INFORMATION REGULATOR (SOUTH AFRICA)

Ensuring protection of your personal information and effective access to information

GUIDE

ON HOW TO USE THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000, AS AMENDED

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PAIA GUIDE

FOREWORD BY THE CHAIRPERSON

The Constitution of the Republic of South Africa, 1996[1] ("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. Before South Africa became a constitutional democracy with an enforceable Bill of Rights, the system of Government in South Africa 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.

The Promotion of Access to Information Act, No. 2 of 2000 (hereinafter referred to as "**PAIA**", or "the Act" interchangeably), as amended, is the national legislation which was enacted in accordance with the above-mentioned section 32(2) of the constitution.

The aim of **PAIA**, is to foster a culture of transparency and accountability in public and private bodies. It does that by giving effect to the right of access to information and actively promoting a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights and also to realise South Africa's goals of an open and participatory democracy.

This **PAIA** Guide has been developed in fulfilment of the Information Regulator's ("Regulator") obligation under Section 10 of the **PAIA**, which requires the Regulator to update and make available the existing Guide that has been compiled by the South African Human Rights Commission.

This Guide has been designed to be a guiding, user-friendly and accessible tool for any person who wishes to exercise any right contemplated in **PAIA** and the Protection of Personal Information Act, 2013.

Adv Pansy Tlakula
CHAIRPERSON OF THE INFORMATION REGULATOR

[1] *Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)*

DISCLAIMER

*This Guide does not relieve the user from the responsibility to exercise their own skill and care in relation to the requirement or obligations imposed by any legislation. Furthermore, this Guide does not provide legal advice and is not intended to replace **PAIA** or Regulations issued under **PAIA**. The Regulator accepts no liability for any loss that may be suffered as a result of reliance on this Guide.*

1. LIST OF ACRONYMS AND ABBREVIATIONS

CEO	Chief Executive Officer
CFO	Chief Financial Officer
Constitution	Constitution of the Republic of South Africa, Act No. 108 of 1996
DIO	Deputy Information Officer
DoJ & CD	Department of Justice and Constitutional Development
IO	Information Officer
Members	Members of the Information Regulator
Minister	Minister of Justice and Correctional Services
PAIA	Promotion of Administrative Justice Act, 2000
PFMA	Public Finance Management Act No. 1 of 1999 as amended
POPIA	Protection of Personal Information Act No. 4 of 2013
Regulator	Information Regulator
SAHRC	South African Human Rights Commission

2. USEFUL TERMS EXPLAINED IN AN EASILY COMPREHENSIBLE FORM AND MANNER

Term	Description
Access Fee	This access fee is paid by the requester to the body from which you are requesting the information, to cover the costs of finding and copying the records you require. What can be charged is prescribed by regulation.
Administrator	Is an organ of state or any natural or juristic person taking administrative action.

Term	Description
Administrative Action	Is any decision taken, or any failure to take a decision, by (a) an organ of state, when: (i) exercising a power in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation; or (b) a natural or juristic person, other than an organ of state, when exercising a public power of performing a public function in terms of an empowering provision. which adversely affects the rights of any person and which has a direct, external legal effect.
Authorised Person	The authorised person is the person who is making a request on behalf of someone else, and who has been properly authorised in writing to do so.
Automatically Available Records	These are records that a public or private body will provide to a requester without them needing to file a request. These records are listed in a 'voluntary disclosure notice', which should be made public.
Data Subject	Is the person to whom personal information relates.
Days	Unless specified as a 'working day' in a section in **PAIA**, a day is considered to be a calender day. To calculate time period, the day on which the request is received is excluded, and every day thereafter is included including weekends and public holidays until the final day is counted. If the final day for responding to a request falls on a Sunday or public holiday, the next day is counted as the final day.
Deemed Refusal	If not response is received to a request within the prescribed time, this is defined as a 'deemed refusal'.
Form 2	This form is prescribed by regulation and should be used to request access to information held by a public or private body.
Form 4	This form is prescribed by regulation and should be used when appealing a decision made by a public body in relation to a request for access to information.

<table>
<tr><th>Term</th><th colspan="3">Description</th></tr>
<tr><td>Guide</td><td colspan="3">This Guide, made in pursuance of section 10 of PAIA, as amended which seeks to assist a person who wishes to exercise any right contemplated in PAIA and the Protection of Personal Information Act, 2013.</td></tr>
<tr><td>Information Officer</td><td colspan="3">The information Officer is the person authorised to handle PAIA requests. The following are categories of Information Officers per specific Body -</td></tr>
<tr><td></td><td rowspan="4">Public Body or Organ of State (as defined in section 239 of the Constitution)</td><td>National Department</td><td>Director-General or the person who is acting as such.</td></tr>
<tr><td></td><td>Provincial Administration</td><td>Head of Department or the person who is acting as such.</td></tr>
<tr><td></td><td>Municipality</td><td>Municipal Manager or the person who is acting as such.</td></tr>
<tr><td></td><td>Public Institutions listed in PFMA Schedule 1, 2, 3A, 3B, 3C & 3D</td><td>Chief Executive Officer or the person who is acting as such.</td></tr>
<tr><td></td><td rowspan="3">Private Body</td><td>Natural Person</td><td>Sole proprietor who carries on any trade business or profession, but only in such capacity and not in his personal capacity.</td></tr>
<tr><td></td><td>Partnership</td><td>Any partner of the partnership or any person duly authorised by the partnership.</td></tr>
<tr><td></td><td>Political Party</td><td>Leader of the political party or any person duly authorised by that leader.</td></tr>
</table>

Term	Description
Information Officer	<table><tr><td>**Private Body**</td><td>Juristic Person</td><td>Chief Executive Officer or the Managing Director or equivalent officer of the juristic person or any person duly authorised by the leader. **NB:** The Chief Executive Officer or equivalent officer may authorise any natural person as information Officer of a Private Body.</td></tr></table>
Deputy Information Officer	The Deputy Information Officer is the person designed or delegated by the Information Officer of a public body to assist the requester with their information request, and to whom the Information Officer can delegate other **PAIA** powers to. **NB:** Whilst only a public body can designate or delegate a Deputy Information Officer(s), in terms of Section 17(1) of **PAIA**, the Protection of Personal Information Act 2013 ("**POPIA**") extends the power to designate a Deputy Information Officer to the private body in terms of section 56(1) thereof.
Information Regulator	The Office of the Information Regulator has been established, in terms of section 39 of **POPIA**, to monitor and enforce compliance with both **POPIA** and **PAIA**. In this Guide the Office of the Information Regulator or the information Regulator is referred to as the Regulator.
Internal Appeal	An internal appeal is the process for challenging a decision made in terms of a **PAIA** request to a public body, which must be completed before a challenge can be made to the Regulator or to a court having jurisdiction.
Private Body	A private body is a person, company or other kind of juristic entity that carries on trade, business or profession, including a political party.

Term	Description
Public Body	A private body means a government department or other functionary or institution, which is performing a public function. However, with regard to internal appeal, any reference to "public body" has been changed to "Government", in order to avoid confusion in respect of public bodies in which appeal is not applicable.
Record	A record is any recorded information regardless of the from, including, for example, written documents, audio, digital and video materials. A record requested from a public or private body refers to a record that is in that body's possession regardless of whether that body created the record.
Regulations	**PAIA** allows the Minister to issue regulations that supplement the Act, which must be published in the Government Gazette, and covers issues like the forms to be used and fees that may be charged for certain processes.
Relevant Authority	**PAIA** uses the term the 'relevant authority' to define the person within a National, Provincial and Local Government to whom an internal appeal must be lodged, which is generally the political head of the body concerned (this function can be officially delegated).

3. CONTACT DETAILS OF THE REGULATOR

Information Officer
Chief Executive Officer: Mr. Mosalanyane Mosala
Contact Person: Ms. Pfano Nenweli
Email: PNenweli@justice.gov.za

Deputy Information Officer: Ms. Varsha Sewlal
Email: VarSewlal@justice.gov.za

Physical Address:
JD House, 27 Stiemens Street
Braamfontein
Johannesburg
2001

Postal Address:
P.O. Box 31533
Braamfontein
Johannesburg
2017

Telephone:
010 023 5200

4. PURPOSE OF THIS PAIA GUIDE

4.1 The purpose of this Guide is to provide information that is needed by any person who wishes to exercise any right contemplated in the Promotion of Access to Information Act of 2000 (**PAIA**) and Protection of Personal Information Act, 2013 ("**POPIA**"). Any person, irrespective of citizenship, can apply for access to information under **PAIA**.

4.2 This Guide will specifically assist a person, also called a data subject, on how to access his/her personal information in terms of section 23 of **POPIA**. Under **POPIA**, person or data subject has the right to -

4.2.1 request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about them, and

4.2.2 request from a responsible party the record or a description of the personal information about the data subject held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information;

4.2.3 request a responsible party to -

(a) correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or

(b) destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain.

4.3 This guide will also assist any person on how to request access to records under **PAIA**. The Guide will also assist requesters in:

4.3.1 understanding **PAIA**, its benefits and background;

4.3.2 learning the step-by-step process by which to make a request and additional tips for making that process easier;

4.3.3 learning the types of information which can be requested using **PAIA**;

4.3.4 understanding the process by which a requester can challenge a decision taken in relation to their request;

4.3.5 being introduced to the changes that will occur to **PAIA** once **POPIA** is fully operational.

4.4 This guide will also assist people in understanding how to challenge the granting of access to their records or how to participate in the process of accessing their records.

5. ABOUT PAIA

5.1 The right to access to information is "one of the most effective ways of upholding the constitutional values of *transparency, openness, participation and accountability*[2]. The above-mentioned constitutional values cannot be attained if the government has a monopoly on the information that informs its actions and decisions. Therefore, access to information is not only fundamental to a properly functioning participatory democracy, but it also increases public confidence in government and enhances its legitimacy. Other benefits of the right to access to information are for instance, that it discourages fraud and corruption, uncertainty and other improper governmental conduct.

