

Guide on how to use the
**Promotion of Access
to Information
Act 2 of 2000**



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Guide on how to use the
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ENGLISH

Finding your way around the PAIA Guide

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Using this Guide

Key

- Yellow boxes:** These highlight noteworthy points and frequently asked questions.
- Grey boxes:** These highlight amendments that will be made once the Protection of Personal Information Act is fully in effect.
- Underlined word:** An underlined word is used on the first mention of a word referred to in the 'useful terms' section to help outline their meaning.
- Bold and maroon:** This is used to highlight a time sensitive part of the PAIA process.

Acronyms

DIO	Deputy Information Officer
IO	Information Officer
PAIA	Promotion of Access to Information Act, 2000
PAJA	Promotion of Administrative Justice Act, 2000
POPIA	Protection of Personal Information Act, 2013
PRASA	Passenger Rail Agency of South Africa
SAHRC	South African Human Rights Commission
SARS	South African Revenue Services

Useful Terms

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.
Authorised Person	The authorised person is the person who is making a request on behalf of someone else, and 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.
Days	Unless specified as a 'working day' in a section in PAIA, a day is considered to be a calendar day. To calculate the time period, it should not include the day on which the request is received, but should include everyday thereafter (including weekends and public holidays). If the final day for responding to a request (the 30th day or any extended period for responding, up to 60 days) falls on a Sunday or public holiday, then the required date for responding is the following day.
Deemed Refusal	If no response is received to a request within the prescribed time, this is defined as a 'deemed refusal'.
Form A	The Form A is prescribed by regulation and should be used to request access to information held by a public body.
Form B (internal appeal)	The Form B is prescribed by regulation and should be used when appealing a decision made by a public body in relation to a request for information.
Form C	The Form A is prescribed by regulation and should be used to request access to information held by a private body.
Guide	This Guide, made in pursuance of section 10 of PAIA, seeks to assist requesters in exercising their right to access information.
Information Officer and Deputy Information Officer	<p>The Information Officer is the person authorised to handle PAIA requests. For a public body, this is the administrative head. For example, it is a national department's Director-General, or the municipality's municipal manager. For a body such as the South African Human Rights Commission, it would be the CEO.</p> <p>It is worth noting that provincial departments have an Information Officer for both their administrative and organisational components. So, if you have a request for the administration it should be sent to the Office of the Premier, but provinces also have departments similar to national government, such as Sports & Recreation, or Treasury.</p> <p>The Deputy Information Officer is the person designated 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.</p> <p>PAIA does not provide for private bodies to designate a Deputy Information Officer; however the SAHRC recommends that they do so for efficiency and convenience.</p>

Information Regulator	The Office of the Information Regulator has been created to monitor and enforce compliance in relation to both POPIA and PAIA and will take over the SAHRC's responsibilities in terms of PAIA in 2021.
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 in court.
Minister	This refers to the Minister of Justice and Constitutional Development.
Personal Information	<p>PAIA provides a broad definition of what information constitutes 'personal information'. Specifically, PAIA defines personal information as being information about an identifiable individual, including, but not limited to-</p> <ol style="list-style-type: none"> a. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual; b. information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved; c. any identifying number, symbol or other particular assigned to the individual; d. the address, fingerprints or blood type of the individual; e. the personal opinions, views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual; f. correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; g. the views or opinions of another individual about the individual; h. the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and i. the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual, j. but excludes information about an individual who has been dead for more than 20 years.
Private Body	A private body is a person, company or other kind of juristic entity, that carries on a trade, business or profession.
Public Body	A public body means a government department or other functionary or institution, which is performing a public function.
Record	A record is any recorded information regardless of the form, including, for example, written documents, video materials etc. 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.
Relevant Authority	PAIA uses the term the ‘relevant authority’ to define the person within a public body to whom an internal appeal must be lodged, which is generally the political head of the body concerned (this function can be officially delegated).
Requestee	The requestee is the person (either IO or DIO), or entity, to whom you are making a request.
Request Fee	This request fee is the fee charged for making a request for information. What can be charged is prescribed by regulation, but is currently R35 for a request from a public body and R50 for a request to a private body.
Requester	The requester refers to the person who is asking for the record from a public or private body. It includes the person making a request on behalf of someone else.
Third Party	A third party is any natural or juristic person who is not the requester of the information, nor the body to whom the information request is made.

