

Section 3

How to make a request for access to information

This section includes:

- 3.1 Types of requests
- 3.2 Fees associated with making requests
- 3.3 The role of the Information Officer
- 3.4 Legal recourse

3 How do I make a PAIA request?

A request for access to information can be made to both public and private bodies. The person making the request is known as the “requester”. PAIA details different ways of accessing information from either a public or private body. Specific prescribed forms must be used when requesting information. The forms can be found in PAIA.

TYPE OF BODY	PAIA FORM	PAIA SECTION
Public body	Form A	Section 18
Private body	Form C	Section 53

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.

3.1 Who can make a PAIA request?

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

Natural person

- » the person does not have to be a South African citizen or a resident of South Africa

Or

Juristic person

- » such as a business or organization

Or

Person acting on behalf of a natural or juristic person

The requester has a right to access records containing personal information about the requester himself, or about the person on whose behalf the request is being made.

A public body is considered a juristic person and may make a request for access to records held by private bodies, *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.

It is important to note that PAIA does not specifically provide for government departments (including national, provincial and municipal branches), and any person or institution that exercises a power or performs a duty in terms of the Constitution, (such as the SAHRC or the Public Protector), or provincial legislation (such as the Western Cape Liquor Licensing Board), to make PAIA requests to other public bodies.

3.1.1 How do I fill in a PAIA request form?

A request for access to information held by a public or private body is made by completing a PAIA request form and submitting it to the relevant body. The PAIA request must be directed to the Information Officer, Deputy Information Officer or head of the public or private body, and must use accurate and up-to-date contact details.

In addition to providing details about the relevant body, a prescribed PAIA request form must include the following:

INFORMATION REQUIRED	DESCRIPTION
Details of the requester	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.
Details of the record requested	Enough information about the record to make it reasonably easy to identify. Additional paper may be used to detail the request, as long as each additional page is signed and attached to the request form.
Manner of access to the record	A description of the form or manner in which the record should be provided or made accessible.
Manner in which to inform requester of access	Manner in which to inform the requester about the decision to grant or deny the request.
Language choice	When a request is made to a public body, the preferred language in which to receive the record must be provided.
Capacity of authorized person making request	When a request is made on behalf of someone else, proof of the capacity in which the person making the request must be provided (known as the authorized person).
Rights concerned	When a request is made to a private body, the requester must state the right that is implicated and explain why the record is required for the exercise or protection of that specific right.

Requesters who are unable to read or write can make verbal requests to the Information Offices or Deputy Information Officer of a public body, who is then responsible for completing Form A on behalf of the requester.

3.1.2 Is there a procedure that has to be followed when making a PAIA request?

A requester must be granted access to the records requested if he/she has complied with the following procedural requirements:

- » The PAIA request must be made on the correct form (Form A for public bodies, Form C for private bodies), and addressed to the Information Officer or Deputy Information Officer of the public or private body, or to the head of the public or private body.
- » The PAIA request form must be hand-delivered, posted, faxed or sent via email to the public or private body to which the request has been made.
- » The records requested are not subject to the refusal grounds provided for under PAIA.

3.2 What is the cost for making a PAIA request?

Requesters are required to pay a fee when requesting access to records from both public and private bodies.

The fee for requesting records from a public body is R35, while the fee for requesting records from a private body is R50.

It is important to note that requesters who are requesting access to their personal information are exempt from paying the request fee; however, they are still required to pay access fees.

Requesters who earn less than R14, 712 per year (if single) and R27, 192 per year (if married or in a life partnership), do NOT have to pay access fees.

3.2.1 What is the cost for accessing records under PAIA?

Requesters are also required to pay fees for accessing the records of public and private bodies. This fee covers the cost of searching for the record and copying it.