5.2 When the South African Constitution was being drafted in the period following the fall of Apartheid in the 1990s, various organisations and individuals campaigned for the inclusion of a right of access to information. It was hoped that the inclusion of this right in the Bill of Rights would ensure that atrocities such as Apartheid could never again take place, as the state and private corporations would be obliged to act in an accountable and transparent manner by providing access to information, and therefore, would be unable to hide behind the veil of secrecy. It was seen as a necessary step for helping to create a culture of justification that would lead to fairer relations between people, and those in power. In one of the earliest cases[3] to deal with the question whether an accused person is entitled to access to all the information contained in the police docket. Jones J acknowledged its importance in these terms:

"The purpose … is to exclude the perpetuation of the old system of administration, a system in which it was possible for government to escape accountability by refusing to disclose information even if it had bearing upon the exercise or protection of rights of the individual. This is the mischief it is designed to prevent [....] Demonstrable fairness and openness promotes public confidence in the administration of public affairs generally. This confidence is one of the characteristics of the democratically governed society for which the Constitution strives".

[2] *Hoexter Administrative Law 94*
[3] *1994 (1) SACR 635 (E)*

5.3 Section 32 of the Constitution enshrines the right of access to information held by both public and private bodies. Section 32 also states that legislation must be enacted to give effect to the right of access to information by detailing the ways in which information from public and private bodies can be accessed, and by providing grounds on which a public and private body could refuse access to information.

5.4 **PAIA** was enacted in response to the above-mentioned constitutional mandate, and came into force in large part in March 2001. Its preamble acknowledges the "secretive and unresponsive culture" of the pre-democratic era, and asserts that one of the objects of **PAIA** is to "foster a culture of transparency and accountability in public and private bodies."

5.5 **PAIA** is meant to give effect to a person's rights of access to information and accountability. It is designed to empower people to use the law, and so helps to facilitate requesting access to information in different ways. One does not need a lawyer to make a request for access to information in terms of **PAIA**.

6. THE OBJECTS OF PAIA

6.1 The objects of **PAIA** are not to replace the constitutional right, but to give effect to the right in section 32 subject to justifiable limitations, and in a way which helps balance all the other rights contained in the Constitution. It hopes to promote a human rights culture and social justice for people, the public sector and the private sector. **PAIA** seeks to promote transparency, accountability and effective governance of all institutions (both public and private) by empowering people to understand their access to information rights, act on them, and both scrutinise, and engage with, decision-making that affects them.

6.2 The right of access to information is a very powerful constitutional right, as it helps people realise other rights. A person can use it to help monitor and assess the delivery of government services, or to access historical records that might be of interest.

6.3 The objectives of **PAIA** are -

6.3.1 to give effect to the constitutional right of access to

6.3.1.1 any information held by the State; and

6.3.1.2 any information that is held by another person and that is required for the exercise or protection of any rights.

- The requirement relating to the protection of rights is confined to information held in private hands. Private bodies are thus subjected to a less stringent standard of transparency than public bodies. The private sector, in other words, is entitled to keep its information to itself, unless that information is needed to protect rights.
- **PAIA** recognises, in terms of Section 8(1) thereof, that a body may be "public" or "private" for the purposes of the Act depending on whether the record in question "relates to the exercise of a power or the performance of a function as a public body or as a private body."

6.3.2 to give effect to that right -

6.3.2.1 subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and

6.3.2.2 in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution;

6.3.3 to give effect to the constitutional obligations of the State in promoting a human rights culture and social justice, by including public bodies in the definition of 'requester', and allowing them, amongst others, to access information from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest;

6.3.4 to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and

6.3.5 generally, to promote transparency, accountability and effective governance of all public and private bodies by, including but not limited to, empowering and educating everyone -

6.3.5.1 to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

6.3.5.2 to understand the functions and operation of public bodies; and

6.3.5.3 to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

6.4 The Promotion of Access to Information Amendment Act, 2019

6.4.1 In the matter of ***My Vote Counts NPC v Minister of Justice and Correctional Services and Another*** **[2018] ZACC 17**, the constitutional court held that *"the State is under an obligation that flows from a proper reading of sections 32, 19 and 7(2) of the Constitution to do everything reasonably possible to give practical and meaningful expression to the right of access to information and the right to vote. The majority further contended that this is so because the exercise of the right to vote must be an informed choice, and there is a vital connection between the proper exercise of the right to vote and the right of access to information. And "without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined".* The Constitutional Court confirmed the order of constitutional invalidity and ordered Parliament to amend **PAIA** and take any other measure it deems appropriate to provide for the recordal, preservation and facilitation of reasonable access to information on the private funding of political parties and independent candidates within a period of 18 months.

6.4.2 In accordance with the above-mentioned constitutional court judgment, the President has, on 3rd June 2019, assented to the Promotion of Access to Information Amendment Act, 2019 (**PAIA amendment Act 2019**)[4]. The **PAIA** amendment Act 2019 includes a political party in the definition of a private body, which effectively means that the leader of the political party or any person duly authorised by that leader is an information officer or head. The **PAIA** amendment Act 2019 now extends the right of access to any records of the political party.

6.4.3 The amendment Act provides for information on the private funding of political parties and independent candidates to be recorded, preserved and made available.

6.4.4 In terms of section 52A of the **PAIA** amendment Act 2019, the head of a political party must create and keep records of any donation exceeding the prescribed threshold, of **R100 000.00**, that has been made to that political party in any given financial year and the identity of the persons or entities who made such donations. The head of a political party is also required to make the records available on a quarterly basis, as prescribed; and keep the records for a period of at least five years after the records concerned have been created.

[4] *Promotion of Access to Information Amendment Act, No. 31 of 2019*

6.4.5 This means that whilst the Political Party Funding Act makes provision for mandatory disclosure to the Electoral Commission, the **PAIA** amendment Act 2019 now extends the right of access, to the records of any donation exceeding **R100 000.00**, to any person, that has been made to that political party.

6.5 Other legislation that protects the right of access to information

PAIA also exists within a whole legal environment, which is designed to create a "culture of justification". In recognition of this, **PAIA** states that any other law that gives a person an avenue for accessing information that is less onerous than **PAIA**, can be used instead[5].

6.5.1 Companies Act 71 of 2008

6.5.1.1 Section 26(1) of the Companies Act provides a person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the company.

6.5.1.2 In terms of section 26(7)(b) of the Companies Act, "the rights of access to information set out in this section are in addition to, and not in substitution for, any rights a person may have to access information in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)".

6.5.2 The Political Party Funding Act, 2018 (Act No. 6 of 2018)

6.5.2.1 The Political Funding introduces a strict regulatory framework for the private funding of all registered political parties, whether represented in the national and provincial legislatures or not. This includes setting limits for the source, size and use of donated funds by political parties.

6.5.2.2 To ensure transparency and accountability, political parties are required to disclose all donations received above the disclosure threshold of **R100 000.00** to the Electoral Commission regularly every three months (as well as ahead of general elections).

[5] *Section 2(1) of PAIA*

6.5.2.3 Any person or organisation making a donation to a political party which individually or cumulatively exceeds **R100 000.00** per year must report that donation to the Electoral Commission within 30 days of making the donation or within 30 days of when the cumulative donations exceeded **R100 000.00**.

6.5.2.4 Lastly, the Political Party Funding Act places an obligation on the Electoral Commission to make public every three months the donations reported by political parties and to report annually to Parliament on all donations made to political parties during the year.

6.5.3 Protection of Personal Information Act, 2013 (Act No. 4 of 2013)

6.5.3.1 Section 23 of **POPIA** provides the data subject with the right of access to personal information held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.

6.5.3.2 This means that whilst access to a record containing personal information about a requester is excluded from **PAIA** in terms Section 11(2) thereof, data subject can request –

6.5.3.2.1 access to his/her personal information; and/or

6.5.3.2.2 identity of all third parties, and/or categories of third parties, who have, or have had, access to the information.

6.5.3.2.3 correction or deletion of personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or

6.5.3.2.4 the record of his/her personal information that the responsible party is no longer authorised to retain to be destroyed or deleted.

6.5.3.3 A responsible party may refuse to disclose any personal information requested, in accordance with the grounds for refusal of access to records, as set out in paragraph 19.4 below.

6.5.4 The Promotion of Administrative Justice Act 3 of 2000

6.5.4.1 Another important law to remember when considering access to information is the Promotion of Administrative Justice Act (**PAJA**). **PAJA** gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33(2) of the Constitution[6].

6.5.4.2 In terms of section 5(1) of **PAJA**, any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned to furnish written reasons for the action. The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reason in writing for the administrative action.

7. ESTABLISHMENT OF THE INFORMATION REGULATOR

7.1 To ensure the promotion and enhancement of the **PAIA** objectives, which are to give effect to that right of access to information in a manner which enables persons to obtain access to records of public and private bodies as swiftly and inexpensively as reasonably possible, the Information Regulator ("the Regulator") was established in terms of section 39 of **POPIA**.

7.2 In order to ensure that uncomplicated and inexpensive administrative procedures follow when a request for access to information is made, complaints to the Regulator and court applications should be the exception rather than the rule.

7.3 **POPIA** amends the role of the **SAHRC** in relation to the **PAIA** mandate. Effective from 30 June 2021, all the functions of the **SAHRC**, as enumerated in **PAIA**, will be handled by the Regulator, which also has additional enforcement powers.

7.4 Whilst the **SAHRC** will still maintain its broader constitutional obligations to promote, protect and monitor the rights enshrined in the Bill of Rights, the **SAHRC** and the Regulator will work closely alongside one another.

[6] *Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*

8. THE ROLE OF THE INFORMATION REGULATOR

8.1 The Regulator has a very important role in relation to **PAIA**. The Regulator is mandated by **PAIA**, under Part 4, Chapter 1A and Part 5 and other sections, to:

8.1.1 promote the right of access to information and assist the public in using **PAIA** where reasonably possible to do so,

8.1.2 monitor and further the implementation of **PAIA** by public and private bodies (which includes promoting effective ways to make information timeously available),

8.1.3 make recommendations to strengthen **PAIA**, and

8.1.4 report annually to Parliament.

8.2 Section 77C (1) and (2) of **PAIA** makes provision for the following powers, duties and functions of the Regulator, to -

8.2.1 investigate a complaint made to the Regulator in the prescribed manner;

8.2.2 refer the complaint to the Enforcement Committee established in terms of section 50 of the **POPIA**; or

8.2.3 decide, in accordance with section 77D, to take no action on the complaint or, as the case may be, require no further action in respect of the complaint; and

8.2.4 act, where appropriate, as conciliator in relation to such complaint in the prescribed manner.

8.3 The Regulator may, in terms of section 77H(1) of **PAIA**, and on its own initiative, or at the request by or on behalf of information officer or head of a private body or any other person conduct as an assessment whether a public or private body generally complies with the provisions of **PAIA**, insofar as its policies and implementation procedures are concerned.