The Protection of Personal Information Act

POPIA will amend the definition of personal information in relation to PAIA, though these changes are not yet in effect. The new definition will be: **‘personal information’** means information relating to an identifiable natural person, including, but not limited to-

- a. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- b. information relating to the education or the medical, financial, criminal or employment history of the person;
- c. any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assigned to the person;
- d. the biometric information of the person;
- e. the personal opinions, views or preferences of the person;
- f. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- g. the views or opinions of another individual about the person; and
- h. the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person,

but excludes information about an individual who has been dead for more than 20 years.

SAHRC IO and DIO details

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Section 1

Introduction

This section includes:

- 1.1 The purpose of this PAIA Guide

- 1.2 About PAIA

- 1.3 PAIA: other rights and laws

- 1.4 The role of the South African Human Rights Commission

1.1 The purpose of this PAIA Guide

This **Guide** provides information on the Promotion of Access to Information Act of 2000 (PAIA). It will assist people in making requests for information under PAIA, and provides examples on how PAIA has been used in the past to advance human rights. Using the key outlined at the beginning, the Guide will assist **requesters** in:

- » Understanding PAIA, its benefits and background.
- » Learning the process by which to make a request step-by-step, and additional tips for making that process easier.
- » Learn the types of information which can be requested using PAIA.
- » Understand the process by which a requester can challenge a decision taken in relation to their request.
- » Being introduced to the changes that will occur to PAIA once POPIA is fully operational.

1.2 About PAIA

The right of people to access information is an important, and empowering, right. 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.

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. The right has been given effect through the passage of PAIA into law in 2000.

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 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.

1.3 PAIA: other rights and laws

The right of access to information is a very powerful right, as it helps you realise your other rights. You can use PAIA to access, for instance, **records** on pollution levels in your area to help monitor the environment for your community. You can use it to help you monitor and assess the delivery of government services, or to access historical records that might be of interest.

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 you an avenue for accessing information that is *less onerous* than PAIA, can be used instead. For instance, section 26 of the Companies Act provides a person who has a beneficial interest in a company a right to inspect a large variety of financial type documents of that company.

Another important law to remember when considering access to information is the Promotion of Administrative Justice Act. PAJA allows you to request written reasons for a decision that affects you, if that decision was made by a public body.

1.4 The role of the South African Human Rights Commission

The SAHRC has a very important role in relation to PAIA. The SAHRC is mandated by the law under Part 5 and other sections to:

- » Promote the right of access to information and assist the public in using PAIA where reasonably possible to do so,
- » Monitor, and further, the implementation of PAIA by public and private bodies (which includes promoting ways to make information available and timely in an effective way),
- » Make recommendations to strengthen PAIA, and
- » Report annually to Parliament.

The Protection of Personal Information Act

POPIA will amend the role of the SAHRC in relation to PAIA, though these changes are not yet in effect. All the functions of the SAHRC enumerated in PAIA will move to the Office of the **Information Regulator** in 2021, which will also have additional enforcement powers. The Office of the Information Regulator is an independent body that will handle both access to information and privacy issues. The SAHRC will still maintain its broader constitutional obligations to promote, protect and monitor the right of access to information, alongside other rights enshrined in the Bill of Rights. This means that, even once POPIA is fully in effect, the SAHRC and Information Regulator will work closely alongside one another.

Section 2

Making a request for a record: before you begin

This section includes:

- 2.1 Getting started: PAIA Manuals

- 2.2 PAIA Manuals of private bodies

- 2.3 Automatically available information

2.1 Getting started: PAIA Manuals

PAIA is meant to give effect to your information rights in an accessible way. It is designed to empower people to use the law, and so helps to facilitate requesting in different ways. One does not need a lawyer to make a request for information in terms of PAIA. While this Guide has been published to assist South Africans from all walks of life to uphold their constitutional right of access to information, there are other sources of information that can also assist you in making a request.

PAIA requires that all public bodies, and some private bodies, compile and make available a PAIA manual. At its most basic, this PAIA manual is useful for:

1. Checking what records may already be available without the need for submitting a formal PAIA request,
2. Getting an understanding of how to make a request to a body, and
3. Getting all the relevant contact details of the person to whom you make your request.

Where do I find these manuals?

All public bodies must make the manual easily available to you. At the very least, they are required to make a copy available at every office of that particular public body during office hours; and make it available on the relevant website of the body.



What about other public bodies that aren't part of national, provincial or local?

All public bodies must have a PAIA manual. However, the PAIA manuals are meant to include information on a department's structures. So, many of the national government department PAIA manuals include the contact details for information officers of other public bodies that it might oversee and can be another place to look for details.

Protection of Personal Information Act

POPIA will amend the requirement for PAIA manuals by removing the obligation to submit the manuals to the SAHRC, though they will need to be online and available on request. Currently regulations require that PAIA manuals be lodged with the SAHRC.

