



**MANAGEMENT MANUAL REF.: POPIA Guide
DWR-HRMM-01**

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**MANAGEMENT MANUAL GUIDE
ON HOW TO USE
PROMOTION OF ACCESS TO INFORMATION
ACT 2 OF 2000 AS AMENDED**

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PAIA GUIDE

FOREWORD

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

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 Information Officer and or Deputy information Officer accepts no liability for any loss that suffered because of reliance on this Guide.

1. ABBREVIATIONS AND TERMS

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 a calendar day. To calculate time, 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 Saturday, Sunday or public holiday, the next day is counted as the final day.

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Deemed Refusal - If no response is received to a request within the prescribed time, this is defined as a 'deemed refusal'.

POPIA -REQUEST FOR INFORMATION DWR-HRMM(F)-01A - This form is prescribed by regulation and should be used to request access to information held by DCM.

POPIA –INTERNAL APPEAL DWR-HRMM(F)-01B - This form is prescribed by regulation and should be used when appealing a decision made by DCM in relation to a request for access to information.

Guide - 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.

Information Officer - The information Officer is the person authorised to handle PAIA requests. The following are categories of Information Officers per specific Body - Public Body or Organ of State (as defined in section 239 of the Constitution)

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.

HR – Human Resources

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.

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 form, 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).

Information Officer – Executive; Human Resources and Public Affairs: Mr. Bongani Phakathi

Email: bonganiphakathi@assore.com

Physical Address:

11 Fricker Road

Illovo Boulevard

Sandton

2196

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Private Bag X03

Northlands

Johannesburg

Telephone: 011 770 6841

Deputy Information Officer: - General Manager: Mr. Christo Marais

Email: christom@dwarsrivier.co.co.za

Physical Address:

372 KT Dwarsrivier Farm

Sekhukhune Road

Steelpoort District

1130

Postal Address:

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Lydenburg

1120

Telephone: 013 230 5300

2. PURPOSE OF THIS PAIA GUIDE

2.1 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.

2.2 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 -

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

2.2.2 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;

2.2.3 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

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

- 2.3.1 understanding PAIA, its benefits and background;
- 2.3.2 learning the step-by-step process by which to make a request and additional tips for making that process easier;
- 2.3.3 learning the types of information which can be requested using PAIA;
- 2.3.4 understanding the process by which a requester can challenge a decision taken in relation to their request;
- 2.3.5 being introduced to the changes that will occur to PAIA once POPIA is fully operational.

2.4 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.

3. ABOUT PAIA

3.1 The right to access to information is "one of the most effective ways of upholding the constitutional values of transparency, openness, participation and accountability². 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.

- 3.2 Section 32 of the Constitution enshrines the right of access to information held by both public and private bodies. Section 32 gives 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.
- 3.3 PAIA came into force in in March 2001. It states that one of the objects of PAIA is to "foster a culture of transparency and accountability in public and private bodies."
- 3.4 PAIA gives 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.

4. THE OBJECTS OF PAIA

- 4.1 The objects of PAIA are 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 promotes 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).
- 4.2 The right of access to information is a 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.
- 4.3 The objectives of PAIA are -
- 4.3.1 to give effect to the constitutional right of access to
- 4.3.1.1 any information held by the State; and
- 4.3.1.2 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."

- 4.3.2 to give effect to that right -
 - 4.3.2.1 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
 - 4.3.2.2 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;
- 4.3.3 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;
- 4.3.4 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
- 4.3.5 generally, to promote transparency, accountability and effective governance of all public and private bodies by, including but not limited to, empowering and educating everyone -
 - 4.3.5.1 to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;
 - 4.3.5.2 to understand the functions and operation of public bodies; and
 - 4.3.5.3 to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

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

- 4.4.1 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.
- 4.4.2 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

- 4.4.2.1 access to his/her personal information; and/or
- 4.4.2.2 identity of all third parties, and/or categories of third parties, who have, or have had, access to the information.
- 4.4.2.3 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
- 4.4.2.4 the record of his/her personal information that the responsible party is no longer authorised to retain to be destroyed or deleted.
- 4.4.3 A responsible party may refuse to disclose any personal information requested, in accordance with the grounds for refusal of access to records.