8.4 The Regulator is empowered, in term of section 77F of **PAIA**, to use its best endeavours to secure a settlement of a complaint, if it appears from the complaint, or any written response made in relation thereto that it may be possible to settle the complaint. This means that the Regulator can only try to assist parties to settle their disputes, if there is a complaint lodged with the Regulator, unless it has decided, on its own initiative, to conduct an assessment, as stipulated in paragraph 8.3 above.

9. MAKING A REQUEST FOR A RECORD

Please refer to the step-by step process chart flow in paragraph 27 below, on how to request access to the records.

9.1 Getting started: **PAIA Manuals**

9.1.1 While this Guide has been published to assist the public from all walks of life to uphold their constitutional right to access to information, there are other sources of information that can also assist a person in making a request to access to records. **PAIA** requires that all public bodies, and private bodies, compile and make available a **PAIA** manual[7].

9.1.2 Before any person takes steps to access the information or records of a particular body, the **PAIA** Manual is the first tool to read.

9.1.3 At its most basic, the **PAIA** manual is useful for a person to:

9.1.3.1 check the nature of the records which may already be available without the need for submitting a formal **PAIA** request;

9.1.3.2 have an understanding of how to make a request for access to information held by a particular body;

9.1.3.3 access all the relevant contact details of the person who will assist the public with the records any person intends accessing;

9.1.3.4 know all the remedies available from the body to which access to the records is being requested, before approaching the Regulator or the Courts;

9.1.3.5 know the description of the services available to members of the public from the body and how to gain access to those services;

9.1.3.6 know if the body will process personal information, the purpose of processing of personal information and the description of the categories of data subjects and of the information or categories of information relating thereto;

9.1.3.7 know if the body has planned to transfer or process a person's personal information outside the Republic of South Africa; and

[7] *Section 14 and section 51 of PAIA*

9.1.3.8 know whether the body has appropriate security measures to ensure the confidentiality, integrity and availability of the information which is to be processed.

9.2 Where to find PAIA manuals?

9.2.1 **PAIA** Manual of public bodies

9.2.1.1 All public bodies must make the **PAIA** Manual easily available in at least three official languages[8].

9.2.1.2 At the very least, they are required to make a copy of a **PAIA** Manual freely available, except if a printed hard copy is requested

9.2.1.2.1 on the web site of the public body;

9.2.1.2.2 at the head office of the public body for public inspection during normal business hours;

9.2.1.2.3 if a person wants a hard copy, the public body must make a copy, but it may request payment of a reasonable fee for the provision of a hard copy; and

9.2.1.3.4 to the Regulator upon request.

9.2.2 **PAIA** Manual of private bodies

9.2.2.1 Private bodies are also required to compile a **PAIA** manual[9], but there is no requirement to compile it in more than one language or in a specific language, although it is recommended that the **PAIA** Manuals of private bodies should be at least in English. If a specific body is providing services to majority of people without formal education, the Regulator recommends that the manual of that body may also be in any other official language.

9.2.2.2 At the very least, the private bodies are required to make a copy of a **PAIA** Manual freely available[10], except if a printed hard copy is requested -

9.2.2.2.1 on the web site of the private body;

9.2.2.2.2 at the principal place of business of the private body for public inspection during normal business hours;

[8] *Section 14(1) of PAIA*
[9] *in terms of section 51 of PAIA*
[10] *Section 51(3) of PAIA*

9.2.2.2.3 if a person wants a hard copy, the private body must make a copy, but it may request the payment of a reasonable fee for the provision of the hard copy; and

9.2.2.2.4 to the Regulator upon request.

9.2.3 The Minister of Justice and Correctional Services has powers to exempt[11] certain private bodies or category of private bodies from the obligation to compile a manual. Currently, and until 31 December 2021, the Minister has exempted[12] all private bodies, except any company which -

(a) (is not a private company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); and

(b) is a private company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008) which operates within any of the sectors mentioned in column one of the schedule to this Notice and –

(i) has 50 or more employees in their employment; or

(ii) has a total annual turnover that is equal to or more than the applicable amount mentioned in column 2 of below table,

from compiling the manual contemplated in section 51(1) of the first mentioned Act for a period of six (6) month from **1 July 2021** to **31 December 2021**: -

Sector	Annual Turnover
Agriculture	R 6 million
Mining and Quarrying	R 22.5 million
Manufacturing	R 30 million
Electricity, Gas and Water	R 30 million
Construction	R 15 million
Retail and Motor Trade and Repair Services	R 45 million
Wholesale Trade, Commercial Agents and Allied Services	R 75 million
Catering, Accommodation and other Trade	R 15 million
Transport, Storage and Communications	R 30 million
Finance and Business Services	R 30 million
Community, Special and Personal Services	R 15 million

[11] *Section 51(4) of PAIA*
[12] *Government Gazette no: 39504, 11 December 2015*

9.2.4 Due to the significance of the legislative requirement for compiling the **PAIA** Manual, especially the amendment[13] of section 51 of **PAIA** (which come into operation on 30 June 2021), in terms of which the scope of the information that the manual must cover has been widened to include matters relating **POPIA**, private bodies will no longer be exempted from the obligation to compile **PAIA** manual. Therefore, from, 1st January 2022, every private and public body will be required to have their **PAIA** Manual available, as prescribed in paragraph 9.2.2.2 above.

9.2.5 The exemption of private companies from the obligation to compile **PAIA** manual does not exempt those private companies from compliance with **PAIA**. This means that any person can still submit a request for access to information to exempted private body. The exemption just means that those private companies don't have to compile a **PAIA** manual.

9.2.6 Remember too, that not all private bodies are companies, as the definition of private body includes natural person, sole proprietor and partnership. However, it may still be worthwhile checking their website, as some Companies create a **PAIA** manual regardless of the number of their employees or their annual turnover.

9.3 Voluntary disclosure and automatic availability of certain records

9.3.1 Automatically available records are those that a public or private body will provide without the need for a requester to submit a **PAIA** request (in other words, a person can just request it without completing the **PAIA** Form 2).

9.3.2 The Information Officer of a public body is required, in terms of section 15(1) of **PAIA**, to make available a list or categories of records that are automatically available, as prescribed in paragraph 9.3.4 below.

9.3.3 Automatically available records of a private body may also be made available, in terms of section 52(1) of **PAIA**, but on a voluntary basis in accordance with paragraph 9.3.4 below.

9.3.4 A description of the categories of automatically available records must be made available -

(a) to the Information Regulator;

(b) on the website of a body; and

(c) for inspection, at the offices of a body concerned during normal office hours.

[13] *Section 110 of POPIA*

9.3.5 Please note that the Regulator will upload the description of automatically available records of a public body on its website.

9.3.6 This list includes records that might be required to be made available by other laws, and any other records that a body chooses to include. In order to avoid the formality of complying with the **PAIA** request process, a requester is advised to check the **PAIA** Manual of the public or private body concerned. Should a person wish to access records that fall within the body's list of automatically available records, that person may merely request access to them without needing to complete **PAIA** Form 2.

9.3.7 Political Party Funding Act 6 of 2018 introduces some changes through **PAIA**, in terms of which the heads of political parties are required to record and preserve records of private donations, which will need to be made public without a person having to file a **PAIA** request.

10. CONTACT DETAILS OF INFORMATION OFFICERS

10.1 Although the contact details of the Information Officers of every public body are required to be published in every telephone directory, in terms of section 16 of **PAIA**, the Regulator has specific contact details of all Information Officers (including Deputy Information Officers, designated in terms of section 17 and 56 of **PAIA** and **POPIA** respectively) registered with it in terms of section 55(2) of **POPIA**.

10.2 Whilst getting the correct contact details may often be a very challenging part of making a **PAIA** request, as roles change frequently in the public sector and **PAIA** manual may not necessarily be up-to-date, the first place to find contact details should be the body's **PAIA** Manual. However, if a requester cannot find the manual, calling the switchboard of the body to ask for the relevant details may also assist.

10.3 For Municipalities, the South African Local Government Association (**SALGA**) places the contact details for all Municipalities at this link: http://www.salga.org.za/Municipalities%20MCD.html

10.4 Government communication also provides national and provincial contacts as well as the contact details of State-Owned Enterprises under this link: https://www.gov.za/about-government/contact-directory. Always remember that the definition of the Information Officer helps to identify whose contact details are needed to identify the Information Officer.

11. PROCESS FOR MAKING A REQUEST FOR INFORMATION

11.1 The forms of request

11.1.1 A request for access to information can be made to both public and private bodies.

11.1.2 **PAIA** requires that if you want to make such a request, you have to submit the request on the required form (these forms are prescribed by Regulations). There are two forms that can be used in pursuing the right to access to information

Form 2	Form 4
This form can only be used if you want to request access to the records of a public or private body.	This form can only be used if you want to submit an internal appeal against the decisions of the Information Officers or that of the Deputy Information Officers of a National, Provincial or Local Sphere of Government to which an internal appeal is applicable.

11.1.3 These forms can be obtained on the Regulator's website at https://www.justice.gov.za/inforeg/

11.2 Deciding whether a request relates to information held by a private or public body

11.2.1 A public body performs a public function, such as providing electricity or water to the public. So, a public body is not just a National, Provincial or Local Government Department– it would include state-owned enterprises or Organs of State such as the Regulator, **Eskom**, or **PRASA**, however, a distinction must be made regarding a public body for purpose of internal appeal, which only refers to National, Provincial or Local Government.

11.2.2 A private body performs a private function. Such a body (which can be a person) carries on a trade, business or profession. It is very important to note that when submitting a **PAIA** request to a private body a person must state which right he is protecting or exercising by asking for this information. With regard to any information that is held by another person, Streicher JA summed up the position as follows, in **Cape Metropolitan Council v Metro Inspection Services (Western Cape) CC and Others**[14],

[14] ***2001 (3) SA 1013*** *(SCA) para 28 at 1026F–G*

"Information can only be required for the exercise or protection of a right if it will be of assistance in the exercise or protection of the right. It follows that, in order to make out a case for access to information in terms of section 32, an applicant has to state what the right is that he wishes to exercise or protect, what the information is which is required and how that information would assist him in exercising or protecting that right".

11.2.3 Sometimes the question of whether a record is a public or private record can be complicated and the public are advised to seek legal advice. For example, if a public body appoints a private body to render certain services on its behalf, such as installation of water metres in certain communities, access to the numbers of installed metres, even if such information is held by such private body, will be treated as information of a public body.