2.2 PAIA Manuals of private bodies

Private bodies are also required to compile a PAIA manual (in terms of section 51 of PAIA). However, the Minister can exempt them from this obligation. Currently until 31 December 2020, the Minister has exempted all companies from this obligation, except those who have over 50 employees and their annual turnover equal to or over the stated amounts:

COLUMN ONE	COLUMN TWO
Agriculture	R6 million
Mining and Quarrying	R22.5 million
Manufacturing	R30 million
Electricity, Gas and Water	R30 million
Construction	R15 million
Retail and Motor Trade and Repair Services	R45 million
Wholesale Trade, Commercial Agents and Allied Services	R75 million
Catering, Accommodation and other Trade	R15 million
Transport, Storage and Communications	R30 million
Finance and Business Services	R30 million
Community, Special and Personal Services	R15 million



Does this exemption mean that private bodies are exempt from PAIA?

You can still submit a request to a private body (see Section 3 of the Guide). The exemption just means that those private companies don't have to provide a manual. Remember too, that not all private bodies are companies. However, it may still be worthwhile checking their website, as many larger companies create a PAIA manual regardless.

2.3 Automatically available records

A public body must include within the PAIA manual a list of records that are automatically available. **Automatically available records** are those that a body will provide to you without the need for you to submit a PAIA request (in other words, you can just request it without completing a PAIA form). 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. Also called a 'voluntary disclosure notice', the list must be published in the Government Gazette, and should be updated every year. You should check to see if the records you are thinking of requesting fall under this list, to avoid having to formally comply with PAIA if you do not have to. A change will soon be made to PAIA that will also specifically require the heads of political parties to record and preserve records of their private donations, which will need to be made open without you having to file a request.

Do private bodies have to do a voluntary disclosure notice?

Private bodies do not have to make such a list, but they might anyway. If they chose to, then they should submit the list to the Minister so it can be published.

The Protection of Personal Information Act

POPIA will amend the requirements on PAIA manuals and automatically available records. Once POPIA is fully in force, the PAIA manuals of a public body will need to be made available to the Information Regulator only on request (currently Regulations state it must be made available to the SAHRC), and made available at the head office of the public body and on its website. The voluntary disclosure notice of a public body will also not be required to be submitted to the Minister for publication (though it will still need to be in the PAIA Manual).

For private bodies, the PAIA manuals of private bodies will need to be made available to the Information Regulator on request, and made available at the main place of business, and on its website. The voluntary disclosure notice of a private body will remain voluntary and, if it exists, there is no requirement to submit it to the Minister.

Section 3

Making a request for information: the process

This section includes:

- 3.1 The forms of request
- 3.2 Deciding whether your request is a private or public body request
- 3.3 Who can make a PAIA request
- 3.4 Completing the Form
- 3.5 The fees involved
- 3.6 Will the Information Officer help me make a PAIA request?
- 3.7 Can the Information Officer extend the timelines involved?

3.1 The forms of request

A request for access to information can be made to both public and private bodies. 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). The person making the request is known as the 'requester'. PAIA creates three forms:

FORM A	FORM B	FORM C
The request form A is the form you use to make the request to a public body and is the form you will use the most in practice.	The form B is the form you use to submit an internal appeal to a public body.	The request form C is the form you use to make the request to a private body.

These forms should be available on the websites of both public and private entities. They can also be found on the SAHRC website at www.sahrc.org.za.

3.2 Deciding whether your request is a private or public body request

Whether you should use a Form A or Form C depends on whether you want information from a private or public body.

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 such as Eskom, or PRASA.

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 you must state which right you are protecting or exercising by asking for this information. In contrast, when submitting a PAIA request to a public body, you do not have to have a reason for requesting the information.

How do I explain what right I am hoping to exercise or protect?



When explaining which right you are hoping to exercise by making your request to a private body you *cannot* refer to your right of access to information. So, you have to explain how the record you are asking for is reasonably required for you to protect, or exercise, another right. This could include rights that are not just constitutional rights. You 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 your right to the environment through monitoring its activities. Or you may require records, which will help you determine if you have a right to file a civil claim against an entity. You therefore need to:

1. Specifically identify the right you hope to protect or exercise, and then
2. Explain clearly why the record you are asking for is reasonably required to help you with that right.

3.3 Who can make a PAIA request

Any person is allowed to make a request under PAIA. The requester can be:

» **Natural person**

A person does not have to be a South African citizen or a resident of South Africa.

» **Juristic person**

This can be a business or organisation.

» **Authorised person**

An authorised person can request the **personal information** about the person that has authorised them to do so.

