



OBLIGATIONS IN RESPECT OF THE PROMOTION OF ACCESS TO INFORMATION ACT

Many companies seem to be unaware of the implications of the Promotion of Access to Information Act of 2000 (PAIA). The South African Constitution (section 32) enshrines a citizen's right to have access to information important to him or her. The PAIA gives effect to this right of access to information.

The Act requires, amongst other things, that all public and private bodies compile a manual, which offers guidelines to anyone requesting information from that particular entity. Private bodies are required to submit their information manuals to the Human Rights Commission for publication in the Government Gazette by 31 August 2003.

A private body is any juristic person, close corporation, partnership or company that is trading. The Act therefore applies to everyone in business. A record is defined in the Act as, "any recorded information, regardless of form, in possession or under the control of the public or private body, whether or not created by that public or private body."

Who can request access to information? Any person, regardless of whether that person is an employee, the public, government or a competitor.

When requesting a record from private bodies the requester would have to demonstrate that the record is required to exercise or protect a specific right. The request should be presented on the prescribed form according to set procedures.

The request should be specific (stating exactly what kind of information is required) and the request must also identify the requester and provide a postal address or fax number.

The company is obliged to respond to the request within 30 days. In other words, if the request is to be refused, the requester should be notified and the reasons for refusing access to the record should be supplied. Alternatively, the record should be sent to the relevant address or fax number within that period.

Grounds for refusing access

Private bodies may refuse to give requesters access to particular information. The grounds for refusal contained in chapter 4 of the Act include:

- Privacy of third party
- Certain records of SARS
- Commercial information of third party
- Confidential information
- Protection of safety of individuals and protection of property
- Protection of law enforcement and legal proceedings
- Privileged records (e.g. attorney-client privilege)
- Commercial information of private body (trade secrets)

- Protection of research information
- Manifestly frivolous requests

However, the Act also makes provision for a public interest override (mandatory disclosure in public interest). This applies where disclosure would reveal evidence of a substantial contravention or failure to comply with the law or an imminent and substantial threat to public safety or environmental risk or where the public interest clearly outweighs the harm contemplated in the provision in question.

According to PAIA the chief executive officer of a private body is by default the information officer (and is responsible for the production of a manual). S/he may however, delegate this responsibility to someone else within the organisation. Companies with dispersed offices and information records should consider appointing deputy information officers to deal with the remote receipt of a request and any records pertaining to these requests. The request and the information should then be forwarded to the chief information officer for his/her consideration.

Manual

Section 51 states that every private body must prepare a manual containing inter alia:-

- Contact details;
- Description of records where no request is required;
- Description of records (subject and categories of information) available under other legislation (such as the Companies Act 61 of 1973 and the Value-Added Tax Act 89 of 1991);
- Description of record subjects and categories available
- The particulars of the head of the body (which may be delegated)
- The process that a requester should follow to obtain information.

The Act does say that companies should render reasonable assistance to requestors and that the manual should contain sufficient detail to facilitate a request for access. The manual should be reviewed regularly. There are guidelines available for the compilation of the prescribed manual. The Human Rights Commission has developed a blue print which can be downloaded at www.sahrc.org.za.

Do the guidelines assist with the categorization of information? Information held by a company will be unique to it. Whilst some generic categories do exist, it is important that the company understand what information it possesses and whether that specific information needs to be disclosed when requested. Further, it will not be useful to make ad hoc arrangements for the categorization and storage of records if the information management system is not kept current. It will require clear policies and procedures, which must be known to and used by everyone in the organization as there will be very few people who do not generate some records, be they e-mails, reports, letters or computer files.

The preparation of the manual may be beneficial to some organisations since it should assist the organization to improve record management, bearing in mind that most documentation is in electronic form. Some organisations will understand for the first time what records they generate, what information and knowledge is contained in them and where and how they are stored.

Government is relying on the goodwill of companies to comply with PAIA. However, if it is found that a large number of companies do not comply, penalties may be enforced. It is however not true that penalties are already being enforced.

In addition to preparing the manual, organizations should develop clear policies regarding what records will automatically be available to the public, what records will be available on request and what records will be refused (for logical and cogent reasons) as well as develop clear policies for

the ongoing storage and categorization of records and ensure that the people in the organisation follow these procedures.