5. MAKING A REQUEST FOR A RECORD

5.1 Getting Started: DCM PAIA Manual

- 5.1.1 This Guide assist employees to uphold their constitutional right to access to information. PAIA requires that DCM compile and make available a PAIA manual.
- 5.1.2 Before any person takes steps to access the information or records of DCM, this PAIA Manual is the first tool to read.
- 5.1.3 The PAIA manual is useful for a person to:
 - 5.1.3.1 check the nature of the records which may already be available without the need for submitting a formal PAIA request;
 - 5.1.3.2 have an understanding of how to make a request for access to information held by DCM;
 - 5.1.3.3 access all the relevant contact details of the person who will assist relevant stakeholders with the records any person intends accessing;
 - 5.1.3.4 know all the remedies available from DCM to which access to the records is being requested, before approaching the Regulator or the Courts;
 - 5.1.3.5 know the description of the services available to stakeholders from DCM and how to gain access to those services;
 - 5.1.3.6 know if DCM 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;

- 5.1.3.7 know if DCM has planned to transfer or process a person’s personal information outside the Republic of South Africa; and
- 5.1.3.8 know whether DCM has appropriate security measures to ensure the confidentiality, integrity and availability of the information which is to be processed.

5.2 Where to find PAIA manuals?

5.2.1 PAIA Manual of private bodies

- 5.2.1.1 DCM is also required to compile a PAIA manual.
- 5.2.1.2 A copy of this PAIA Manual is freely available upon request.
 - 5.2.1.2.1 on the shared electronic drive; at the office of the Human Resources Manager of DCM for public inspection during normal business hours;
 - 5.2.1.2.2 at the workplace for inspection during normal business hours;
 - 5.2.1.2.3 if a person wants a hard copy, Dwarsrivier Chrome Mine must make a copy.
 - 5.2.1.2.4 to the Regulator upon request.

5.3 Voluntary disclosure and automatic availability of certain records

- 5.3.1 Automatically available records are those that DCM 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 POPIA - REQUEST FOR INFORMATION DWR-HRMM(F)-01A
- 5.3.2 The Deputy Information Officer or his/ her delegate of DCM 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 5.3.4 below
- 5.3.3 Automatically available records of DCM may also be made available, in terms of section 52(1) of PAIA, but on a voluntary basis in accordance with paragraph 5.3.4 below.
- 5.3.4 A description of the categories of automatically available records must be made available -

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- (a) to the Information Regulator;
- (b) on the share electronic drive of DCM; and
- (c) for inspection, at the offices of DCM during normal office hours.

5.3.5 Note that the Regulator will upload the description of automatically available records of DCM on its website.

5.3.6 This list includes records that might be required to be made available by other laws, and any other records that DCM 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 DCM. Should a person wish to access records that fall within DCM's list of automatically available records, that person may merely request access to them without needing to complete POPIA -REQUEST FOR INFORMATION DWR-HRMM(F)-01A

6. CONTACT DETAILS OF INFORMATION OFFICERS

6.1 The Regulator has specific contact details of the DCM Information Officer (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.

6.2 The first place to find contact details should be DCM's (this) PAIA Manual. However, if a requester cannot find the manual, it can be found at the HR Service Centre.

7. PROCESS FOR MAKING A REQUEST FOR INFORMATION

7.1 The forms of request

7.1.1 A request for access to information can be made to DCM.

7.1.2 If you want to make such a request, you have to submit the request on the required form. POPIA -REQUEST FOR INFORMATION DWR-HRMM(F)-01A. Two forms can be used in pursuing the right to access to information (POPIA -REQUEST FOR INFORMATION DWR-HRMM(F)-01A and POPIA -INTERNAL APPEAL DWR-HRMM(F)-01B

Form 1	Form 2
This form can only be used if you want to request access to the records of DCM	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 DCM

7.1.3 These forms can be obtained from the shared electronic drive and / or Information Officer and/or Deputy Information Officer or his/ her representative.

7.2 Deciding whether a request relates to information held by DCM.

7.2.1 DCM performs a private function. It is very important to note that when submitting a PAIA request to DCM a person must state which right he is protecting or exercising by asking for this information. 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. An applicant has to state what the right is that he/ she wishes to exercise or protect, what the information is which is required and how that information would assist in exercising or protecting that right.

7.2.2 When the question of whether a record is a public or private record arise employees are advised to seek advice.

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

7.3.1 When explaining which right one is hoping to exercise when making a request to DCM, 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.

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

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

8. WHO CAN MAKE A PAIA REQUEST?

8.1 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.