The fees for accessing records of public bodies are:

ACTIVITY	FEE
Copy per A4 Page	60 cents
Printing per A4 page	40 cents
Copy on a CD	R40
Transcription of visual images per A4 page	R22
Copy of a visual image	R60
Transcription of an audio recording per A4 page	R12
Copy of an audio recording	R17
Search and preparation of the record for disclosure	R15 per hour or part thereof, excluding the first hour, reasonably required for the search and preparation

The fees for accessing records of a private body are:

ACTIVITY	FEE
Copy per A4 Page	R1.10
Printing per A4 page	75 cents
Copy on a CD	R70
Transcription of visual images per A4 page	R40
Copy of a visual image	R60
Transcription of an audio recording per A4 page	R20
Copy of an audio recording	R30
Search and preparation of the record for disclosure	R30 per hour or part thereof, excluding the first hour, reasonably required for the search and preparation.

Postage fees have to be paid by the requester for the delivery of their records in the case of both public and private bodies.

Exceptions

If the Information Officer, Deputy Information Officer, or head of the public/private body thinks that the collection and reproduction of documents will take longer than six hours, he/she must inform the requester (by formal notice) that one third of the access fee is payable upfront as a deposit.

If the record is not provided in the form requested, the access fee that is charged to the requester must not exceed the fee that would have been charged if access was granted in the form requested. However, this rule does not apply when an alternative form is required because

information had to be severed from the record. If the requester cannot read, view or hear the record in the form held by a public body because of a disability, the public body is required to provide the record in a form that is accessible to the requester. The access fee charged to the requester must not exceed the fee that would have been charged but for the disability.

3.3 Can an Information Officer help me make a PAIA request?

When a PAIA request is made to a public body, the Information Officer or Deputy Information Officer must help you when necessary to complete the PAIA forms.

Such assistance must be given free of charge.

DUTIES OF INFORMATION OFFICERS	DESCRIPTION
Assist the requester in completing the PAIA form	When a PAIA request does not follow all of the set requirements detailed in PAIA and on the prescribed form, the Information Officer or Deputy Information Officer may NOT refuse the request. Instead, the Information Officer must inform the requester, in writing, that he/she is unable to grant the request because it is incomplete, and offer to help the requester make the necessary changes to the form. If the requester does not respond to the letter or correct the form in a reasonable amount of time, then the Information Officer may refuse the request.
Provide requester with relevant information where possible	If it would be reasonable and possible to do so, the Information Officer must provide the requester with any other information held by the public body which is also relevant to the request, even if the records were not part of the original request.
Transfer request	When a PAIA request is made to the incorrect public body, the Information Officer of that body must transfer the request to the correct public body within 14 days of receiving the request and must inform the requester of the transfer in writing.

DUTIES OF INFORMATION OFFICERS	DESCRIPTION
30 days to respond to request	A PAIA request must be responded to by the public or private body within 30 days after receiving the request. The Information Officer may request an extension for a period of no more than 30 additional days for specific reasons, which include the request involving (1) a large volume of documents, (2) consultation with other public or private entities, (3) or if the requester has granted the extension in writing. Only one extension is allowed per PAIA request.
Grant or deny access	It is the responsibility of the Information Officer to grant or deny access to the records. This decision must be put to the requester in writing.
Form of access, access fee and recourse	When a PAIA request is granted, the Information Officer must notify the requester of the form in which access will be given and of the amount of the access fee, which must be paid once access has been given. The notice must also inform the requester that he/she has the right to lodge an internal appeal and application to court against the access fee or against the form in which access will be granted. In addition, the notice must also provide information about the time within which an appeal or court application must be filed as well as the procedure that must be followed.
Denial of request	If a PAIA request is denied, the notice to the requester must state the reasons for refusal, which must be supported by the relevant provisions of PAIA. As with the form of access and amount of access fees, the notice must provide the requester with information regarding his/her right to appeal the decision or to file an application in court.
Defer release of the record	The Information Officer may decide to defer the release of a record to a requester in terms of Section 24 of PAIA if that record is intended to be published within 90 days or if the record is required by law to be published but is yet to be.

