officer of a public body may refuse a request for access to a record of that body if the record:

- Contains trade secrets of the State or a public body;
- Contains financial, commercial, scientific or technical information, and the disclosure thereof would likely cause harm to the commercial or financial interests of the State or public body;
- Contains information, which if disclosed, could place the public body at a disadvantage in contractual or other negotiations, or prejudice a public body in commercial competition;
- Is a computer programme as defined in the Copyright Act, No. 98 of 1978, which is owned by the State or a public body, unless it is required to give access in terms of PAIA.

The information officer may not refuse a request for access to a record of that body if the record consists of information:

- Already publicly available;
- About or owned by a public body, other than the public body to whom the request is made, and this public body has consented in writing to its disclosure to the requester;
- About the results of any product or environmental testing or other investigation (excluding the results of preliminary testing or investigations conducted for developing methods of testing) carried out by or for the public body, and the disclosure thereof would reveal a serious public safety or environmental risk.

#### **4.1.10 Mandatory protection of research information of a third party, and protection of research information of a public body**

The information officer of a public body must refuse a request for access to a record of that body, if the record contains information about research being carried out or to be carried out on behalf of a third party and if this were to be disclosed, it would likely:

- Expose the third party, the person carrying out the research or will be carrying out the research on behalf of the third party, or the subject matter of the research, to a serious disadvantage.

The information officer of a public body may refuse a request for access to a record of that body, if the record contains information about research being carried out or to be carried out on behalf of a public body and if this were to be disclosed, it would likely:



- Expose the public body, the person carrying out the research or will be carrying out the research by or on behalf of the public body or the subject matter of the research, to a serious disadvantage.

#### **4.1.11 Operation of public bodies**

The information officer of a public body may refuse a request for access to a record of a public body, if the record contains an opinion, advice, report or recommendation obtained or prepared; or an account of a consultation, discussion or deliberation, including the minutes of meetings, for the purposes of assisting to formulate policy or the taking a decision in the exercise of power or the performance of a duty in terms of the law on the public body.

The information officer of a public body may refuse a request for access to a record of that body, if the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies, by inhibiting the candid communication of an opinion, advice, report or recommendation; or the conduct of a consultation, discussion or deliberation; or if the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

The information officer of a public body may refuse a request for access to a record of that public body, if:

- The disclosure of the record could reasonably be expected to jeopardise the effectiveness of a testing, examining, or auditing procedure or method used by a public body;
- The record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise, which was made to the person who supplied the material, that the material or the identity of the person who supplied it would be held in confidence; or
- The record contains a preliminary, working or other draft of an official of a public body.

#### **4.1.12 Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources**

The information officer of a public body may refuse a request for access to a record of that public body, if the request is trifling or intended to harass, or if the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

#### **4.1.13 Mandatory disclosure in the public interest**

Despite the above-listed grounds for refusal, the information officer of a public body must grant a request for access to a record of a public body if, the disclosure thereof would reveal evidence of:

- A substantial contravention of, or failure to comply with the law; or an imminent and serious public safety or environmental risk; and the public interest in the disclosure of the record, outweighs the harm contemplated under the grounds for refusal.

## 4.2 Grounds for refusal of access to records of a private body

The information contained in this section is a summary of the grounds upon which a private body is entitled to raise, as grounds for the refusal of access to its records. The information is intended to provide a requester with clarity as to the reasons why a request may be refused by the private body. The list is a summary of the grounds contained in Part 3, Chapter 4 of PAIA, and is by no means exhaustive.

### 4.2.1 Mandatory protection of privacy of a third party who is a natural person

The head of a private body must refuse a request for access to a record of that body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

However, a record may not be refused if it consists of information:

- About an individual who has consented in writing to the disclosure of the information;
- Already publicly available;
- Given to the private body by the individual to whom it relates, and that individual was informed by the private body before it is disclosed that the information belongs to a class of information that may already be publicly available;
- About an individual's physical or mental health, or well-being, who is under the care of the requester, and who is under the age of 18 years or incapable of understanding the nature of the request, and further if the disclosure would be in the individual's best interests;
- About an individual who is deceased and the requester is the individual's next of kin, or is making the request with the written consent of the individual's next of kin;
- About an individual who is or was an official of a private body, and the information relates to the position or functions of the individual.