11.3 How does a person explain the right he is hoping to exercise or protect?

11.3.1 When explaining which right one is hoping to exercise when making a request to a private body, one cannot refer to the right of access to information. One has to explain how the record one is asking for is reasonably required for one to protect, or exercise, another right. This could include rights that are not just constitutional rights.

11.3.2 One may for example require the master plans from a company that has the potential to impact the pollution levels in a community, in order to help protect one's right to the environment through monitoring its activities. Or one may require records, which will help one determine if one has the right to file a civil claim against an entity. One therefore needs to:

11.3.2.1 Specifically identify the right one hopes to protect or exercise, and then

11.3.2.2 Explain clearly why the *record* one is asking for is reasonably required to help one with that right.

11.3.3 In contrast, when submitting a **PAIA** request to a public body, one does not have to have a reason for requesting the information.

12. WHO CAN MAKE A PAIA REQUEST?

12.1 Any person, whether South African or non-South African, is allowed to make a request under **PAIA**. The requester can be a natural person or juristic person.

12.2 A public body is considered a juristic person and may make a request for access to records held by private bodies, but only if the public body is -

12.2.1 acting in the interests of the public, and

12.2.2 if the records are required to fulfil or protect any rights other than those of the public body.

12.3 Under **PAIA** a requester cannot request access to a record, of the public body, containing personal information about the requester from the public body[15], however the requester or data subject can, in terms of section 23(1)(b) of **POPIA**, request from a responsible party the record or a description of the personal information about the data subject held by the responsible party. This means that any person can now request access to their personal information held by the public or private body upon production of adequate proof of identity. The personal information that a requester may request from the responsible body may include information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.

12.4 In terms of section 50(1) of **POPIA**, any person can request access to a record, of a private body, containing personal information about the requester or the person on whose behalf the request is made.

13. TO WHOM CAN A REQUEST BE MADE TO?

13.1 The Information Officer of a public body is required to designate a Deputy Information Officer(s), who must ensure that access to the records of the public body is as reasonably accessible as possible. Although this was not a requirement with regard to the private body under **PAIA**, a private body may designate the above-mentioned Deputy Information Officer, in terms of section 56 of **POPIA**.

13.2 The request for access to information, although it may be directed to the Information Officer, can be submitted to the Deputy Information Officer. Particulars of Deputy Information Officer(s) can be obtained in the **PAIA** manual of that particular body or from the Regulator.

14. COMPLETING THE FORM

14.1 Form 2 - request for access to a record of a public or private body:

14.1.1 In order to complete the **PAIA** form, a person needs to provide sufficient detail to allow the Information Officer or Deputy Information Officer to identify the records the requester seeks.

[15] *Section 11(2) of PAIA*

14.1.2 **PAIA** Regulations specify the form to be used, which must be sent to the Information Officer, or Deputy Information Officer of the body.

14.1.3 Requesters who are unable to read or write can make verbal requests to the Information Officer or Deputy Information Officer of a public body, who is then responsible for completing the form 2 on behalf of the requester. The current form will require you to complete the following sections:

Information Required	Description
Particulars of public private body	This section should contain the relevant email and fax number of the Information Officer and/or Deputy Information Officer.
Particulars of person requesting access to records	This should contain enough information about the requester to make the requester reasonably easy to identify, including the contact details of the requester: postal address, email address, fax and/or telephone number in South Africa. It also asks for your identity number to authenticate your identity. If you are requesting the information on behalf of someone else, proof of the capacity in which you are making the request must be provided (as the 'authorised person').
Particulars of record requested	Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to the form. All additional pages must be signed.
Type of record	This should contain enough information about the record to make it reasonably easy to identify. If the information required cannot fit in the space provided in the form, additional typed or handwritten page may be used to give more detail of the request, as long as each additional page is signed

Information Required	Description
	and attached to the request form. You might, for example, include an extract from a report or news story that references the record you are looking for. It allows you to include a reference number for the record, if is this applicable.
Fees	The body, to which a requester intends submitting a request for access to a record, including record containing personal information about his or herself, may request that you pay request fee (access fee) or deposit fee, but that amount must not be excessive, as the fees must be for the reasonable time required to search for and prepare a record. The Minister may by notice in the Gazette exempt the payment of fees as listed on paragraph 51.1 below. A space is provided for the requester to indicate why he believes he or she should be exempted from paying any fees. The reason may include, for example, that he or she is unemployed.
Form of access to record	This section allows you to note with an "X" your preferences for the form of access to the record may be provided in a printed copy of record and/or flash drive and/or compact disc drive.
Manner of access	Under this section you are required to note your preference in relation to which language the record should be in (this may not be possible in relation to all records, but you should still indicate your preference). The manner of access of the record may contribute to a refusal of access due to higher fees. For example, if a requester wants document in your preferred language,

Information Required	Description
	fees for changing the documents to your preferred language may become payable. However, if the record is not available in the language you prefer, access may be granted in the language in which the record is available. The manner of access to record may include personal inspection of record, record sent by email, or fax or courier or postal.
Notice of decision regarding request for access	A space is provided for the requester to describe the manner in which he wishes to be informed about the decision to grant or deny the request. The requester can specify for instance that he would prefer to be contacted by email or by telephone or the response can be posted or couriered to him.
Particulars of right to be exercised or protected	When requesting information from a private body a requester is required to describe the "particulars of right to be exercised or protected". Here he must state the right he is relying on (such as his right to a healthy environment) and how the record he is requesting will help you either exercise, or protect, that right. He must show a connection between the record he wants, and the exercise or protection of the right. Unfortunately, unlike the request for access to record of a public body, he cannot access a record of the private body unless he specifies the right(s) he intends protecting or exercising should access for information be granted. This can include the fact that after he gains access to records, he will then exercise his right to equal protection and benefit of the law[16] by suing that body for damages that he may have suffered.

[16] *Section 9(1) of the constitution of the Republic of South Africa, Act 108 of 1996*

14.1.4 If for any reasons his request does not comply with the requirements listed above, the Information Officer may not just refuse his request, unless he notified the requester that he intends to refuse the request and the reasons are provided. The Information Officer must also notify that he will assist the requester or give him an opportunity to correct the error.

15. THE FEES INVOLVED

15.1 Generally, fees need to be paid both for making a request, but also to cover the cost of providing access to records in terms of a request. There are, however, some exceptions. If the requester is granted access to the records he or she requested and he or she is not exempted from paying any fees, as indicated in paragraph 15.2 below, the Information Officer or Deputy Information Officer of a public or private body can charge the prescribed fees relating to the following categories -

NB: The fee structure in respect of fees payable to the Public and Private Bodies can be accessed on the Regulator's website.

Item	Description
1	The request fee payable by every requester
2	Photocopy of A4 size page
3	Printed copy of A4 size page
4	For a copy in a computer-readable form on: (i) Flash drive (to be provided by requestor) (ii) Compact disc • If provided by requestor • If provided to the requestor
5	For a transcription of visual images per A4 size page
6	Copy of visual images
7	Transcription of an audio record, per A4 size page
8	Copy of an audio record on: (i) Flash drive (to be provided by requestor) (ii) Compact disc • If provided by requestor • If provided to the requestor
9	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. To not exceed a total cost of the prescribed maximum amount
10	Deposit: If search exceeds 6 hours
11	Postage, e-mail or any other electronic transfer

15.2 The requester does not need to pay an access fee[17] to a public body if:-

15.2.1 He is a single person whose annual income, after permissible deductions, such as **PAYE** and **UIF**, is less than **R14 712.00** a year, or

15.2.2 He is married and the joint income with his partner, after permissible deductions, such as **PAYE** and **UIF**, is less than **R27 192.00** per year.

15.3 Please note that the public or private body can request, in Form 4 to the Regulations, a deposit from the requester, but only if they believe that the information or records requested will take more than six (6) hours to search, but the deposit amount cannot be more than one-third of the prescribed fee.

16. WILL THE INFORMATION OFFICER HELP THE REQUESTER MAKE A PAIA REQUEST?

16.1 The role of the Information Officers and/or Deputy Information Officers of both public and private bodies is to, in so far as it relates to the processing of requests for access to records:

16.1.1 receive the **PAIA** or **POPIA** request;

16.1.2 coordinate the processing of the request within the body;

16.1.3 make a decision as to whether to grant or refuse access to the records being requested;

16.1.4 liaise with the requester (e.g. they may need to ask the requester for more details or they may need to request an extension of time to deal with the request, etc.);

16.1.5 Advice the requester of the outcome of their **PAIA** request, which advice must be given as soon as is reasonably possible but within 30 days after receiving the request. The initial period of 30 days may be extended once for a further period of not more than 30 days, if for example, the requester has agreed to the extension or the request requires a search for records that cannot reasonably be completed within the original period;

16.1.6 provide the requester with reasons for the decision to refuse access. It is very important that the reasons given for a refusal are clear and detailed and must include reference to the specific sections of **PAIA** (see paragraph 19.4 below, regarding the grounds for refusal of access to records[18]);

[17] *as per Government Notice R991 of 14 October 2005*
[18] *Section 33 to 46 of PAIA*

16.1.7 inform relevant third parties through the third-party notification process, in terms of section 47 of **PAIA**; and

16.1.8 if access to the records is granted, provide the requester with a copy of the record.

16.2 When notifying the requester about the decision, also outline the forms of recourse available and the relevant time-lines (the recourse available is different for public and private bodies).

16.3 The additional role and responsibilities of the Information Officers and/or Deputy Information Officers are those detailed in the Guidance Note on Information Officers and Deputy Information Officers which Guidance Note is available at https://www.justice.gov.za/inforeg/docs.html

16.4 Because the role of the Information Officers and/or Deputy Information Officers is to facilitate the request for access to information, this also means they have a variety of duties to those making a request.

16.5 The Information Officers and/or Deputy Information Officers must provide the assistance for free.

16.6 The Information Officers and/or Deputy Information Officers of a public body have the following special tasks:

Duties of Information Officers	Description
Assist with completing the form	The Information Officer must provide reasonable assistance to the requester in completing their **PAIA** form, and may not refuse to accept a form that is not properly completed unless they have either given that help, or offered that help and the assistance or help has been refused.
Provide relevant information	If it is reasonably possible, the Information Officer must provide the requester with any other information that may be relevant, even if not specifically requested.
Transfer the request	This is a very important duty. When a **PAIA** request is made to the wrong public body, the Information Officer must transfer the

Duties of Information Officers	Description
	request to the correct public body within **14 days** of receiving the request and must inform the requester in writing of having done so. Once transferred, the correct Information Officer must then respond with a decision within **30 days**.
Deferral of release	The Information Officer may decide to defer the release of a record to a requester if that record will be published within **90 days** or if the record is required by law to be published but is yet to be.