8.2 A public body is considered a juristic person and may make a request for access to records held by DCM, but only if the public body is –

8.2.1 acting in the interests of the public, and

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

8.3 A requester cannot request access to a record of DCM containing personal

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information about the requester from DCM, however the requester or data subject can request from DCM a description of the personal information about the data subject held by DCM. This means that any person can request access to their personal information held DCM upon production of adequate proof of identity. The personal information that a requester may request from DCM may include information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.

8.4 Any person can request access to a record of DCM, containing personal information about the requester or the person on whose behalf the request is made.

9. TO WHOM CAN A REQUEST BE MADE?

9.1 The Information Officer of Assore designated a Deputy Information Officer, who must ensure that access to the records of DCM is as reasonably accessible as possible.

9.2 The request for access to information can be submitted to the Deputy Information Officer. Particulars of Deputy Information Officer of DCM can be obtained in this PAIA manual or from the Regulator.

10. COMPLETING THE FORM

10.1 POPIA -REQUEST FOR INFORMATION DWR-HRMM(F)-01A - request for access to a record of DCM:

10.1.1 In order to complete the PAIA form, a person needs to provide sufficient detail to allow the Deputy Information Officer or his/ her representative to identify the records the requester seeks.

10.1.2 PAIA Regulations specify the form to be used, which must be sent to the Deputy Information Officer or his/ her representative at DCM.

10.1.3 Requesters who are unable to read or write can make verbal requests to the Information Officer or Deputy Information Officer of DCM, who is then responsible for completing the POPIA -REQUEST FOR INFORMATION HR–DWR-HRMM(F)-01A on behalf of the requester. The form will require you to complete the following sections:

Information Required	Description
Particulars of DCM	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 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 it is applicable
Fees	No fee is to be paid for information requested from DCM if the request is made to supply the information in the business language, which is English. (see manner of access below). An amount for lengthy documentation/ reports in excess of 100 x A4 pages can be charged.
Form of access to record	This section allows you to note with a "✓" your preferences for the form of access to the record, it may be provided in a printed copy of record and/ or electronically (scanned, e-mail etc.)
Manner of access	If access is needed in the language of your preference 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 courier or postal.
Notice of decision regarding request for access	A space is provided for the requester to describe the manner in which he/ she wishes to be informed about the decision to grant or deny the request. The requester can specify the preferred method of contact. (I.e. by email, telephone, post, courier etc.)

Particulars of right to be exercised or protected	It is mandatory when requesting information from DCM that a requester describe the “particulars of right to be exercised or protected”. The requester must indicate the connection between the requested record, and the exercise or protection of the right. A requester cannot access a record of DCM unless he/ she specifies the right(s) he/ she intends protecting or exercising should access for information be granted. This can include the fact that after he/ she gains access to records, he/ she will then exercise his/ her right to equal protection.
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10.1.4 If for any reason the request does not comply with the requirements listed above, the Information Officer, Deputy Information Officer or his/ her delegate may not just refuse the request, unless the requester is notified about the intention to refuse the request and the reasons are provided. The Information Officer, Deputy Information Officer or his/ her delegate must also notify that the requester will be assisted to correct the error.

11. FEES INVOLVED

11.1 Generally, no fees need to be paid for making a request, only when a request is made for information not in the business language. DCM can charge the prescribed fees relating to the following categories -

Fees payable to DCM (Must be made at the finance department)

Item	Description	Payable Amount
1	The request fee payable by every requester	Free
2	Photocopy of A4 size page (in excess of 100 pages)	R 1-20/ additional copy
3	Printed copy of A4 size page (in excess of 100 pages)	R 1-20/ additional copy
4	For a copy in a computer-readable form on: <ul style="list-style-type: none"> Flash drive (to be provided by requestor) 	Free
5	For a transcription of visual images per A4 size page (in excess of 100 pages)	R 1-20/ additional copy
6	Copy of visual images (in excess of 10 images)	R 1-20/ additional copy
7	Transcription of an audio record, per A4 size page (in excess of 5 pages)	R 5-00/ page
8	Copy of an audio record on: <ul style="list-style-type: none"> Flash drive (to be provided by requestor) 	Free
9	Postage, e-mail or any other electronic transfer	Free

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

12.1 The role of the Information Officer and/or Deputy Information Officer or his/ her representative of DCM is to, in so far as it relates to the processing of requests for access to records:

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- 12.1.1 receive the PAIA or POPIA request;
 - 12.1.2 coordinate the processing of the request within DCM;
 - 12.1.3 make a decision as to whether to grant or refuse access to the records being requested; 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.);
 - 12.1.4 Advise 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, to search for records that cannot reasonably be completed within the original period;
 - 12.1.5 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
 - 12.1.6 inform relevant third parties through the third-party notification process, in terms of section 47 of PAIA; and
 - 12.1.7 if access to the records is granted, provide the requester with a copy of the record.
- 12.2 When notifying the requester about the decision, also outline the forms of options available and the relevant time-lines
- 12.3 The Information Officers and/or Deputy Information Officers must provide the assistance free.
- 12.4 Special tasks of the Information Officer and/or Deputy Information Officer or his/ her representative of DCM:

Information Officer and/or Deputy Information Officer or his/ her representative	Description
Assist with completing the form	The relevant role-player 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	The relevant role-player must provide the requester with any other information that may be relevant, even if not specifically requested.

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.
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12.5 If DCM is unable to find the particular records requested or believe that the records do not exist, submit a detailed affidavit or affirmation to the requester giving notice that the records in question do not exist or cannot be found, but also outline the steps taken to locate it.

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

13.1 The Information Officer and/or Deputy Information Officer or his/ her representative has an obligation to render 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 of the PAIA and section 23 of POPIA.

13.2 However, should the Information Officer and/or Deputy Information Officer or his/ her representative fail to comply with his/her duty, referred in paragraph 13.1 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.

13.3 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.

14. CAN THE INFORMATION OFFICER EXTEND THE TIMELINES INVOLVED?

14.1 An outline of the process and the key time-lines involved are contained in the diagram of the PAIA request process, in paragraph 21 below. Having specific time-lines is an important part of PAIA, as it fosters the effective management of requests for access to records.

14.2 Once request is submitted correctly the Information Officer and/or Deputy Information Officer or his/ her representative, to whom the request is made or transferred, must respond as soon as is reasonably possible but within 30 days. However, the Deputy Information Officer of DCM can approve a request of a single 30 day extension, but only if:

14.2.1 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 DCM;

14.2.2 the request requires a search through records in an office of a person who is not at the mine at that stage and could thus not be completed within the 30 days; and/or

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

14.3 The Information Officer and/or Deputy Information Officer or his/ her representative 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 -

14.3.1 Appeal to the relevant authority;

14.3.2 complain to the Regulator; or

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

15. RESPONSES TO A REQUEST FOR INFORMATION

15.1 Stake holders have the right to request access to records from DCM. DCM is required to disclose any information requested under the PAIA unless it falls under one of twelve (12) exemptions or reasons why access to records may or must not be granted and seven (7) exemptions or reasons why access to records may or must not be granted. The nineteen (19) exemptions provided for in PAIA are intended to protect interests such as personal privacy, national security, and law enforcement.

15.2 The guiding principle underlying the administration of PAIA is the belief of openness. DCM should also consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and must separate or hide the information that cannot be disclosed and disclose the rest.

15.3 Types of responses to requests

15.3.1 When a request for access to a record is made, the Information Officer and/or Deputy Information Officer or his/ her representative 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,

15.3.2 However, PAIA provides a list of reasons or grounds (see paragraphs 15.4 and 15.6 below) why the request may or must be refused.

15.3.3 Despite the reasons for refusal of access to records, the Information Officer must grant a request for access to a record of DCM if the public interest in the disclosure of the record clearly outweighs the harm contemplated in the listed reasons for refusal.

15.3.4 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 methods for refusal namely. Mandatory and Discretionary grounds for refusal.

15.4 Mandatory grounds of refusal (grounds of exemption)

15.4.1 With mandatory grounds, the Information Officer and/or Deputy Information Officer or his/ her representative must refuse a request because they apply to the record.

15.4.2 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 –

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

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM 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 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.

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

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM must not allow a requester access to the commercial information of another person (in other words, who is not the requester. This would include information like trade secrets, or that might threaten that third party’s commercial interests.

15.4.2.3 Mandatory protection of confidential information, and protection of other confidential information, of a third party;

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM 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.

15.4.2.4 Mandatory protection of safety of individuals, and protection of property;

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM 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. Mandatory protection of safety of individuals, and protection of property

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

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM must not allow a requester access to records already protected by section 60 of the Criminal Procedure Act. The Information Officer and/or Deputy Information Officer or his/ her representative of DCM 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.