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 (1) acting in the interests of the public, and (2) if the records are required to fulfil or protect any rights other than those of the public body.

3.4 Completing the Form

In order to complete the PAIA form, you need to provide sufficient detail to allow the IO to identify the records you seek. Regulations specify the form used, which must be sent to the Information Officer, Deputy Information Officer or head of the public or private body. Requesters who are unable to read or write can make verbal requests to the IO or DIO of a public body, who is then responsible for completing Form A 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 contact details 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 person on whose behalf request is made	This section only needs to be completed by a requester who is requesting information for another person.
Particulars of record	This should contain enough information about the record to make it reasonably easy to identify. Additional paper 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	A space is provided for you to describe why you believe you should be exempted from fees. [See Section 3.5 of the Guide]
Form of access to record	This section allows you to note with an 'X' your preferences for the form or manner that the record should be provided in, such as if you want a copy of a record, or perhaps just an opportunity to inspect the record. In addition, in this section you 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).
Notice of decision regarding request for access	A space is provided for you to describe the manner in which you wish to be informed about the decision to grant or deny the request. You can specify for instance that you would prefer to be contacted by email, or by telephone.

What is different about the form used for a request to a private body?



Because of the different nature of private and public body requests, the Form C – in addition to all the same categories of information asked for above – also has a section for you to describe the ‘[p]articulans of right to be exercised or protected’. Here you must state the right you are implicating (such as your right to a healthy environment) and why the record you are requesting will help you either exercise, or protect, that right. You must show a connection between the record you want, and the exercise of the right.

3.5 The fees involved

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. How much can be charged for any of these fees is prescribed by Regulations.

When you make a request, the body can charge the following as a request fee:

	PUBLIC BODY	PRIVATE BODY
Request Fee	R35	R50

You do not need to pay an **access fee**, however, to a public body if:

- » You are requesting your personal information, or
- » You are a single person whose annual income is less than R14 712 a year, or
- » You a married and your joint income is less than R 27 192 per year.

If you are granted access to the records you request, an IO or DIO can charge you a request fee to cover the cost of reproducing the records and providing them to you, but the charges are limited to the following:

	PUBLIC BODY	PRIVATE BODY
Copy of an A4-size page or part thereof	R0, 60c	R1,10c
Printing per A4 page	R0, 40c	R0,75c
Copy on a CD	R40	R70
Transcription of visual images per A4 page	R22	R40
Copy of a visual image	R60	R60
Transcription of an audio record per A4 page	R12	R20
Copy of an audio recording	R17	R30
Search and preparation of the record for disclosure	To search for and prepare the record for disclosure, R15,00 for each hour or part of an hour, excluding the first hour, reasonably required for such search and preparation	To search for and prepare the record for disclosure, R30,00 for each hour or part of an hour reasonably required for such search and preparation
Postage	The actual postage is payable.	The actual postage is payable.

The **requestee** can request in a formal notice a deposit from the requester if they believe a request will take more than six hours, but this cannot be more than one-third of the fee.

3.6 Will the Information Officer help me make a PAIA request?

The role of the IO and/or DIO of both public and private bodies is to:

- » Receive the PAIA request.
- » Coordinate the processing of the request within the body.
- » Make a decision as to whether to grant access to the records being requested.
- » Liaise with the requester (e.g. they may need to ask the requester for more details, may need to request an extension of time to deal with the request, etc).
- » Advise the requester of the outcome of their PAIA request (which must be made **within 30 days** after receiving the request).
- » Provide the requester with reasons for the decision made. It is very important that the reasons given for a refusal are clear and detailed and must include the specific sections of the grounds used (see Section 4.2 of the Guide).
- » Inform relevant third parties through the **third party** notification process (see Section 4.5 of the Guide).
- » If the records are granted, provide the requester with a copy of the record.

- » When notifying the requester about the decision, also outline the forms of recourse available and the relevant timelines (the recourse available is different for public and private bodies) (see Section 5 of the Guide).

Because the role of the IO and DIO is to facilitate PAIA, this also means they have a variety of duties to those making a request. They must give this assistance for free. Public body IO or DIOs (but not private body IO or DIOs) have the following special tasks:

DUTIES OF INFORMATION OFFICERS	DESCRIPTION
Assist with completing the form.	The IO 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 been refused.
Provide relevant information.	If it is reasonably possible, the IO 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 IO must transfer the 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 IO must then respond with a decision within 30 days .
Deferral of release.	The IO 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.

With both public and private bodies the IO must, if they are unable to find the particular records requested or believe that the records do not exist, submit a *detailed affidavit* 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 try and locate them.