16.7 With both public and private bodies, the Information Officer must, if they are unable to find the particular records requested or believe that the records do not exist, submit a detailed affidavit or affirmation[19] to the requester giving notice that the records in question do not exist or cannot be found, but also outline the steps they took to locate them.

17. ASSISTANCE AVAILABLE FROM THE INFORMATION REGULATOR IN TERMS OF PAIA AND POPIA

17.1 The Information Officer of a public body has an obligation to render such reasonable assistance[20], free of charge, as is necessary to enable that requester or data subject to comply with the manner of access as contemplated in sections 18 of the **PAIA** and section 23 of **POPIA**.

17.2 However, should the Information Officer fail to comply with his/her duty, referred in paragraph 17.1 above, a requester or a data subject can may lodge a complaint with the Regulator and the Regulator may, upon investigation, issue an Enforcement Notice directing the Information Officer to provide the reasonable assistance.

17.3 The Regulator may, if reasonably possible, on request, assist any person wishing to exercise any right contemplated in **PAIA** and **POPIA**[21], and this includes providing reasonable assistance, free of charge, as is necessary to enable that requester or data subject to comply with the manner of access as contemplated in sections 18 and 53 of the **PAIA** and section 23 of **POPIA**.

17.4 The above includes providing guidance on how to complete a request for access form or completing a form on behalf of an illiterate or blind person.

[19] *Section 23(1) and 51(1) of PAIA*
[20] *Section 19(1) of PAIA*
[21] *Section 83(3)(c) of PAIA*

18. CAN THE INFORMATION OFFICER EXTEND THE TIMELINES INVOLVED?

18.1 An outline of the process and the key time-lines involved are contained in the diagram of the **PAIA** request process, in paragraph 27 below. Having specific time-lines is an important part of **PAIA**, as it fosters the effective management of requests for access to records.

18.2 As a reminder, once you have submitted your request correctly the Information Officer or Deputy Information Officer, to whom the request is made or transferred, must respond to you as soon as is reasonably possible but in any event **within 30 days**[22]. However, the Information Officer of a public or private body can request a single **30 day extension**[23], but only if:

18.2.1 the request is for a large number of records or requires that a large number of records are searched and, without an extension, this search would interfere with the normal activities of the body concerned;

18.2.2 the request requires a search through records in an office of that body not situated in the same city or town and could thus not be completed **within the 30 days**; and/or

18.2.3 it requires a level of consultation in order to act on the request, which cannot reasonably be completed **within just 30 days**.

18.3 The Information Officer must notify the requester of his or her intention to extend the initial time period, and indicate the period of extension, the reason for the extension, and notify the requester of his or her or its right to -

18.3.1 Appeal to the relevant authority;

18.3.2 complain to the Regulator; or

18.2.3 launch proceedings in court against the extension as the case may be.

18.4 The Information Officer must also inform the requester of the process for each of the above-mentioned rights in the notice[24].

19. RESPONSES TO A REQUEST FOR INFORMATION

19.1 **PAIA** has provided the public with the right to request access to records from any public or private body. It is often described as the law that keeps citizens in the know about their government. Public bodies are required to disclose any information requested under the **PAIA** unless it falls under one of **twelve (12)**

[22] *Section 25(1) of PAIA*
[23] *Section 26(1) of PAIA*
[24] *Section 26(3) of PAIA - the extension notice must state that the requester may lodge an internal appeal, complaint to the Information Regulator or an application with a court, as the case may be, against the extension, and the procedure (including the period) for lodging the internal appeal, complaint to the Information Regulator or application, as the case may be.*

exemptions or reasons why access to records of a public body may or must not be granted[25] and seven (7) exemptions or reasons why access to records of private body may or must not be granted[26]. The nineteen (19) exemptions provided for in **PAIA** are intended to protect interests such as personal privacy, national security, and law enforcement.

19.2 The guiding principle underlying the administration of **PAIA** is the presumption of openness. This means that any reason for limiting this openness must be justifiable. Public bodies should also consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they must sever or redact the information that cannot be disclosed and disclose the rest.

19.3 Types of responses to requests

19.3.1 When a request for access to a record is made, the Information Officer or Deputy Information Officer must, if a request for access to a record is granted or refused, inform the requester of -

(a) his or her decision; and
(b) the fees payable, if any,

on a form that corresponds substantially with **Form 3** of Annexure A to the Regulations:

19.3.2 However, **PAIA** provides a list of reasons or grounds (exemptions) (see paragraphs 19.4 and 19.6 below) why the request may or must be refused. This is important, as the request can only be refused on the basis of one of these listed grounds for refusal of access to records.

19.3.3 Despite the above-mentioned reasons for refusal of access to records, the Information Officer of a public body must grant a request for access to a record of the body if the public interest in the disclosure of the record clearly outweighs the harm contemplated in the listed reasons for refusal[27]. This means the requester can rely on public interest whenever any of the grounds of refusal of access to records is being invoked.

19.3.4 In short, the reasons behind why information cannot be disclosed relate to whether the disclosure of the information would cause more harm than non-disclosure would. There are two different types of listed grounds for refusal for access to records of a body:

[25] *Chapter 4 of PAIA- grounds for refusal of access to records (section 34-45 of PAIA)*
[26] *Chapter 4 of PAIA -grounds for refusal of access to records (section 63-69 of PAIA)*
[27] *Section 46 of PAIA*

19.4 **Mandatory grounds of refusal (grounds of exemption)**

19.4.1 With mandatory grounds, the Information Officer or Deputy Information Officer must refuse a request because they apply to the record.

19.4.2 There are more mandatory grounds than discretionary grounds. The following are the mandatory grounds of refusal, and the Information Officer or Deputy Information Officer must refuse a request because they apply to the record –

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

The Information Officer of a public or private body must not allow a requester access to the personal information of another person if it amounts to 'an unreasonable disclosure'. The sections themselves indicate a few reasons when this does not apply, like when records are already in the public knowledge, or where a person has given consent. The consent issue is particularly important as it connects to another part of the process the requester should be aware of, which relates to third party notifications, in terms of chapter 5 of **PAIA**.

19.4.2.2 **Mandatory protection of certain records of the South African Revenue Service;**

The Information Officer of **SARS** must not allow a requester access to records obtained, or held, by **SARS** for its revenue collection purposes. However, records obtained or held by **SARS** may not be refused if a request is done by personal requester or the person on whose behalf the request is made.

19.4.2.3 **Mandatory protection of commercial information of third party;**

The Information Officer of a body must not allow a requester access to the commercial information of another person (in other words, who is not the requester or requestee. This would include information like trade secrets, or that might threaten that third party's commercial interests. For example, **KFC** use certain recipes, including some ingredients manufactured by a third party, which are the trade secrets of that third party and its disclosure might threaten the commercial interests of that third party.

19.4.2.4 **Mandatory protection of certain confidential information, and protection of certain other confidential information, of a third party;**

The Information Officers of both a public and private body must not allow a requester access to a record if its release would amount to a breach of a duty of confidence owed to a third party in terms of an agreement or contract.

19.4.2.5 **Mandatory protection of safety of individuals, and protection of property;**

The Information Officer of both a public or private body must not allow a requester access to a record if its release could reasonably be expected to compromise the safety of an individual. In the same sections, it also states that the Information Officer of a body may refuse access if it would be likely to impair the security of a building or property.

19.4.2.6 **Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings;**

The Information Officer of a public body must not allow a requester access to records like bail proceeding records that are already protected by section 60 of the Criminal Procedure Act. In the same section, it also states that an Information Officer of a public body may refuse access to records of law enforcement that reveal its methods, techniques, procedures for prevention of crimes, or prosecution of crimes, as well as certain other records relevant to legal proceedings that are happening.

19.4.2.7 **Mandatory protection of records privileged from production in legal proceedings;**

The Information Officer of a private body must not allow a requester access to a record if the record is privileged from production in legal proceedings, unless the person entitled to the privilege has waived the privilege.

19.4.2.8 **Mandatory protection of research information of third party, and protection of research information of public or private body.**

The Information Officer of a body must not allow a requester access to a record if the record relates to research that is, or will be, undertaken by the body in question and its release would be likely to expose the researcher, the third party or the matter under research to a serious disadvantage.

19.4.3 Please note that the above mandatory grounds for refusal of access to records are somewhat the same for public and private bodies, except for the mandatory protection of certain records of South African Revenue Service, of police dockets in bail proceedings, of law enforcement and of legal proceedings, which are only applicable to public bodies.

19.4.4 If only part of the record is linked to an exemption ground, the Information Officer or Deputy Information Officer of both a public or private body is under an obligation to consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they should take reasonable steps to sever or redact that part that cannot be released to the requester and grant access to the rest of the record.

19.5 Deemed refusal of request[28]

19.5.1 A failure to respond properly to a request within the correct timeframe is considered to be a 'deemed refusal'. This is important, because **PAIA** allows the requester to challenge a decision when no decision has been made and the request has been ignored. The requester would merely state in the internal appeal that no response was received.

19.5.2 Request for access to records is deemed to be a refusal after the expiry of 30 days or any extended period and the public or private body fails to respond.

19.6 Discretionary grounds of refusal

19.6.1 With discretionary grounds, an Information Officer or Deputy Information Officer may consider whether or not to refuse a request because the grounds apply to the record requested. Because it is a discretion, the Information Officer must apply his/her mind objectively when considering the different grounds, which are:

19.6.1.1 **South Africa's defence, security and international relations:**
The Information Officer may refuse access if the release of the information could reasonably be expected to threaten the defence or security of the country. This could also apply where the release of the information might harm South Africa's relations with another country, such as revealing records supplied in confidence.

19.6.1.2 **Economic, financial and commercial interests:**
The Information Officer may refuse access if its release will be harmful to the economic and financial status of the Republic;

[28] *Section 27 and 58 of PAIA*

19.6.1.3 **Operations of public bodies:** The Information Officer of a public body may refuse access if the release of the information could reasonably hamper operations, for example if it is trying to formulate policy, or deliberate on an issue;

19.6.1.4 **Manifestly frivolous or vexatious requests:** The Information Officers may refuse a request for information if they are of the opinion that processing requests will be unreasonably time consuming and lead to a waste of resources. In addition, they may refuse access to a record if the request is seen to be made by a requester to unnecessarily annoy or provoke.