15.4.2.6 Mandatory protection of records privileged from production in legal proceedings;

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM 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.

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

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM must not allow a requester access to a record if the record relates to research. That is research that will be, undertaken by DCM and its release would be likely to expose the researcher, the third party or the matter under research to a serious disadvantage.

15.4.3 If only a part of the record is linked to an exemption ground, the Information Officer and/or Deputy Information Officer or his/ her representative of DCM is under an obligation to consider whether partial disclosure of information is possible. Whenever it is determined that full, disclosure is not possible and they should take reasonable steps to separate or hide that part that cannot be released to the requester and grant access to the rest of the record.

15.5 Deemed refusal of request

15.5.1 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.

15.5.2 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.

15.6 Discretionary grounds of refusal

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

15.6.1.1 South Africa's defence, security and international relations:

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The Information Officer and/or Deputy Information Officer or his/ her representative 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.

15.6.1.2 Economic, financial and commercial interests:

The Information Officer and/or Deputy Information Officer or his/ her representative may refuse access if its release will be harmful to the economic and financial status of the Republic;

15.6.1.3 Operations of DCM:

The Information Officer and/or Deputy Information Officer or his/ her representative of DCM may refuse access if the release of the information could reasonably hamper operations. Requests may be refused if the processing of requests will be unreasonably time consuming and lead to a waste of resources. In addition a request to access record can be refused if the request is seen to be made by a requester to unnecessarily annoy or provoke.

16. MANDATORY DISCLOSURE OF RECORDS IN THE PUBLIC INTEREST

16.1 Even if a discretionary or mandatory ground for refusal exists in relation to a request for access to records of DCM, 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.

16.2 Where the importance of the public interest exists and the disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with, the law, the Information Officer and/or Deputy Information Officer or his/ her representative of DCM must grant a request for access to a record despite the existence of the exemption grounds.

17. THIRD PARTY NOTIFICATION PROCESS

17.1 The Information Officer and/or Deputy Information Officer or his/ her representative of DCM is required, in terms of sections 47 and 71 of PAIA, to take

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all reasonable steps to inform a third party about a request for his or her records that might be a record that contains either personal information,

17.1.1 a SARS record;

17.1.2 trade secrets;

17.1.3 Approving 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.

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

17.2.1 make written or oral representations to the Information Officer and/or Deputy Information Officer or his/ her representative why the request for access should be refused; or

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

17.3 It is important for the requester to note that the PAIA states that the written notices to the third party must be sent to the third party within 21 days of the request being received. The Information Officer and/or Deputy Information Officer or his/ her representative, must inform the requester that a notice has been sent to the third party

17.4 Once that notification has been sent, the Information Officer and/or Deputy Information Officer or his/ her representative must then make a final decision on whether or not to release the records within 30 days of that notice being sent.

17.5 The third party must be notified about the decision taken and adequate reasons for granting the request must be provided. The third party must be informed about the right and the procedure to challenge the decision as indicated in paragraph 18 below.

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

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

18.1.1 A requester can follow-up in writing, on the pending decision of an Information Officer and/or Deputy Information Officer or his/ her representative. All correspondence between a requester and the Information Officer and/or Deputy Information Officer or his/ her representative must be in writing for future reference purposes.

18.1.2 Internal appeals at DCM must be handled through the Grievance

Procedure (HR–OP–52) before approaching the Regulator or Court.

- 18.1.3 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.
- 18.1.4 A requester may challenge the following decisions of DCM –
 - 18.1.4.1 the form of access granted;
 - 18.1.4.2 the refusal of the request;
 - 18.1.4.3 the procedure (including the period) for lodging the internal appeal;
 - 18.1.4.4 inappropriate time extension taken to respond to a request for access;
 - 18.1.4.5 failure to disclose records;
 - 18.1.4.6 the granting of a request for access to a record;

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

- 18.2.1 The Information Officer and/or Deputy Information Officer or his/ her representative of DCM 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. The re-requested record cannot be deleted or destroyed, until such time that all or any proceedings in an internal appeal or a complaint to the Regulator or an application to court is finally determined.
- 18.2.2 This means that the Information Officer and/or Deputy Information Officer or his/ her representative cannot delete or destroy any information requested, pending any process prescribed in paragraph 18.2.1

18.3 To whom must the internal appeal be directed?

- 18.3.1 Appeals will be considered by DCM. An internal appeal must be delivered to the Information Officer and/or Deputy Information Officer or his/ her representative at the address or e-mail address listed in this document.
- 18.3.2 The Information Officer and/or Deputy Information Officer or his/ her representative has an obligation, in terms of section 75(4) of PAIA, to submit the appeal to the Employee Relations Office at the mine, together with his reasons for the decision under appeal. The submission of the

appeal to the relevant section must be done within 30 working days after receipt of the appeal.

