

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000



INTRODUCTION

The Promotion of Access to Information Act (PAIA) gives effect to the constitutional right of access to information contained in section 32 of the Bill of Rights. Everyone has the right to access to any information held by the State and to information held by another person, which is required for the exercise or protection of any rights. This Act applies to both private and public bodies. It is aimed at fostering a culture of transparency and accountability and at promoting a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect their rights. One of the objects of PAIA is to give effect to the constitutional right of access to information subject to justifiable limitations, including limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance.

IMPLICATIONS FOR PUBLIC BODIES AND CCMA

The Act applies to a record of a public body, whenever it came into existence, which is under the control or in the possession of that public body or an official thereof. The Act applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record of a public body, which is materially inconsistent with the object or specific provision of the Act.

The Act cannot be used for access to records required for criminal or civil proceedings where such proceedings have already commenced and where the records are obtainable / accessible in terms of other legislation.

A requester must be given access to a record if he or she has complied with the procedural requirements of the Act and where there are no grounds of refusal applicable. A request includes a request for access to a record which contains personal information about the requester. The reasons why the requester requires access to the information or the information officer's belief as to what the reasons are of the requester for such access are irrelevant.

DUTIES PLACED ON PUBLIC BODIES

The body must compile a manual which contains a description of its structure and functions, contact details of the information officer, lists of what records the body holds together with a list of categories of records,

a list of categories of records automatically available and a list of services available to the public, to name a few. This manual must be made available to the public.

Each public body must designate an information officer and as many deputy information officers as necessary to render the public body as reasonably accessible to requesters as possible.

Information officers must assist a requester who requires assistance in completing the request form – reasonable assistance must be rendered free of charge.

Where records cannot be found or do not exist, the information officer must state all steps taken to find the records on affidavit.

The public body has thirty (30) days to decide whether the record will be made available or not. An extension may be granted.

If the request is granted, the information officer must advise the requester of the fee to be paid and in what form the access will be made.

If the request is refused, the information officer must notify the requester of the grounds of refusal and the right to lodge an internal appeal.

GROUND OF REFUSAL

The grounds of refusal fall into two main categories; mandatory grounds of refusal and discretionary grounds of refusal.

MANDATORY GROUNDS OF REFUSAL

These are grounds where access **must** be refused. In other words, there is an absolute refusal on these grounds and access cannot be given to the requester. The following are examples:

- Protection of the privacy of a third person that is a natural person where disclosure would involve the unreasonable disclosure of personal information of such person, including a deceased person.
- Certain records of the South African Revenue Service.
- Protection of commercial information of a third party e.g. trade secrets, commercial information of a party used in contractual negotiations or in commercial competition.
- Certain confidential information.

- Information which could reasonably be expected to endanger the life or physical safety of an individual.
- Privileged records arising in legal proceedings – unless the privilege is waived.
- Research information of a third party and of a public body.

DISCRETIONARY GROUNDS OF REFUSAL

The information officer in these circumstances has discretion as to whether or not to grant access. A few examples of such grounds of refusal are the following:

- Access to records, which can reasonably be expected to cause prejudice to the defence or the international relations of the Republic of South Africa.
- Access to records, which may materially prejudice the economic interests or financial welfare of the Republic of South Africa, and impair the ability of the government to manage the country.

FRIVOLOUS AND / OR VEXATIOUS REQUESTS

The information officer may refuse access to any record if the request is manifestly frivolous or vexatious (essentially a waste of time) in terms of Section 45. The request may also be refused if the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

SECTION 46: OVER-RIDER CLAUSE

Despite the mandatory grounds of refusal, if the access would reveal a failure to comply with the law or an imminent danger, affect the public safety, is an environmental risk, and such harm outweighs the harm intended in the mandatory section, then access must be given.

RELEVANT LEGISLATION

- The Promotion of Access to Information Act 2 of 2000, as amended.
- Constitution of the Republic of South Africa 1996, as amended, Chapter Two