20. MANDATORY DISCLOSURE OF RECORDS IN THE PUBLIC INTEREST

20.1 Even if a discretionary or mandatory ground for refusal exists in relation to a request for access to records of public or private bodies, there is always the possibility that the public interest in the disclosure of the record is more important than the harm created by the release of the record.

20.2 Where the importance of the public interest exists as stated above and the disclosure of the record 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, then the Information Officer of a body must grant a request for access to a record despite the existence of the exemption grounds listed above.

21. THIRD PARTY NOTIFICATION PROCESS[29]

21.1 An Information Officer or Deputy Information Officer of a body is required, in terms of sections 47 and 71 of **PAIA**, to take all reasonable steps to inform a third party about a request for his or records that might be a record that contains either personal information,

21.1.1 a SARS record;

21.1.2 trade secrets;

21.1.3 Information the release of which could constitute grounds for an action for breach of a duty of confidence; or research information that could expose someone or the subject matter to serious damage.

21.2 The notice to the third party whose records or Information are subject of request should invite the third party to -

[29] *Section 47 and 71 of PAIA*

21.2.1 make written or oral representations to the Information Officer why the request for access should be refused; or

21.2.2 give written consent for the disclosure of the record to the requester.

21.3 Importantly for the requester, **PAIA** says that the written notices to the third party must be sent to the third party within 21 days of the request being received, and that the Information Officer or Deputy Information Officer must inform the requester that a notice has been sent to the third party.

21.4 Once that notification has been sent, the Information Officer or Deputy Information Officer must then make a final decision on whether or not to release the records **within 30 days** of that notice being sent.

21.5 The third party must be notified about the decision taken and adequate reasons for granting the request must also be provided. The third party must also be informed about the right and the procedure to challenge the decision as indicated in paragraph 22 below.

22. LEGAL REMEDIES AVAILABLE AGAINST A DECISIONS OR FAILURE TO TAKE A DECISION BY THE INFORMATION OFFICER OR DEPUTY INFORMATION OFFICER

22.1 Action to take once a decision is made on a request

22.1.1 A requester can make a follow-up action in writing, on the pending decision of an Information Officer or Deputy Information Officer. It is encouraged that all correspondence between a requester and the Information Officer or Deputy Information Officer must be in writing for future reference purposes.

22.1.2 There are different processes for public and private bodies, especially regarding internal appeals. For instance, with regard to a request for access to a record of a public body, the requester must first submit an internal appeal before approaching the Regulator or Court. However, there is no internal appeal against a decision (whether granting or refusal to grant access to records) or deemed refusal of access to records of a private body.

22.1.3 This section will explain the legal remedies available to requesters who wish to challenge such decisions, which include internal appeals, lodging a compliant to the Regulator and applications to Court. See also diagram of **PAIA** request process flow, in paragraph 27 below.

22.1.4 A requester may, amongst others, challenge the following decision of a private and/or public body -

22.1.4.1 the tender or payment of the request fee;

22.1.4.2 the tender or payment of a deposit;

22.1.4.3 the access fee to be paid is too excessive;

22.1.4.4 the form of access granted;

22.1.4.5 the refusal of the request;

22.1.4.6 the procedure (including the period) for lodging the internal appeal;

22.1.4.7 inappropriate time extension taken to respond to a request for access;

22.1.4.8 failure to disclose records;

22.1.4.9 the granting of a request for access to a record;

22.1.4.10 refusal to grant request to waive the fees;

22.2 Internal remedies

22.2.1 How does a requester appeal internally against a public body's decision?

22.2.1.1 An internal appeal can only be lodged, in terms of section 74 of **PAIA**, with the relevant authority of the national or provincial sphere of government or any municipality in the local sphere of government as the case may be[30].

22.2.1.2 So for example, the City of Johannesburg is an example of a local sphere of government against which an internal appeal can be submitted. The Road Accident Fund or the Regulator is an example of a public body which is not part of the national, provincial or local sphere of government as it is set up by legislation, and therefore an internal appeal may not be lodged against it.

[30] *Section 74(1) of PAIA*

22.2.1.3 When a requester or a third party is unhappy with a decision made by the Information Officer or Deputy Information Officer of a national, provincial or local sphere of government, the requester or a third party has the right to file an internal appeal, in terms of section 74(1) or (2) of **PAIA**. The process for lodging an appeal is prescribed in the **PAIA** manual of that particular body and the manner for lodging an internal appeal is also detailed herein below.

22.2.1.4 If the response from the national, provincial or local sphere of government is a deemed refusal, in another words, it has failed to respond to a request within 30 days or any extended period, the requester may file an internal appeal, as per the processes outlined herein, before the requester may approach the Regulator or a Court.

22.3 **Preservation of records until final decision on request has been finally determined**

22.3.1 The Information Officer of a National, Provincial or Local sphere of government to which an internal appeal is applicable is required, in terms of section 21 of **PAIA**, to take appropriate steps that are reasonably necessary to preserve the record and cannot delete or destroy any re-quested record, until such time as all or any proceedings in an internal appeal or a complaint to the Regulator or an application to court, as the case may be, are finally determined.

22.3.2 This means that the information officer cannot delete or destroy any information requested, pending any process prescribed in paragraph 22.3.1. above.

22.4 **To whom should the internal appeal be directed to?**

22.4.1 Although the appeal will be considered by the relevant authority, an internal appeal must be delivered or sent to the Information Officer of the National, Provincial or Local Sphere of Government, as the case may be, at his address, fax number or electronic mail address[31], the contact details of which can be found in the **PAIA** manual or as may be obtained from the Regulator.

22.4.2 The Information Officer of the national, provincial or local sphere of government, as the case may be, has a specific obligation, in terms of section 75(4) of **PAIA**, to submit the appeal to the

[31] *Section 75(1)(b) of PAIA*

appeal authority, together with his reasons for the decision under appeal. The submission of the appeal to the relevant authority must be done within 10 working days after receipt of the appeal.

22.5 **Who is the relevant authority?**

22.5.1 The relevant authority, herein referred to as "appeal authority" is generally the political head of the body concerned (although this function can be officially delegated) and specifically refers to the following person.

Public body ("Government")	Relevant Authority ("Appeal Authority")
Office of the Presidency	The person designated in writing by the President, if any, otherwise the President is the appeal authority.
National Department	Minister responsible for that department or the person designated in writing by that Minister.
Office of a Premier	The person designated in writing by the Premier.
Provincial Department	Member of the Executive Council (MEC) responsible for that Provincial Department or the person designated in writing by the MEC;
Municipality	The Mayor, the Speaker or any other person designated in writing by the Municipal Council of that municipality;

22.5.2 Any other case, where it is not the office of the premier: the member of the executive who is responsible for that public body or the person designated in writing by that member.

22.5.3 If the appeal authority approves the Information Officers' decision, then the internal appeal is denied and the original

22.5.4 decision of the Information Officer stands. However, should the appeal authority disagree with the Information Officer's decision, then the appeal is granted and the original decision is overturned.

22.6 Who can lodge an internal appeal?

22.6.1 Any requester whose **PAIA** request for access to the records of National, Provincial or Local sphere of Government, as the case may be, has been refused, and believes that one of the appeal grounds listed in paragraph 22.2.4 above is applicable to their request, has the right to file an internal appeal.

22.6.2 Third parties can also file internal appeals against the decision made by an Information Officer to grant access to a record that concerns them. If the internal appeal involves a third party, the appeal authority who received the internal appeal is required to notify those third parties (so the responsibility shifts from the Information Officer to the appeal authority).

22.7 Period within which to lodge an appeal

22.7.1 An internal appeal must be lodged-

22.7.1.1 within **60 days**[32] after the decision was taken;

22.7.1.2 within **30 days**[33] after notice is given to the third party of the decision appealed against

22.7.2 Lodging an internal appeal after the above-mentioned period (late) may not be allowed, unless a valid reason for being late is provided to the appeal authority. An example, such as being hospitalised for more than 60 days may be accepted as valid reasons for being late.

22.7.3 If the appeal authority does not accept the late lodging of an internal appeal, it must provide you with reasons for rejecting the appeal and provide guidance of any additional information, if any, required in order to accept the appeal. The appeal authority must also advise you about the process to lodge a complaint against their decision with the Regulator or a court.

[32] *Section 75(1)(a)(i) of PAIA*
[33] *Section 75(1)(a)(ii) of PAIA*

22.7.4 As indicated above, your appeal must be submitted by the Information Officer to the appeal authority within 10 working days after receipt of an internal appeal[34].

22.8 **Notice of appeal by appeal authority to the requester or third party**

22.8.1 The appeal authority must, as soon as is reasonably possible but in any event within **30 days** after the receipt of the internal appeal[35], notify -

22.8.1.1 the third party to whom or which the record under appeal belongs, or

22.8.1.2 the requester about the internal appeal against the granting of a request for access.

22.8.2 A requester or a third party to whom or which notice is given, may within **21 days** after that notice is given, make written representations to the appeal authority why the request for access should or should not be granted.

22.9 **Decision on internal appeal and notice thereof[36]**

22.9.1 The appeal authority must decide the internal appeal as soon as reasonably possible but in any event within 30 days:

22.9.1.1 after the internal appeal is received by the Information Officer of a body;

22.9.1.2 after a third party is informed, as indicated in paragraph 22.8.1 above.

22.9.2 The decision of the appeal authority must be communicated to the appellant, third party and the requester. The decision of the appeal authority must be accompanied by adequate reasons for the decision, including the provision of **PAIA** or **POPIA** relied upon.

22.9.3 If the appeal authority fails to give notice of the decision on an internal appeal to the appellant within 30 days, the appeal is deemed to have been dismissed and the requester can proceed to lodge a complaint to the Regulator or approach the Court for appropriate relief[37].

[34] *Section 75(4) of PAIA*
[35] *Section 76(2)(a) of PAIA*
[36] *Section 77 of PAIA*
[37] *Section 77(7) of PAIA*

22.10 Completing the internal appeal - Form 4

22.10.1 In order to appeal against any decision by a National, Provincial or Local sphere of Government, the requester must lodge his internal appeal by completing Form 4. Form 4 must be submitted to the Information Officer of the sphere of government concerned, who is then required to forward it to the appeal authority, as stated above.

22.10.2 Form 4 is available on the Regulator's website, https://www.justice.gov.za/inforeg/, as well as in the website of the sphere of Government concerned.

22.10.3 The Information Officer or Deputy Information Officer of the sphere of Government concerned is not under an express obligation to help the requester complete the internal appeal form; however, the requester may still request the Information Officer to assist him in this regard.