### 4.2.2 Mandatory protection of commercial information of a third party

The head of a private body must refuse a request for access to a record of that private body if it contains:

- Trade secrets of a third party;
- Financial, commercial, scientific or technical information of a third party, other than trade secrets, where the disclosure thereof would be likely to cause harm to the commercial or financial interests of that third party;
- Information supplied to the third party in confidence, and if disclosed would place the third party at a disadvantage in contractual or other negotiations, or prejudice the third party in commercial competition.

However, a record may not be refused if it consists of information:

- About a third party who has already consented in writing, to its disclosure to the requester;
- About the results of any product or environmental testing or other investigation supplied by the private body or the results of any such testing or investigation carried out on by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.

#### **4.2.3 Mandatory protection of certain confidential information of a third party**

The head of a private body must refuse a request for access to a record of that body, if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

#### **4.2.4 Mandatory protection of safety of individuals, and protection of property**

The head of a private body must refuse a request for access to a record of that body, if its disclosure could reasonably be expected to endanger the life or physical safety of an individual.

The head of a private body may refuse a request for access to a record of that body if its disclosure would be likely to prejudice or impair:

- The security of a building, structure, or system, including a computer or communication system; a means of transport or any other property;
- The methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme; the safety of the public or part of the public or the security of a building, structure, or system, including a computer or communication system, a means of transport or any other property.

#### **4.2.5 Mandatory protection of records privileged from production in legal proceedings**

The head of a private body must refuse a request for access to a record of that body, if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived such privilege.

#### **4.2.6 Commercial information of a private body**

The head of a private body may refuse a request for access to a record of that body if the record:

- Contains trade secrets of the private body;
- Contains financial, commercial, scientific or technical information, other than trade secrets of the private body, and the disclosure thereof would likely cause harm to the commercial or financial interests of that body;
- Contains information, the disclosure of which could reasonably be expected to put the private body at a disadvantage in contractual or other negotiations; or prejudice the body in commercial competition;

- Is a computer programme as defined in the Copyright Act, No. 98 of 1978, which is owned by the private body, unless it is required to give access to a record in terms of PAIA.

However, a record may not be refused if it consists of information:

- About the results of any product or environmental testing or investigation (excluding the results of preliminary testing or investigations conducted for developing methods of testing), carried out by or for the public body, and the disclosure thereof would reveal a serious public safety or environmental risk.

#### **4.2.7 Mandatory protection of research information of a third party, and protection of research information of a private body**

The head of a private body must refuse a request for access to a record of that body, if the record contains information about research being carried out or to be carried out, by or on behalf of a third party, and if this were to be disclosed, it would be likely to:

- Expose the third party or the person carrying out the research or will be carrying out the research on behalf of the third party, or the subject matter of the research, to a serious disadvantage.

The head of a private body may refuse a request for access to a record of that body, if the record contains information about research being carried out or about to be carried out, by or on behalf of the private body, and if this were to be disclosed, it would likely:

- Expose the private body or the person carrying out the research or will be carrying out the research on behalf of the private body, or the subject matter of the research to a serious disadvantage.

#### **4.2.8 Mandatory disclosure in the public interest**

Despite the above listed grounds for refusal, the head of a private body must grant a request for access to a record of that body if, the disclosure thereof would reveal evidence of:

- A substantial contravention of, or failure to comply with the law; or
- An imminent and serious public safety or environmental risk; and the public interest in the disclosure of the record, outweighs the harm contemplated under the ground for refusal.