PAIA states in Sections 23 (for a public body) and 55 (for a private body) that if an Information Officer is unable to find the particular records requested, or it is believed that they do not exist, the Information Officer must, after ensuring that all reasonable steps have been located to find the record, submit an affidavit to the requester giving notice that the records in question do not exist or cannot be found. The affidavit must be very detailed.

3.4 What legal remedies do I have when my PAIA request is denied?

A requester has the right to take legal steps against the Information Officer, Deputy Information Officer, or head of the public or private body if the Information Officer:

- » Denies access to a record
- » Extends the time to respond to a request
- » Charges a request fee or an access fee
- » Provides access to a record in a form different from the one originally requested.

This section will explain the legal remedies available to requesters who wish to challenge such decisions.

3.4.1 Legal Recourse against Public Bodies

When a requester is unhappy with a decision made by the Information Officer of a public body, the requester has the right to file an internal appeal. An internal appeal involves a more senior person, known as the relevant authority, reviewing the decision of the Information Officer and deciding whether he/she made the correct decision. If the senior person approves of the Information Officer's decision, then the internal appeal is denied and the original decision regarding the PAIA request is confirmed. If the senior person does not approve of the Information Officer's decision, then the appeal is granted and the original decision regarding the PAIA request 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.

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.

3.4.1.1 Who may lodge an internal appeal?

A requester who makes a PAIA request to a national, provincial or municipal public body and is refused access has the right to file an internal appeal. This is done by completing a PAIA Form B and filing it with the national, provincial or municipal public body. A copy of Form B can be found on the website of the relevant bodies and is also available at the SAHRC.

If the internal appeal involves any third party, the public body that has received the internal appeal is responsible for notifying all relevant third parties. The requirements for notification and representation are the same as those required for the original PAIA request.

Third parties are also allowed to file internal appeals against the decision made by a public body to grant access to a specific record.

3.4.1.2 When may you lodge an internal appeal?

A requester may lodge an internal appeal against the decision of a public body for the following reasons:

- » The requester is not satisfied with the fees required for the request.
- » The requester is not satisfied with the decision to grant a 30 day extension to the public body to respond to the request.
- » The requester is not satisfied when the form in which the records are provided are not the same as the form that was requested, and the requester believes that it would not have been unreasonably burdensome for the public body to provide the records in the requester's preferred form.

3.4.1.3 How do I make an internal appeal?

An internal appeal must be filed by the requester within 60 days of receiving the refusal for the original PAIA request. This is done by completing a Form B and submitting it to the relevant national, provincial or municipal government department.

National Government	If the PAIA request was made to a national department, the requester may file an internal appeal with the Minister of that department.
Provincial Government	If the PAIA request was made to a provincial department, the requester may file an appeal with the Member of the Executive Council of that department.
Municipal Government	If the PAIA request was made to a municipal department, the requester may file an appeal with the mayor of the municipality, or the speaker of the municipality, or any other person designated by the Municipal Council for that specific municipality.

The Form B is submitted to the same Information Officer/Deputy Information Officer who refused the initial request, who is then required to forward it to the more senior person.

NOTE:

If the appeal requires that notice be given to a third party (i.e., when the information contains personal information about another person, as well as confidential information, specific commercial information, and research information about the third party), then the appeal must be lodged within 30 days of notice being given to that third party.

A requester must submit the internal appeal to the Information Officer of the relevant body via post, fax or email.

An internal appeal must include the subject of the internal appeal, reasons in support of the appeal, and include any other relevant information known to the person making the appeal.

If the requester would like to be informed of the decision regarding the internal appeal in a different manner (in addition to a written reply), he/she must state the preferred manner and provide any necessary information.

3.4.1.4 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 public body must accept the appeal if good cause is shown for the late lodging. 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.

3.4.1.5 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.

CAN I FILE AN APPLICATION IN COURT AGAINST THE DECISION OF A PUBLIC BODY?

Yes. If your internal appeal against a public body has been unsuccessful, or if the public body refused to accept the late lodging of an internal appeal, or if you have been aggrieved in any way because of a decision made by the public body, you may apply to court for relief by filing an application within 180 days of receiving the decision for more information, see below). A requester or third party may only apply to court after the internal appeal process has been concluded.