22.10.4 Below is the step-by-step process to complete the internal appeal form -

Information Required	Description
Particulars of public body	This section should contain the name of the National, Provincial for Local sphere of Government concerned, and the name and surname of the Information Officer.
Particulars of appellant who lodges the internal appeal	This section should be completed by the appellant, whether in representative capacity or not. The full names and surname, identity number and the capacity, in which an internal appeal is lodged on behalf of another person, if relevant, must be provided. If the appeal is being in a personal capacity, such capacity must be recorded. Additional information required includes the contact details of the requester:

Information Required	Description
	postal address, email address, fax and/or telephone number. This information should be the same as in the original request. If the person filling in the form is the representative of the requester, proof of the capacity in which appeal is lodged must be attached to this form.
Particulars of person on whose behalf request is made (If lodged by a third party)	This section only needs to be completed by a person who is requesting information for another person. If the person submitting the internal appeal is not the person who originally requested the information, the particulars of the requester must be provided herein. If the request is in one's personal capacity this section need not be completed.
The decision against which the internal appeal is lodged	The form provides space for the requester to indicate with an "x", which of the listed appeal grounds applies to the appeal.
Grounds for appeal	Under this section, the requester is required to describe in detail why he thinks the appeal grounds apply. He is required to provide reasons(s) why he thinks the decision of the Information Officer is incorrect. He also needs to attach any documents which support the appeal. The list of reasons supplies in support of the appeal can be outlined in greater detail on a separate page, if the space provided in the form is not sufficient. The additional pages submitted should be signed.

Information Required	Description
	There must be sufficient reasons and supporting information to enable the appeal authority makes an informed decision. Therefore, one must also include an outline of everything that has happened in the run-up to the internal appeal. On the separate page, one can refer to specific sections of **PAIA** as a basis for the appeal.
Notice of decision on appeal	A space is provided for a description of the manner in which the decision must be sent, for example by post, couriered or facsimile or e-mail. Please select the preferred manner of notification.

22.10.5 Whilst there is no prohibition against getting a lawyer to assist at any stage of the request for information, the various **PAIA** processes are meant to be user-friendly removing the need for a lawyer and for legal fees to be incurred.

23. COMPLAINT TO THE INFORMATION REGULATOR

23.1 A requester or third party may only submit a complaint to the Regulator after that requester or third party has exhausted the internal appeal procedure against a decision of the Information Officer of a national, provincial or local sphere of government. This means that one can only submit one's complaint, against a particular sphere of government to the Regulator if one is not happy with the decision of the appeal authority. The Regulator will reject the complaint if an appeal process to the relevant sphere of government has not been completed.

23.2 However, with regard to a public body (in respect of which an internal appeal is not applicable) and a private body, a requester or third party may submit a complaint to the Regulator, if not satisfied by the decision of the body concerned.

23.3 A complaint to the Regulator by a requester or third party must be lodged within 180 days of receipt of the decision from the body.

23.4 A requester may lodge a complaint with the Regulator, if not happy with -

23.4.1 the outcome of an internal appeal to the appeal authority of any sphere of government;

23.4.2 a decision of the appeal authority to disallow the late lodging of an internal appeal;

23.4.3 a decision of the Information Officer of a public body that is not part of any sphere of government to –

23.4.3.1 refuse a request for access; or

23.4.3.2 extend the period to deal with request; or

23.4.3.3 grant access in a particular form.

23.4.4 a decision of the head of a private body to -

23.4.4.1 refuse a request for access; or

23.4.4.2 demand payment of the request fee, or a deposit of the access fee; or

23.4.4.3 extend a period to deal with request; or

23.4.4.4 grant access in a particular form.

23.5 A third party may lodge a complaint with the Regulator, if not happy with -

23.5.1 the outcome of an internal appeal to the appeal authority of the relevant sphere of government;

23.5.2 a decision of the Information Officer of a public body that is not part of any sphere of government to grant a request for access; or

23.5.3 a decision of the head of a private body to grant a request for access to a record of that body,

23.6 **How does one complain to Regulator?**

23.6.1 complaint to the Regulator must be made in writing and a complaint form must be completed, either manually or online. A complaint form, Form 5, can be downloaded from the Regulator's website, https://www.justice.gov.za/inforeg/

23.6.2 This means that the Regulator will not accept a complaint telephonically; however, the Regulator is required to provide reasonable assistance to any person who wishes to make a complaint and this includes assistance regarding completing a complaint form.

23.6.3 If one is challenging the decision of the Information Officer of a private body, one must provide sufficient evidence to prove that the record requested is required for the exercise or protection of any other right(s). Access to the records of a private body can only be granted if one can prove that one intends exercising or protecting any other right(s) with the record requested.

23.7 **What happens after receipt of the complaint?**

23.7.1 Upon receipt of one's complaint, the Regulator must -

23.7.1.1 investigate the complaint and refer its findings to the Enforcement Committee for a decision; or

23.7.1.2 take no action on the complaint due to the fact that -

23.7.1.2.1 The complaint has not been submitted within the period of 180 days and there are no reasonable grounds to condone the late submission of a complaint;

23.7.1.2.2 the complaint is frivolous or vexatious or not made in good faith; or

23.7.1.2.3 having regard to all the circumstances of the case, any further action is unnecessary or inappropriate. For example, the information requested has been made publicly available.

23.7.1.3 Where appropriate conciliate or use its best endeavours to secure such a settlement or assist the parties to settle their dispute(s); and

23.7.1.4 Advise the complainant and the Information Officer, to whom the complaint relates, of the course of action to be undertaken.

23.8 Regulator's first communication to the complainant and Information Officer regarding the complaint lodged

23.8.1 If the Regulator decides not to take any further action on the complaint, the Regulator will inform the requester of that decision and the reasons for not taking further action on the complaint.

23.8.2 If the Regulator decides to investigate a complaint, the requester will receive a letter advising him that the Regulator has decided to conduct an investigation.

23.8.3 Upon receipt of a compliant, the Regulator will forward the details of the complaint to the Information Officer of the relevant body, and request him to submit to the Regulator, a written response to the complaint.

23.9 Investigative powers of the Regulator

23.9.1 The Regulator has powers, in terms of section 77G(2) of **PAIA**, to -

23.9.1.1 use its best endeavours to secure such a settlement;

23.9.1.2 summon and enforce the appearance of persons before the Regulator;

23.9.1.3 compel them to give oral or written evidence on oath and to produce any records;

23.9.1.4 receive and accept any evidence and other information, whether on oath, by affidavit;

23.9.1.5 enter and search any premises occupied by a responsible party;

23.9.1.6 conduct a private interview with any person in any premises entered; and

23.9.1.7 carry out in those premises any inquiries that the Regulator deems fit.

23.10 Assessment of compliance with the provisions of PAIA

23.10.1 The Regulator may conduct an assessment on whether a public or private body generally complies with the provisions of this **PAIA**.

23.10.2 The Regulator may randomly conduct a compliance assessment on a body, of its own volition, however, the Regulator can also conduct the compliance assessment upon request by or on behalf of the Information Officer of a body or any other person. This means that any person may request the Regulator to conduct compliance assessment on a body. A person can also submit an anonymous request to conduct a compliance assessment, by indicating that he or she request to remain anonymous.

23.10.3 The Regulator will provide the person who requested the assessment with the assessment report and a recommendation of action to be undertaken, if any.

23.11 Information Notice

The Regulator may serve the Information Officer of a body with an Information Notice requiring said party to furnish the Regulator with information specified in the notice. For example, if a complaint lodged with the Regulator relates to a refusal of access based on any of the exempted grounds, the Regulator may request, in an Information Notice, copies of the records to which access has been refused in order to determine if the reasons for refusal are valid or not.

23.12 Establishment of Enforcement Committee

23.12.1 The Regulator is required to establish an Enforcement Committee[38], which has powers to -

23.12.1.1 consider all matters referred to it by the Regulator in terms PAIA and make a finding in respect thereof; and

23.12.1.1 make any recommendation to the Regulator regarding any action that should be taken against the Information Officer of a body.

23.13 Enforcement Notice

23.13.1 The Regulator may, after having considered the recommendations of the Enforcement Committee, serve the Information Officer of a body with an Enforcement Notice -

[38] *Section 50 of POPIA*

23.13.1.1 confirming, amending or setting aside the decision which is the subject of the complaint; or

23.13.1.2 Requiring the Information Officer to take such action or to refrain from taking such action as the Information Regulator has specified in the notice.

23.14 **What are consequences for non-compliance with Enforcement Notices?**

23.14.1 An Information Officer of a body who refuses to comply with an enforcement notice is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three years or to both such a fine and such imprisonment.

23.14.2 Section 77K of **PAIA** signifies the importance of the right of access to Information or records. This section also strengthens the importance of the Regulator in so far as promotion of right of access to information is concerned.

24. APPLICATION TO COURT

24.1 **Who can file an application to court against a decision?**

24.1.1 requester or third party may only apply to a court for appropriate relief in terms of section 82 in the following circumstances:

24.1.1.1 After that requester or third party has exhausted the internal appeal process referred to in paragraph **22.3** above; or

24.1.1.2 After that requester or third party has exhausted the complaints procedure referred to in section 77A.

24.1.2 In terms of section 78(1) of **PAIA**, a requester or a third party has two options, either to refer a decision, listed in paragraphs 22.2.4, 23.4 and 23.5 above, to the Regulator or the Court. Whilst one is not compelled to approach the Regulator before approaching the Court, it is advisable that one should consider approaching the Regulator, as the Regulator has extensive and quick dispute resolution mechanisms, as opposed to the Court.

24.1.3 However, for the Court to have jurisdiction to adjudicate the matter, a requester or a third party must -

24.1.3.1 be aggrieved by either of the decisions, listed in paragraph 22.2.4, 23.4 or 23.5 above; or

24.1.3.2 have exhausted the complaints procedure with the Regulator or withdraw the complaint to the Regulator. This means that one cannot approach the Court if one's compliant is still pending with the Regulator.

24.1.4 If one is challenging the decision of an Information Officer of a private body, one needs to provide sufficient evidence to prove that the record requested is required for the exercise or protection of any other right(s).

24.2 When can one file an application to Court against a decision of a body or Regulator?

24.2.1 An application to Court by a requester or third party, who is either unsuccessful in an internal appeal to the appeal authority of the relevant sphere of government or aggrieved by a decision of the Information Officer of a body (listed in 22.2.4, 23.4 or 23.5 above) or that of the Regulator must be filed within 180 days from the date of the applicable event.