18.4 Who can lodge an internal appeal?

- 18.4.1 Any requester whose PAIA request for access to the DCM records has been refused, and believes that one of the appeal grounds is applicable to the request, has the right to file an internal appeal.
- 18.4.2 Third parties can also file internal appeals against the decision made by an Information Officer and/or Deputy Information Officer or his/ her representative to grant access to a record that concerns them. If the internal appeal involves a third party, the Employee Relations section who received the internal appeal is required to notify those third parties (so the responsibility shifts from the Information Officer to the Employee Relations section).

18.5 Period within which to lodge an appeal

- 18.5.1 An internal appeal must be lodged-
- 18.5.1.1 within 48 hours after the decision was taken;
 - 18.5.1.2 within 30 days after notice is given to the third party of the decision appealed against
- 18.5.2 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 Employee Relations section. An example, such as being hospitalised for more than 30 days may be accepted as valid reason for being late.
- 18.5.3 If the Employee Relations section does not accept the late lodging of an internal appeal, it must provide the person lodging the appeal with reasons for rejecting the appeal and provide guidance of any additional information required in order to accept the appeal. The Employee Relations section must also advise the person appealing about the process to log a complaint against their decision with the Regulator or a court.
- 18.5.4 As indicated, the appeal must be submitted to the Employee Relations section by the Information Officer and/or Deputy Information Officer or his/ her representative within 48 hours after receipt of an internal appeal.

18.6 Notice of appeal by Employee Relations section to the requester or third party

- 18.6.1 The Employee Relations section must, as soon as is reasonably possible but in any event within 30 days after the receipt of the internal appeal, notify –
- 18.6.1.1 the third party to whom or which the record under appeal belongs, or
 - 18.6.1.2 the requester about the internal appeal against the granting of a request for access
- 18.6.2 A requester or a third party to whom or which notice is given, may within 30 days after that notice is given, make written representations to the Employee Relations section why the request for access should or should not be granted.

18.7 Decision on internal appeal and notice thereof

- 18.7.1 The Appeal chairperson must decide on the internal appeal as soon as reasonably possible but in any event within 30 days:
- 18.7.1.1 after the internal appeal is received by the Information Officer and/or Deputy Information Officer or his/ her representative of DCM;
 - 18.7.1.2 after a third party is informed.
- 18.7.2 The decision of the Appeal Chairperson must be communicated to the appellant, third party and the requester. The decision of the Appeal Chairperson must be accompanied by adequate reasons for the decision, including the provision of PAIA or POPIA relied upon.
- 18.7.3 If the Employee Relations section fails to give notice of the decision on an internal appeal to the appellant within 30 days after the Appeal Chairperson made a decision, 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.

18.8 Completing the internal appeal - POPIA –INTERNAL APPEAL DWR-HRMM(F)-01B

- 18.8.1 In order to appeal against any decision by the Information Officer and/or Deputy Information Officer or his/ her representative the requester must

lodge an internal appeal by completing POPIA –INTERNAL APPEAL DWR-HRMM(F)-01B). This must be handed to the Information Officer and/or Deputy Information Officer or his/ her representative who in turn will submit it to the Employee Relations section.

- 18.8.2 The Information Officer and/or Deputy Information Officer or his/ her representative of DCM is not under an obligation to help the requester complete the internal appeal form.
- 18.8.3 Below is the step-by-step process to complete the internal appeal form - Completing the internal appeal - POPIA –INTERNAL APPEAL DWR-HRMM(F)-01B

Information Required	Description
Particulars of DCM	This section should contain the name Information Officer and/or Deputy Information Officer or his/ her representative
Particulars of appellant who lodges the internal appeal	<p>The appellant must complete this section whether in representative capacity or not.</p> <ul style="list-style-type: none"> • The full names and surname, • Company number and/ or identity number • Capacity, in which the 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: <ul style="list-style-type: none"> ➢ the contact details of the requester ➢ postal address, ➢ email address, ➢ 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 a “✓”, which of the listed appeal grounds applies to the appeal.
Grounds for appeal	Under this section, the requester is required to:

	<ul style="list-style-type: none"> • Describe in detail why he/ she thinks the appeal grounds apply. • He/ She is required to provide reasons(s) why he/ she thinks the decision of the Information Officer is incorrect. • He/ She 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. • Additional pages submitted should be signed. • There must be sufficient reasons and supporting information to enable the Appeal Chairperson to make an informed decision. • Include an outline of everything that has happened in the run-up to the internal appeal. • On the separate page, 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 with a ✓.

18.8.4 DCM's PAIA processes are meant to be user-friendly removing the need for a lawyer and for legal fees to be incurred.

19. COMPLAINT TO THE INFORMATION REGULATOR

19.1 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 Appeal Chairperson. This means that one can only submit a complaint, against DCM to the Regulator if not happy with the decision of the Appeal Chairperson. The Regulator will reject the complaint if an appeal process to DCM has not been completed.

19.2 However, a requester or third party may submit a complaint to the Regulator, if not satisfied by the decision of DCM.

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

19.4 A requester may lodge a complaint with the Regulator, if not happy with –

19.4.1 the outcome of an internal appeal

19.4.2 a decision of the Employee Relations section to disallow the late lodging of an internal appeal;

- 19.4.3 a decision of the Information Officer and/or Deputy Information Officer or his/ her representative
- 19.4.3.1 refuse a request for access; or
 - 19.4.3.2 extend a period to deal with request; or
 - 19.4.3.3 grant access in a particular form.
- 19.5 A third party may lodge a complaint with the Regulator, if not happy with –
- 19.5.1 the outcome of an internal appeal
 - 19.5.2 a decision of the Information Officer and/or Deputy Information Officer or his/ her representative to grant a request for access
- 19.6 How to complain to Regulator
- 19.6.1 Complaints to the Regulator must be made in writing and a complaint form must be completed, either manually or online. A complaint form can be downloaded from the Regulator's website, <https://www.justice.gov.za/inforeg/>
 - 19.6.2 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.
 - 19.6.3 If the decision of the Information Officer and/or Deputy Information Officer or his/ her representative of DCM is challenged, sufficient evidence must be provided to prove that the record requested is required for the exercise or protection of any other right(s). Access to the records of DCM can only be granted if it can be proved that the intention is exercising or protecting any other right(s) with the record requested.

19.7 What happens after receipt of the complaint by the Regulator?

- 19.7.1 Upon receipt of a complaint, the Regulator must -
 - 19.7.1.1 investigate the complaint and refer its findings to the Enforcement Committee for a decision; or
 - 19.7.1.2 take no action on the complaint due to the fact that –
 - 19.7.1.2.1 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;
 - 19.7.1.2.2 the complaint is playful or annoying or not made in

good faith; or

19.7.1.2.3 having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

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

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

19.8 Regulator’s first communication to the complainant and Information Officer regarding the complaint lodged

19.8.1 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.

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

19.8.3 Upon receipt of a complaint, the Regulator will forward the details of the complaint to the Information Officer of Assore, and request him to submit to the Regulator, a written response to the complaint.

19.9 Investigative powers of the Regulator

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

19.9.1.1 use its best endeavours to secure such a settlement;

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

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

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

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

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

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

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19.10 Assessment of compliance with the provisions of PAIA

19.10.1 The Regulator may conduct an assessment on whether DCM generally complies with the provisions of this PAIA.

19.10.2 The Regulator may randomly conduct a compliance assessment on DCM, of its own decision; however, the Regulator can also conduct the compliance assessment upon request by or on behalf of the Information Officer of DCM or any other person. This means that any person may request the Regulator to conduct compliance assessment on DCM. A person can also submit an anonymous request to conduct a compliance assessment, by requesting to remain anonymous.

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

19.11 Information Notice

The Regulator may serve the Information Officer of DCM with an Information Notice requiring DCM 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.

19.12 Establishment of Enforcement Committee

19.12.1 The Regulator is required to establish an Enforcement Committee, which has powers to -

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

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

19.13 Enforcement Notice

19.13.1 The Regulator may, after having considered the recommendations of the Enforcement Committee, serve the Information Officer of DCM with an Enforcement Notice

- 19.13.1.1 confirming, amending or setting aside the decision which is the subject of the complaint; or
- 19.13.1.2 Requiring the Information Officer to take such action or to refrain from taking such action as the Information Regulator has specified in the notice.