How do I find the contact details of the IO and DIO?



Getting the correct contact details is often a very challenging part of making a PAIA request, as roles change frequently in the public sector. The first place to find contact details should be the body’s PAIA Manual. However, if you can’t find the manual, calling the switchboard of the body to ask for the relevant details may also assist. For municipalities, the South African Local Government Association places the contact details for municipalities here: <http://www.salga.org.za/Municipalities%20MCD.html>. Government communication also provides national and provincial contacts here: <https://www.gov.za/about-government/contact-directory>. Always remember that the definition of the IO helps you identify whose contact details you will need to find.

3.7 Can the Information Officer extend the timelines involved?

An outline of the process and the key timelines involved is contained in the Diagram on page 35 of this Guide. Having specific timelines is an important part of PAIA, as it fosters the effective management of requests. As a reminder, once you have submitted your request correctly the IO or DIO must respond to you **within 30 days**. However, public and private body IOs can request a *single 30 day extension*, but only if:

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

The information officer must notify you of their intention to extend the normal time period stating the period of extension, the reason for the extension, and notifying you of your right to appeal this extension in the relevant form (this will be different for private and public bodies, see Section 5 of the Guide).

Section 4

Responses to a request for information

This section includes:

- 4.1 Types of responses to requests

- 4.2 When may a request be refused?

- 4.3 When must a request be refused?

- 4.4 What is the public interest override?

- 4.5 What is a third party notification process?

4.1 Types of responses to requests

When a request is made, the IO or DIO might grant your request and give you access to the record. However, PAIA also lists reasons why a request may or must be refused. This is important, as your request can *only* be refused on the basis of one of these listed grounds. There is also a public interest override that could override grounds for refusal in certain circumstances.

PAIA creates a presumption of openness. Thus, any reason for limiting this openness must be justifiable.

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: discretionary or mandatory grounds. Below we consider the different grounds in more detail, but you might wish to refer to the specific grounds as they are set out in the law. They are contained in Chapter 4 of Part 2 for public bodies and Chapter 4 of Part 3 for private bodies. You can access a copy of the law at www.sahrc.org.za. You should note that the listed grounds for refusal are somewhat different between public and private bodies.



What if only part of the record is linked to an exemption ground?

The IO or DIO of both a public and private body is under an obligation to, if reasonably possible, sever (or cut out) that part that cannot be released to the requester and then grant access to the rest.

What if you simply receive no answer to your request?

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 you to challenge a decision then even when no decision has been made and you have just been ignored. You would merely state in your internal appeal that no response was received.

4.2 When may a request be refused?

With discretionary grounds, an IO or DIO *may* consider whether or not to refuse a request because the grounds apply to the record requested. Because it is a discretion, the IO must apply their mind and stay objective in considering the different grounds, which are:

1. **South Africa's defence, security and international relations:** The IO of a public body 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 our relations with another country, such as revealing records they supplied in confidence.

2. **Economic, financial and commercial interests:** The IO of a public body may refuse access if release will be harmful to the economic and financial status of the Republic. Similarly, the IO of a private body may refuse access to records if the records contain that body's commercial information, like trade secrets.
3. **Operations of public bodies:** The IO of a public body may refuse access if the release of the information could reasonably hamper operations, like if it is trying to formulate a policy, or deliberate on an issue.
4. **Manifestly frivolous or vexatious requests:** The IO of a public body may refuse a request for information if they are of the opinion that processing requests will be unreasonably time consuming and lead to 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.

4.3 When must a request be refused?

With mandatory grounds, an IO or DIO *must* refuse a request because the grounds for refusal apply to the record. There are more mandatory grounds than discretionary grounds, but they can be summarised as:

1. **Privacy of a third party:** The IO of both a private and public 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 couldn't apply, like when records are already public, or where a person has given consent. The consent issue is particularly important as it connects to another part of the process you should be aware of, which relates to third party notifications, which can be read about in Section 4.5 of the Guide.
2. **Certain records of SARS:** The IO of a public body must not allow a requester access to records obtained, or held, by SARS for its revenue collection purposes.
3. **Commercial information of a third party:** The IO of both a private and public 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.
4. **Confidential information:** The IO of both a private and public 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. Unlike a public body, a private body can still use this section without a third party notification procedure (see Section 4.5 of the Guide).
5. **Safety of individuals and property:** The IO of both a private and public 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 IO of a public or private body may refuse access if it would be likely to impair the security of a building or property.
6. **Police dockets, law enforcement and other legal records:** The IO 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 IO of a public body may refuse access to records of law enforcement that reveal its methods for prevention of crimes, or prosecution, as well as certain other records relevant to legal proceedings that are happening.
7. **Legal privilege:** The IO of both a private and public 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.
8. **Research Information:** The IO of both a private and public 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 expose them to a serious disadvantage.