3.4.2 Legal Recourse against Private Bodies

When a requester is not satisfied by a decision made by the head of a private body, for example for refusing access, for imposing access fees, or for extending the time period in which the response is due, the requester may apply to court for relief within 180 days of receiving the decision for more information, see below) that has caused the grievance. The decision of the private body will be reviewed by a court and a decision will be made by the courts as to whether or not to provide access to the requested records..

BRUMMER V MINISTER FOR SOCIAL DEVELOPMENT

In this matter the courts stated that the original 30 day period under PAIA for a requester to apply to the courts if dissatisfied with the decision of an Information Officer was insufficient to serve the cause of justice. It was therefore held that the 30 day time period was invalid and was to be extended to 180 days. This judgment has been reflected in PPIA

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.

3.4.3 What will happen to my case in court?

There are several possible outcomes when taking a PAIA case to court. After hearing both sides of the matter, the presiding officer has the power to grant an order. This may include an order that: (1) confirms, changes, or removes the decision of a public or private body with respect to the PAIA request; (2) requires the public or private body to take a specific action or to refrain from a specific action; (3) grants an interdict, a declaratory order, specific relief, or compensation; or (4) calls for the payment of particular costs.

Section 4

When access to information can/may be refused

This section includes:

4.1 Balancing the right to access information with other rights

4.2 Mandatory v discretionary grounds for refusal of access

4.3 Grounds for refusal listed in PAIA

4.4 The public interest test

4.1 When access to information may be refused

This section provides an overview of when access to information may be refused under PAIA, and a guide on how to apply the rules that permit an Information Officer to refuse a request. PAIA lists 12 grounds on which access to information may be refused by an Information Officer of a public or private body, some of which are mandatory and some of which are discretionary (see section 4.2. below for further information). In addition PAIA creates a public interest clause which in certain instances effectively overrides any of the grounds of refusal of access to information where the public interest is of concern. (See section 4.4 below for further information).

BALANCING THE RIGHT OF ACCESS TO INFORMATION WITH OTHER RIGHTS

GENERAL RULE	The right of access to information is enshrined in the Bill of Rights of the South African Constitution. In order to give effect to this right, access to information should be granted as often as possible.
EXCEPTION	Like many other rights contained in the Bill of Rights, the right of access to information can be limited or refused in certain circumstances. PAIA sets out grounds on which information requests may be refused, and therefore, where the right of access to information may be limited.

4.2 Mandatory v Discretionary grounds for refusing access to information

PAIA states that in certain circumstances information cannot be disclosed by the Information Officer. 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. PAIA therefore lists 12 grounds under which access to information can be refused by the Information Officer of the public or private body (these 12 grounds are detailed in section 4.3 below). Some of these reasons for non-disclosure are mandatory, meaning that the Information Officer must not allow access to the information if one of the mandatory grounds for refusal of access to information can be proved. Other grounds for refusal of access to information are discretionary. This means that the Information Officer may or may not disclose the information. Therefore, the Information Officer must apply his/her discretion when deciding whether or not to disclose the information. He/ she must do this by assessing whether disclosure would cause more harm to the public or private body than non-disclosure.

PAIA TERMS TO NOTE...

For mandatory refusals, PAIA uses the word “must”.

For discretionary refusals, PAIA uses the word “may”.

Remember: As an Information Officer, you must remain objective when applying a ground for refusal of access to information. Do not take sides. Be impartial at all times!

4.3 Grounds for refusing of access to information

As stated above, there are various grounds under which an access to information request may or must be refused by an Information Officer of a public or private body. These grounds are listed in PAIA under Chapter 4 of Part 2 for a public body, and Chapter 4 of Part 3 for a private body.

4.3.1 Protection of the privacy of a third party

An Information Officer of a public or private body must not allow access to personal information of a natural person, including a deceased individual (for a definition of “natural person” see Useful Terms above). PAIA states that in order to protect the right to privacy of a third party who is a natural person, the Information Officer must assess whether releasing the information in question to the requester ‘would involve the unreasonable disclosure of personal information’ (see sections 34 and 63 of PAIA).