19.14 What are the consequences for non-compliance with Enforcement Notices?

- 19.14.1 An Information Officer 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.
- 19.14.2 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 as far as promotion of right of access to information is concerned.

20. APPLICATION TO COURT

20.1 Who can file an application to court against a decision?

- 20.1.1 requester or third party may only apply to a court for appropriate relief in terms of section 82 in the following circumstances:
 - 20.1.1.1 After that requester or third party has exhausted the internal appeal process; or
 - 20.1.1.2 After that requester or third party has exhausted the complaints procedure
- 20.1.2 In terms of section 78(1) of PAIA, a requester or a third party has two options, either to refer a decision, 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
- 20.1.3 However, for the Court to have jurisdiction to adjudicate the matter, a requester or a third party must –
 - 20.1.3.1 be aggrieved by either of the decisions; or

20.1.3.2 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 complaint is still pending with the Regulator

20.1.4 If the decision of the Information Officer of DCM is challenged, sufficient evidence needs to be provided to prove that the record requested is required for the exercise or protection of any other right(s).

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

20.2.1 An application to Court by a requester or third party, who is either unsuccessful in an internal appeal to the Employee Relations section of the DCM, or aggrieved by a decision of the Information Officer of DCM or that of the Regulator must be filed within 180 days from the date of the applicable event.

20.2.2 The Information Officer of DCM 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.

20.2.3 If a requester, third party, or DCM, feels aggrieved may apply to court to have any of the decisions reviewed by the Court.

20.2.4 An application to Court under PAIA is done through civil proceedings; this should be used as a last resort.

20.2.5 Cases for access to information can be heard before the Magistrate's Courts, as a court of first instance, and the High Court, which has jurisdiction.

20.2.6 Failing to bring the application within a period of 180 days may be condoned by the Court if it is shown that the interests of justice is required. 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. 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.

20.2.7 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 or an incomplete record has been furnished, by

the administrator.

20.2.8 If the record has already been furnished, the application shall be brought in terms of rule 55 Magistrates' Court Rules. If the applicant believes the administrator did not provide the full record of proceedings, the applicant may proceed in accordance with the procedure set out in Rule 53 of the High Court Rules. He/ She must indicate in an affidavit why there is reason to believe that the full record was not provided.

20.3 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.

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

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

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

20.4.4.2 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;

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

20.4.4.4 make an order of costs against any party;

20.4.4.5 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.

22. REGULATIONS MADE IN TERMS OF SECTION 92 OF PAIA

22.1 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 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 -

- 22.1.1 Obligations of Information Regulator (Regulation 2)
- 22.1.2 Obligations of information officer (Regulation 3)
- 22.1.3 Automatic availability of certain records of public body (Regulation 4)
- 22.1.4 Voluntary disclosure and automatic availability of certain records of
- 22.1.5 Availability of records of political parties (Regulation 6)
- 22.1.6 Request for access to information (Regulation 7)
- 22.1.7 Outcome of request and fees payable (Regulation 8)
- 22.1.8 Internal appeal against decision of information officer of public body (Regulation 9)
- 22.1.9 Lodging of complaints (Regulation 10)
- 22.1.10 Procedure regarding investigation of complaints (Regulation 11)
- 22.1.11 Settlement of matter (Regulation 12)
- 22.1.12 Conciliation of matter (Regulation 13)
- 22.1.13 Assessment (Regulation 14)
- 22.1.14 Electronic communication (Regulation 15)
- 22.1.15 Offences and penalties (Regulation 16)

23. KEY LEGISLATIONS REGULATIONS


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

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DOCUMENT CONTROL

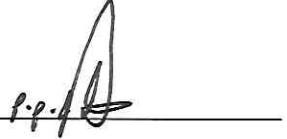
Originator:	Cilliers le Roux
Approved by:	Esther Sibuyi
Date requested:	2023/07/31

CHANGE CONTROL

Change Request Number	<p style="text-align: center;">DETAILS OF CHANGES MADE TO MANAGEMENT MANUAL</p>
	New Manual.

DOCUMENT APPROVAL

Human Resources Manager: 

General Manager: 

Date: 08/08/23

Document Status	Controlled	Date Converted	2023/08/01
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