4.4 What is the public interest override?

Even if a discretionary or mandatory ground exists in relation to a request, there is always the possibility that an override could exist, which means that the record should be released anyway. The public interest override means that, even if certain of the exemptions might apply, the IO of a public or private body *must* grant your request for access if they can see that the release of the record would reveal evidence of—

- i) a substantial contravention of, or failure to comply with, the law; *or*
- ii) an imminent and serious public safety and environmental risk; *and*

the public interest in the release of the record clearly out-weighs the harm contemplated in the provision in question.

4.5 What is a third party notification process?

PAIA requires of an IO or DIO of both public and private bodies that they inform third parties about requests they are considering that relate to them under certain exemption grounds, and it outlines a process for how they should do that. This notice hopes to give those third parties an opportunity to make their own submissions in relation to whether or not that request should be refused (though the final decision always rests with the IO or DIO).

Importantly for the requester, PAIA says that the written notices involved must be sent to the third party **within 21 days** of the request being received, and that the IO or DIO must inform the requester that they are doing so. Once that notification has been sent, the IO or DIO must then make a final decision on whether or not to release the records **within 30 days** of that notice being sent.

Section 5

Legal remedies against decisions

This section includes:

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

5.2 Internal remedies

5.3 Court and other remedies

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

A requester can take follow-up action on the decision of an IO or DIO on several types of decisions, but the avenues are different for public and private bodies. For a public body, you must first submit an internal appeal, but private body requests have no internal appeal. You can challenge a decision, which:

1. Denies you access to a record.
2. Provides the record, but not in the form requested.
3. Extends the time to respond to a request.
4. Charges a request fee or an access fee.

This section will explain the legal remedies available to requesters who wish to challenge such decisions, which include internal appeals and applications to court.

5.2 Internal remedies

5.2.1 How do you appeal internally against a public body's decision?

When a requester is unhappy with a decision made by the IO of a public body, the requester has the right to file an internal appeal. An internal appeal involves a different political actor, known as the **relevant authority**, reviewing the decision of the IO to see if it was correct. If the relevant authority approves of the IO's decision, then the internal appeal is denied and the original decision stands. If the relevant authority disagrees with the IO's decision, then the appeal is granted and the original decision is overturned.

It is important to note that you can only submit an internal appeal to national, provincial and municipal government departments. No internal appeal procedure is available for other public bodies. So for example, the City of Cape Town is an example of a municipal government department against which an internal appeal can be submitted. The Road Accident Fund is an example of a public body which is not part of national, provincial or local government as it is set up by legislation (the Road Accident Fund Act), and therefore an internal appeal cannot be lodged against them.

5.2.2 Who can lodge an internal appeal?

Any requester who makes a PAIA request to a national, provincial or municipal public body, and believes one of the four review grounds is applicable to their request, has the right to file an internal appeal.

Third parties can also file internal appeals against the decision made by an IO to grant access to a record that concerns them. If the internal appeal involves a third party, the public body that has received the internal appeal is responsible for notifying those third parties (so the responsibility shifts from the IO to the relevant authority).

Note: If the response from the public body is a deemed refusal, you must still file an internal appeal as per the processes outlined here before you can go to court.

5.2.3 Completing the internal appeal Form B

To lodge your internal appeal, you must first complete the Form B. An internal appeal must be filed by the requester **within 60 days** of receiving the refusal for the original PAIA request. The Form B is submitted to the same IO or DIO that made the original decision, who is then required to forward it to the relevant authority.

These forms should be available on the websites of both public and private entities. They can also be found on the SAHRC website at ww.sahrc.org.za. The IO or DIO is not under an express obligation to help a requester complete the form, so the sections to be completed should be noted:

INFORMATION REQUIRED	DESCRIPTION
Particulars of public/private body	This section should contain the relevant contact details of the IO or DIO to whom you sent the original request.
Particulars of requester/third party who lodges the internal appeal	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. This information should be the same as in your original request.
Particulars of person on whose behalf request is made	This section only needs to be completed by a requester who is requesting information for another person.
The decision against which the internal appeal is lodged	The form provides space for you to indicate with an 'x', which of the listed appeal grounds applies to your case.
Grounds for appeal	The form then provides space for you to describe in detail why you think the appeal grounds apply. The list of reasons you supply to support your appeal can be outlined in greater detail by an 'appeal supplement' – this is because the form permits you to provide additional information in what it calls a 'folio' (but any additional pages you submit should be signed by you). The appeal supplement should give the relevant authority as much information as possible to help them make their decision. Therefore you should also include an outline of everything that has happened in the run-up to the internal appeal. In completing this supplement you can refer to specific sections of PAIA as a basis for why you are appealing.
Notice of decision on appeal	A space is provided for you to describe the manner in which you wish to be informed about the decision to grant or deny the request. You can specify for instance that you would prefer to be contacted by email, or by telephone.