Section 1 of PAIA provides a broad definition of what information constitutes “personal information”. It includes information relating to sex, pregnancy, and religion, as well as personal correspondence, DNA, fingerprints, and instances where the individual’s name appears in records.

The Information Officer must also consider whether or not the personal information in question falls into the following categories of personal information which may be disclosed:

- » Personal information of an individual who has given consent for this information to be released;
- » Personal information which has already been made public;
- » Personal information about a child under the age of 18 where the disclosure of such information is in the best interest of the child, and the requester is the child’s carer (i.e. parent or guardian);
- » Personal information of a deceased person to a requester who is the individual’s next of kin, or who has been authorized (written consent) by the next of kin;
- » Personal information of a deceased person who has been deceased for a period of more than 20 years;
- » Personal information of an individual who is or was an official of a public or private body and where the information relates to their position as an official.

PAIA requires that Information Officers from the South African Revenue Services (SARS) do not disclose personal tax and revenue information, unless the requester is requesting access to his/her own information.

4.3.2 Protection of commercial information of a third party

The Information Officers of public and private bodies must refuse access to information if releasing that information would cause harm to the commercial or financial interests of the business. PAIA lists the following commercial information which cannot be disclosed by an Information Officer:

- » Trade secrets;
- » Financial, commercial, scientific, research or technical information about a third party which, if released, would cause harm to the third party;
- » Information which has been supplied in confidence by the third party.

Although there is a general rule to protect the information of a company, a public body is required to operate in a transparent manner. There are therefore certain instances where commercial information of a company can be released.

PAIA Exclusion: Records of a third party which contain information relating to public safety or environmental risks must be released, even if the release of such information will likely cause harm to the third party. This constitutes public interest information (see section 4.4 below).

4.3.3 Protection of confidential information

PAIA provides that an Information Officer must refuse access to a record if the release of the record will amount to a breach of a duty of confidence owed to a third party in terms of an agreement or contract.

4.3.4 Protection of the safety of individual and property

This section states that an Information Officer must refuse access to a record if the disclosure of the record could reasonably be expected to compromise the safety of an individual or property. This section has a right to privacy aspect to it as it considers the personal life of an individual and their property.

4.3.5 Protection of information in legal proceedings

The purpose of this section is to protect information required in legal and law enforcement processes. This section recognizes other legislation governing certain categories of information. In this section, the Criminal Procedure Act 51 of 1977 is recognized as the law governing records pertaining to bail proceedings and other law enforcement procedures. Also, this applies to records that are privileged from production and that are not available to anyone else other than the person who has the privilege to access those records. For example, any records subject to the relationship between an attorney and his/her client are protected under section 40 of PAIA.

Although PAIA acknowledges the existence of other legislation relating to the management and disclosure of information and records, where the other legislation unjustifiably limits the right of access to information and is contrary to the principles of transparency and accountability, PAIA will supersede that law.

4.3.6 Protection of Research Information

An Information Officer of a public or private body must refuse access to records which contain information relating to research which is or will be undertaken by the public or private body in question or a third party. This refusal of access to information is in circumstances where the disclosure of the record will expose the research of the third party or public or private body, the individual or institution carrying out the research, or the subject matter of the research to a serious disadvantage (see sections 43 and 69 of PAIA).

4.3.7 Information where access may be refused

The following categories of information relate to information which an Information Officer may refuse access to if they can justify that the information in question falls within the following categories and is not in the public interest to disclose (for further information on the public interest clause see section 4.4 below).

4.3.7.1 South Africa's defense, security and international relations

Section 41 of PAIA requires an Information Officer to consider whether the request for information relates to information about the security of South Africa. The Information Officer may refuse a request if they can prove that it will compromise the safety of South Africa to release the information.