**PART 5****5. GENERAL INFORMATION**

The following is a list of notices containing amendments to the Act and the regulations as well as other Government Notices made by the Minister of Justice and Constitutional Development in terms of Section 92 of the Promotion of Access to Information Act, No. 2 of 2000.

**5.1 Amendments to the Act****5.1.1 Government Notice: No. 428**

Date: 31 March 2004

Subject: Amendment to section 92(4) of the Promotion of Access to Information Act 2000 to provide for Offences and Punishments.

**5.1.2 Government Notice: No. 96**

Date: 15 January 2003

Subject: Amendment of the Act in order to provide for training of presiding officers in the Magistrates' Courts for the purposes of the Act.

**5.1.3 Government Notice: No. R. 187**

Date: 15 February 2002

Subject: Amendments to the Act with regard to Availability of the Guide and Availability of Manuals.

**5.2 Amendments to the Regulations****5.2.1 Government Notice: No. R. 1244**

Date: 22 September 2003

Subject: Amendment to Regulation 187 with regard to Availability of Manuals by Public Bodies and Availability of Manuals by Private Bodies.

**5.2.2 Government Notice: No. 1263**

Date: 11 April 2003

Subject: Amendments to Regulation 187 with regard to availability of manuals from Private bodies.

**5.2.3 Government Notice: No. R. 223**

Date: 9 March 2001

Subject: Regulations relating to fees for the records of public bodies and private bodies.

**5.3 Other Government Notices****5.3.1 Government Notice: No. 585**

Date: 14 May 2004

Subject: Withdrawal of Government Notice No: 938 and the designation of Magistrates' Courts as places appointed within any district or regional

division as places for holding of a court as courts to hear any application in terms of the Promotion of Access to Information Act 2000 within whose area of jurisdiction the decision of the information officer or relevant authority of the public body or head of a private body has been taken. Notice 585 designates Magistrates' Courts only for applications and not for appeal as was the case with Notice 938.

**5.3.2 Government Notice: No. 1243**

Date: 29 August 2003

Subject: Exemption of Private Bodies to compile a Manual from 1 September 2003 to 31 August 2005.

**5.3.3 Government Notice: No. 938**

Date: 27 June 2003

Subject: Designation of all Magistrates' Courts as courts to hear both applications or applications and appeals in respect of a specified class of decisions in terms of the Promotion of Access to Information Act 2000 within whose area of jurisdiction the decision of the Information Officer or relevant authority of the public body or the head of a private body has been taken.

**5.3.4 Government Notice: No. R. 888**

Date: 20 June 2003

Subject: Determination of a public body to be part of another public body (Auditor General).

**5.3.5 Government Notice: No. R. 887**

Date: 20 June 2003

Subject: Publication of Section 15 Notices (Information readily available from public bodies) by the Minister.

**5.3.6 Government Notice: No. 678**

Date: 23 May 2003

Subject: Determination of separate public body under section 13(c)(i) of the Act. The notice determines the National Prosecuting Authority as a separate public body.

**5.3.7 Government Notice: No. R. 494**

Date: 11 April 2003

Subject: Exemption of the National Intelligence Agency from compilation and making available of the manual for the period 2003 to 2008 from the provisions of the Act.

**5.3.8 Government Notice: No. R. 493**

Date: 11 April 2003

Subject: Exemption from compilation, publication and making available of the manual in terms of the National Intelligence Agency for the period 2003 to 2008.

**5.3.9 Government Notice: No. R. 340**

Date: 28 February 2003

Subject: Exemption of public and private bodies from submission of manuals for the period 1 March 2003 to 31 August 2003.

**5.3.10 Government Notice: No. R. 1094**

Date: 21 August 2002

Subject: Exemption of private bodies and public bodies from submission of manuals for the period 15 August 2002 to 28 February 2003.

**5.4 Reports**

The South African Human Rights Commission presents a very informative annual report to Parliament detailing its monitoring and observation of the implementation of the Act and the general enjoyment of the right of access to information. These annual reports are available free of charge at the Commission's offices and on the Commission's website.