You do not need a lawyer to help you with your internal appeal application.



Who is the relevant authority?

- National Government** **The relevant authority of a national department is the Minister of that department.**
- Provincial Government** **The relevant authority of a provincial department is the Member of the Executive Council of that department.**
- Municipal Government** **The relevant authority of a municipal department is the mayor of the municipality, or the speaker of the municipality, or any other person designated by the Municipal Council for that specific municipality.**

5.2.4 What happens when an internal appeal is lodged after the expiry date of the prescribed period?

When an internal appeal is filed after the 60 day period has lapsed, the relevant authority must accept the appeal if good cause is shown for why the appeal was filed late. When the relevant public body does not accept the late lodging of an internal appeal, it must provide notice to the person who lodged the appeal. It must also make clear to the requester any process required for filing a late lodging.

5.2.5 What are the fees for internal appeals?

A requester who lodges an internal appeal is required to pay the prescribed fee. The decision regarding the appeal may be deferred until the fee is paid. Previous regulations had prescribed the fee as being R50, but the current regulations – which repealed those – does not provide for a prescribed appeal fee.

5.3 Court and other remedies

5.3.1 When can I file an application to court against a decision?

You can make an application to court to challenge the following decisions:

	PUBLIC BODY	PRIVATE BODY
Grounds for judicial review.	You are denied access to a record by an internal appeal (this applies to both cases of where the original request was refused, or granted).	You are denied access to a record.
	You are provided the record, but not in the form requested.	You are provided the record, but not in the form requested.
	Extends the time to respond to a request.	Extends the time to respond to a request.

	Charges a request fee or an access fee.	Charges a request fee or an access fee.
	You are refused late lodging of your internal appeal.	
Requirements.	You have to first exhaust the internal appeal remedy.	You can establish that the record requested is required for the exercise or protection of any other right.

5.3.2 How do you make your application?

Similarly to the internal appeal process, both a requester and relevant third party can apply to court to have their grounds for review considered. This is a civil procedure, and a requester must apply to court **within 180 days** after the last decision was made.

Access to information cases can be heard before the Magistrate's Courts as a court of first instance, as provided for under section 79 of PAIA, and also the High Courts.

The Protection of Personal Information Act

POPIA will amend the 'recourse' provisions of PAIA very significantly. Once in operation, a requester will have the option of referring a decision to the Information Regulator to review the decision, rather than the courts. Like the court process, a requester will be required to exhaust available internal remedies first if they are applicable. A requester will have **180 days** from the time of the final decision to lay their complaint before the Information Regulator, and the complaint will need to be in writing (the format of which will be prescribed in regulations).

Section 6

Key references and other useful materials

This section includes:

6.1 Key Laws and Regulations

6.2 SAHRC resource list

6.3 Partner resource list

6.1 Key Laws and Regulations

LAWS

Promotion of Access to Information Act, 2000

Protection of Personal Information Act, 2013

REGULATIONS AND NOTICES

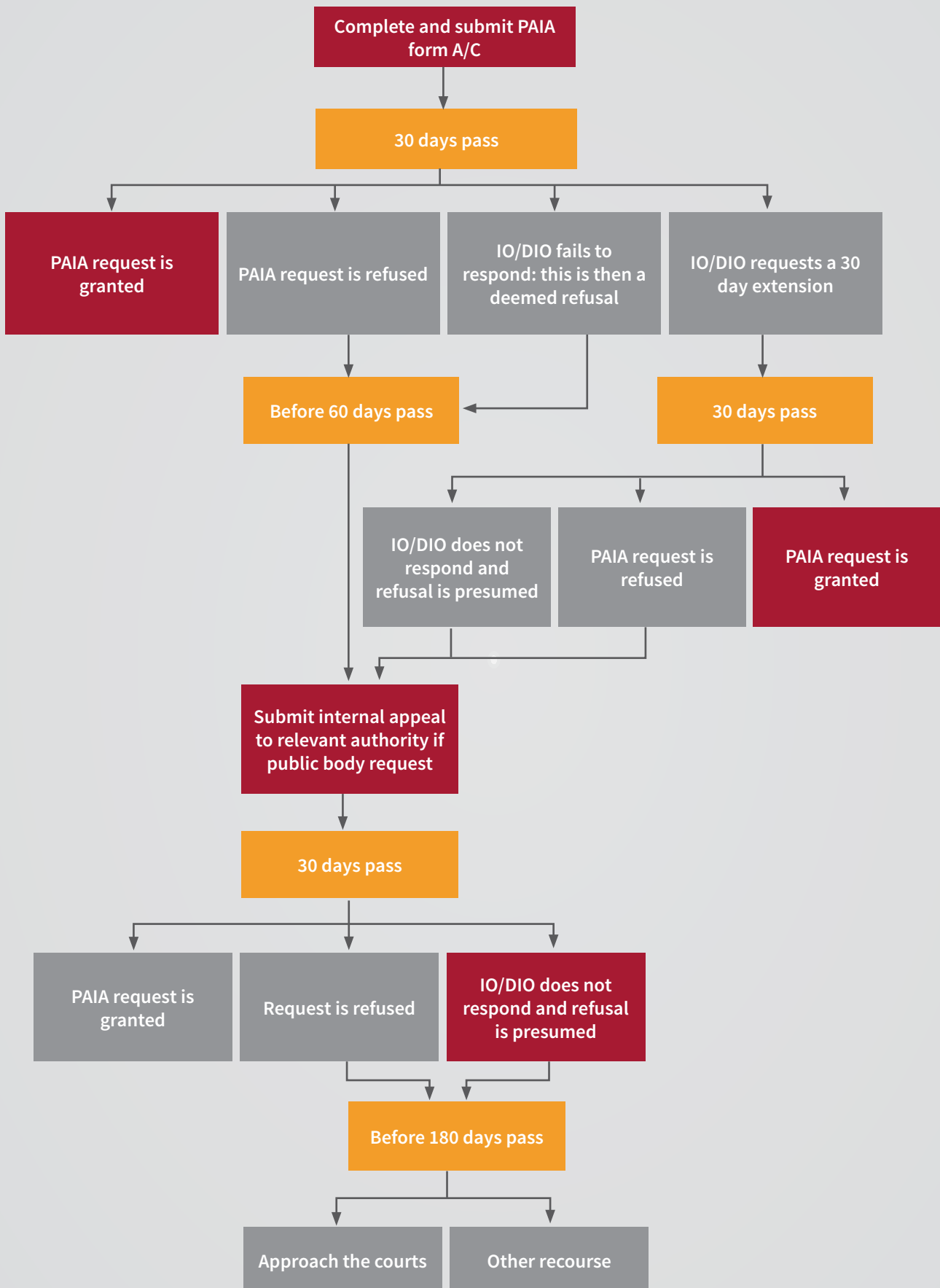
Government Notice	Date	Subject and description
Government Notice R.187 in GG 23119	15 February 2002	Regulations from the Minister, which outline the availability of Guides, and the prescribed forms and fees.
Government Notice R.991 in GG 28107	14 October 2005	Regulations that prescribe the grounds under which a person is exempt from having to pay fees.
Government Notice 1222 in GG 39504	11 December 2015	Exemptions in relation to provision of manuals for private bodies.
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.

6.2 SAHRC resource list

- » The Guide on How to Use the Promotion of Access to Information Act 2 of 2000 (available at www.sahrc.org.za)

6.3 Partner resource list

TITLE	PURPOSE	YEAR	CREATOR	LOCATION
PAIA rules, forms and regulations.	Official associated documentation for PAIA, including the most up to date forms, regulations, etc.	2019	Department of Justice	https://www.justice.gov.za/paia/paia.htm
GUIDE: Getting to grips with South Africa's Promotion of Access to Information Act (PAIA)	An introductory article for using PAIA.	2014	Africa Check	https://africacheck.org/factsheets/getting-to-grips-with-the-promotion-of-access-to-information-act-paia/
Open Journalism Workshop: How to use PAIA	An instructional video lecture on how to use PAIA targeted at media.	2013	Open Democracy Advice Centre	https://youtu.be/XQFFeryCwaY
PAIA Unpacked	A Guide on using PAIA targeted at paralegals and lawyers.	2012	South African History Archive	http://foip.saha.org.za/static/paia-unpacked-a-resource-for-lawyers-and-paralegals/
PAIA Resource Kit	Step-by-step Guide to assist in completing forms and related documentation.	2008	South African History Archive	http://foip.saha.org.za/static/paia-resource-kit1
PAIA Workshop Guide	A detailed four part guide on how to submit and track PAIA requests.	2008	South African History Archive	http://foip.saha.org.za/static/paia-workshop-guide



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