24.2.2 The Information Officer of a body or appeal authority of a Government, as the case may be, aggrieved by a decision of the Regulator may apply to a court for appropriate relief in terms of section 82, within 180 days[39].

24.2.3 A requester, third party, or a body, may apply to court to have any of the decisions they are aggrieved by reviewed by the Court.

24.2.4 An application to Court under **PAIA** is done through civil proceedings, and should be used as a last resort.

24.2.5 Cases for access to information can be heard before the Magistrate's Courts, as a court of first instance[40], and the High Court having jurisdiction.

24.2.6 Failing to bring the application within a period of 180 days may be condoned by the Court if one shows that the interests of justice so require. This means that the court may accept the late application if the issue to be adjudicated is found to be in the interests of justice.

[39] *Section 78(4) of PAIA*
[40] *Section 91A of PAIA and Promotion of access to information Rules, 2019*

If the records to which access is requested will assist one in applying for an appeal against imprisonment or assist one in getting further medical attention, for example, the court is likely to grant condonation in this regard.

24.2.7 An application may be brought in accordance with the procedure set out in rule 53 of the High Court Rules or in terms of rule 55 of the Magistrates' Court Rules if no records have or an incomplete record has been furnished by the administrator.

24.2.8 If the record has already been furnished, the application shall be brought in terms of rule 55 Magistrates' Court Rules, provided that where there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator, the applicant may proceed in accordance with the procedure set out in Rule 53 of the High Court Rules, at its election, but shall indicate in its founding affidavit why there is reason to believe that the full record has not been provided[41].

24.3 What is the legal status of the Regulator's decision pending the decision of the Court?

The Regulator's powers are mainly sourced from the Constitution, **POPIA** and **PAIA**. As a result, the enforcement notice issued by the Regulator has legal consequences and is therefore binding until such time as the court of law has decided otherwise. The Regulator's decisions are therefore effective and enforceable unless directed otherwise by the relevant Court.

24.4 What are orders the Court hearing an application may grant?

24.4.1 The court (either Magistrates' or High Court) hearing an application may make the following orders -

24.4.4.1 confirm, amend or set aside the decision of either the Information Officer, or Appeal Authority or Information Regulator;

24.4.4.2 require the Information Officer or Appeal Authority to take such action or to refrain from taking such action as the Court considers necessary within a period mentioned in the order;

24.4.4.3 grant an interdict, interim or specific relief, a declaratory order or an order for compensation;

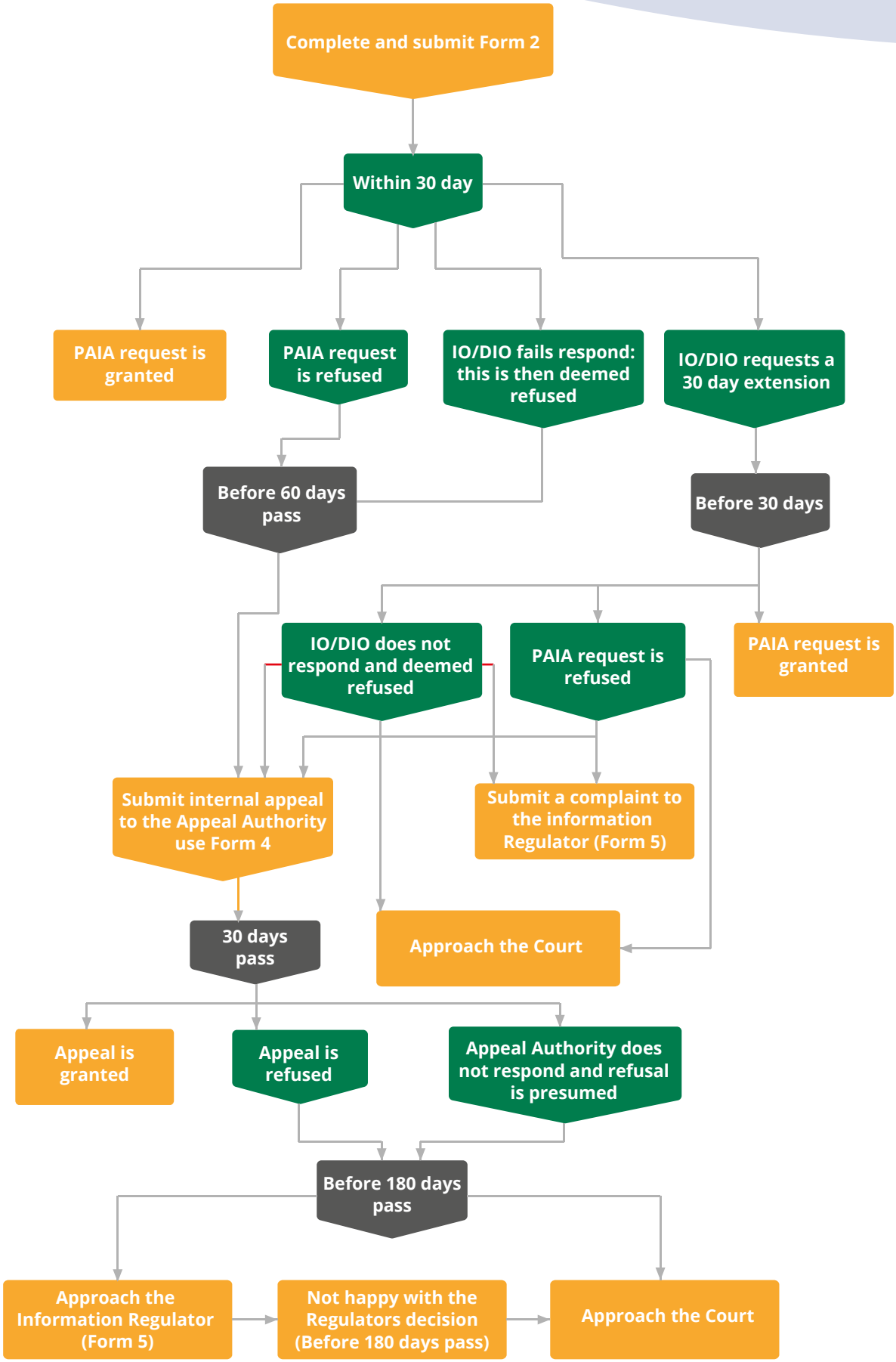
[41] *Rule 4 Promotion of access to information Rules, 2019*

24.4.4.4 make an order of costs against any party;

24.4.4.5 in the interests of justice, condone non-compliance with the 180-day period within which to bring an application. As indicated above, sufficient grounds for failure to adhere to the prescribed period must be explained in detail in the accompanying application for condonation.

25. DIAGRAM OF PAIA REQUEST PROCESS

Please refer to the step-by step process chart flow, on the processes to be followed when exercise the right of access to information.


Complete and submit Form 2
Within 30 day
PAIA request is granted
PAIA request is refused
IO/DIO fails respond: this is then deemed refused
IO/DIO requests a 30 day extension
Before 60 days pass
Before 30 days
IO/DIO does not respond and deemed refused
PAIA request is refused
PAIA request is granted
Submit internal appeal to the Appeal Authority use Form 4
Submit a complaint to the information Regulator (Form 5)
30 days pass
Approach the Court
Appeal is granted
Appeal is refused
Appeal Authority does not respond and refusal is presumed
Before 180 days pass
Approach the Information Regulator (Form 5)
Not happy with the Regulators decision (Before 180 days pass)
Approach the Court

26. REGULATIONS MADE IN TERMS OF SECTION 92 OF PAIA

26.1 In accordance with section 92(1) and 92(4) of **PAIA**, Minister made Regulations relating to the Promotion of Access to Information, covering the following matters

26.1.1 Obligations of Information Regulator **(Regulation 2)**

26.1.2 Obligations of information officer **(Regulation 3)**

26.1.3 Automatic availability of certain records of public body **(Regulation 4)**

26.1.4 Voluntary disclosure and automatic availability of certain records of

26.1.5 Availability of records of political parties **(Regulation 6)**

26.1.6 Request for access to information **(Regulation 7)**

26.1.7 Outcome of request and fees payable **(Regulation 8)**

26.1.8 Internal appeal against decision of information officer of public body **(Regulation 9)**

26.1.9 Lodging of complaints **(Regulation 10)**

26.1.10 Procedure regarding investigation of complaints **(Regulation 11)**

26.1.11 Settlement of matter **(Regulation 12)**

26.1.12 Conciliation of matter **(Regulation 13)**

26.1.13 Assessment **(Regulation 14)**

26.1.14 Electronic communication **(Regulation 15)**

26.1.15 Offences and penalties **(Regulation 16)**

26.2 In accordance with section 79(1) of **PAIA**, the Rules Board for Courts of Law, with the approval of the Minister, made rules of procedure for -

26.2.1 a court in respect of applications in terms of section 78 of **PAIA**; and

26.2.2 a court to receive representations ex parte referred to in section 80(3)(a)

27. KEY LEGISLATIONS, REGULATIONS, NOTICES AND ACKNOWLEDGEMENT

Legislations, As May Be Amended From Time To Time
Promotion of Access to Information Act, Act 2 of 2000
Promotion of Administrative Justice Act, Act 3 of 2000
Promotion of Access to Information Amendment Act, Act 54 of 2002
Protection of Personal Information Act, Act 4 of 2013
Promotion of Access to Information Amendment Act, Act 31 of 2019
Political Party Funding Act, Act 6 of 2018

Regulations and Notices		
Government Notice	**Date of Publications**	**Subject and Description**
Government Notice R.757 in GG No 45057	27 August 2021	Regulations relating to the Promotion of Access to Information, 2021
Government Notice R.991 in GG 28107	14 October 2005	Regulations that prescribe the grounds under which a person is exempt from having to pay fees.
Government Notice 397 in GG No. 44785	30 June 2021	Exemption of certain private bodies from compiling **PAIA** Manual.
Government Notice 1217 in GG 42717	19 September 2019	Designation of Magistrate Courts as having the capacity to hear **PAIA** matters.
Government Notice R.1284 in GG 42740	4 October 2019	Rules of procedure for applications to be made in terms of **PAIA** before High Court or Magistrates Court.

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This updated Guide on how to use **PAIA** was originally compiled by the South African Human Rights Commission (**SAHRC**) and the Regulator hereby acknowledges the original work of the **SAHRC**, including all its sources.

Issued by
INFORMATION REGULATOR