4.3.7.2 Economic, financial and commercial interest of South Africa

Section 42 of PAIA requires the protection of information of a public body if its disclosure will be harmful to the economic and financial status of the Republic. This ground for refusal is discretionary meaning that the Information Officer must take into account that public bodies are mandated under the Constitution of South Africa to be accountable to the public, and that it is therefore only in certain instances that the information may be refused. Further, the Information Officer will need to demonstrate that the disclosure of the information in question will cause harm to the financial and economic interests of South Africa.

4.3.7.3 Operations of public bodies

Section 44 of PAIA gives Information Officers the discretion to refuse access to a record if it will hamper the operations of a public body. Section 44 is broad and may include:

- » Minutes of meetings;
- » Records containing advice or opinions;
- » Records pertaining to consultations with other bodies;
- » Records pertaining to the formulation of policies or recommendations.

4.3.7.4 “Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources”

An Information Officer may refuse a request for information if he/she is of the opinion that processing requests will be unreasonably time consuming and lead to waste of resources. In addition, an Information Officer may refuse access to a record if the request is seen to be made by a requester to unnecessarily annoy or provoke.

4.4 Public Interest Override

All the protections afforded to information as detailed above falls away if the release of the information is in the public interest. In this way, the public interest test overrides all the other grounds of refusal of access to information.

The following test must be applied by an Information Officer of a public or private body before refusing to allow access to information that falls under the categories for non- disclosure listed above. If these conditions are met, then the information must be disclosed on the grounds of public interest.

Does the information demonstrate a serious breach of a law?

OR

Do the records in question contain information relating to an imminent and serious public safety or environmental risk?

AND

Does the public interest in disclosing the information clearly outweigh the potential harm?

Section 5

Key references and other useful information

This section includes:

5.1 A list of some of the key references used to compile this PAIA Guide, including legislation including legislation

5.2 A list of other useful PAIA resources

5.1 Key references

RESOURCE	AUTHOR
Promotion of Access to Information Act 2 of 2000	Legislation
Protection of Personal Information Act 4 of 2013	Legislation
PAIA Unpacked (available at www.saha.org.za)	SAHA
PAIA Resource Kit (available at www.saha.org.za)	SAHA
The Guide on How to Use the Promotion of Access to Information Act 2 of 2000 (available at www.sahrc.org.za)	SAHRC
PAIA Community Tool Guide (available at www.sahrc.org.za)	SAHRC
PAIA Frontline Staff Manual (available at www.sahrc.org.za)	SAHRC

5.2 PAIA Regulations

GOVERNMENT NOTICE	DATE	SUBJECT AND DESCRIPTION
Government Notice: No. R. 1244	22 September 2003	Amendment relating to the availability of the PAIA manuals of public and private bodies.
Government Notice: No. R. 233	9 March 2001	This Regulation relates to the fees payable for access to records of public and private bodies.
Government Notice: No. R. 466	1 June 2007	Includes forms for Information Officers to follow when publishing voluntary disclosure notices in terms of sections 15 and 52 of PAIA.

5.3 PAIA Amendments

GOVERNMENT NOTICE	DATE	SUBJECT AND DESCRIPTION
Government Notice: No. 428	31 March 2004	Amendment to section 92(4) of PAIA to provide for offences and penalties for persons who deliberately and wrongfully obstruct a requester's request for information, for example by destroying records.
Government Notice: No. 96	15 January 2003	Amendment to PAIA to provide for the training of presiding officers in the Magistrates' Courts to hear PAIA matters.
Government Notice: No. R. 187	15 February 2002	Amendment to PAIA regarding this Section 10 Guide and the availability of PAIA manuals.
Government Notice: No. 1263	11 April 2003	Notice relating to the availability of the PAIA manuals of private bodies.

5.4 Other useful PAIA resources

- 1) Using PAIA to Promote Housing Rights, SAHA (available at www.saha.org).
- 2) Accessing Information for Your Community, SAHA (available at www.saha.org).
- 3) Accessing Information in the LGBTI Sector, SAHA (available at www.saha.org).

