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## **DRAFT OPEN DEMOCRACY BILL**

OFFICE OF THE DEPUTY PRESIDENT

Comments on the draft Bill should be sent to:

The Director-General,  
Office of the Deputy-President,  
Private Bag X955,  
Pretoria,  
0001

The comment may also be faxed to (012)-323-2573/6

The comment must reach the Office of the Deputy President not later than 11 November 1997.

Please provide the name, address, telephone number and fax number of the person, governing body or organisation responsible for submitting the comment.

## **DRAFT OPEN DEMOCRACY BILL**

**To provide for public access to information held by governmental bodies, subject to certain exemptions; to make information in respect of the functions and operations of governmental bodies available to the public; to provide a mechanism for individuals to correct information about themselves held by governmental or private bodies; to provide for protection against abuse of information about individuals held by governmental or private bodies; to provide for the protection of individuals who make known evidence disclosing contraventions of the law, serious maladministration or corruption in governmental bodies; and to provide for matters connected therewith.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:--

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## PART 1

### INTRODUCTORY PROVISIONS

#### Definitions<sup>(1)</sup>

1.(1) In *this Act*, unless the context otherwise indicates--

"**access fee**" means a fee *prescribed* for the purposes of section 25;

"**application**" means an application to a High Court in terms of section 74 or 75 (as the case may be);

"**commercial requester**" means a *requester* other than a *personal* or *non-commercial requester*;

"**computer program**" means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

"**contravention**", in relation to any provision, includes any failure to comply with the provision, and "**contravene**" has a corresponding meaning;

"**governmental body**"<sup>(2)</sup> means--

(a) any department of state or administration in the national, provincial or local sphere of government or any other functionary or institution exercising a power or performing a function in terms of the Constitution or a provincial constitution or exercising a public power or performing a public function in terms of any legislation, and includes, without limiting the generality of the foregoing, any body

(i) of which the accounts and financial statements are required by legislation to be audited by the Auditor-General;

(ii) of which the majority of the members are appointed, whether alone or on the advice or recommendation of, or in or after consultation with some other person or body, by the President, the Deputy President, a Minister, the Premier of a province, a member of the Executive Council of a province or of the municipal council of a municipality, another governmental body, or more than one of such authorities;

(iii) in which the State, a province or a municipality is the majority or controlling shareholder;

(iv) of which more than 50 per cent of its expenditure is defrayed directly or indirectly from funds voted by Parliament, a provincial legislature or a municipal council;

(v) which is or was dependent for more than 50 per cent of its total permanent capital needs, including share capital, loans or other forms of permanent capital, on funds voted by Parliament, a provincial legislature or a municipal council, and in which permanent capital the State, a province or a municipality still holds a direct or indirect interest of more than 50 per cent;

(vi) which supplies products or services under monopolistic rights conferred on it by legislation;

(vii) in respect of which the State, a province or a municipality creates the probability through contingent liability that funds voted by Parliament, a provincial legislature or a municipal council will have to be used in future to defray more than 50 per cent of the body's expenditure or to provide more than 50 per cent of the body's permanent capital;

(viii) of which the funds, assets or other property are administered by the State, a province or a municipality on a trust basis on behalf of the inhabitants of the Republic or of a particular interest group;

(b) any other body which was a body contemplated in paragraph (a)(vi) and which exercises in a monopolistic manner substantially the same functions as it performed when it was a body contemplated in paragraph (a)(vi);

(c) any other body (including a natural person) only in respect of *records* of that body regarding work that it performs on behalf of or under the control of a body contemplated in paragraph (a) or (b),

but excludes the Cabinet and all courts and all judicial officers presiding in those courts;

"**head**", in relation to--

(a) a *governmental body*--

(i) in the case of a national department, provincial administration or organisational component mentioned in the first column of Schedule 1 or 2 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in

the second column of the said Schedule 1 or 2 opposite the name of the relevant department, provincial administration or organisational component or the officer who is acting as such;

(ii) in the case of any other *governmental body*, means the chief executive officer of that governmental body or the person who is acting as such;

(b) a *private body*--

(i) in the case of a natural person, that natural person;

(ii) in the case of any other *private body*, the chief executive officer of the *private body* or the person who is acting as such;

"**health practitioner**" means an individual who carries on, and is registered in terms of legislation to carry on, an occupation which involves the provision of care or treatment for the physical or mental health of individuals or for their well-being, and includes, but are not limited to--

(a) a medical practitioner;

(b) a psychiatrist;

(c) a psychologist; and

(d) a social worker;

"**inaccurate**", in relation to a *record* or information contained therein, means incorrect, incomplete, misleading or not relevant to the purpose for which the *record* is held;

"**information officer**", in relation to a *governmental body*, means the person appointed as information officer of that governmental body in terms of section 4(1)(a);

"**internal appeal**" means an internal appeal to the *head* of a *governmental body* in terms of section 67(1);

"**international organisation**" means an international organisation--

(a) of states; or

(b) established by the governments of states;

"**non-commercial requester**" means a *requester* who seeks access to a *record* for the purpose of--

(a) gathering news for the production of, or disseminating news by, a printed or electronic medium; or

(b) education or research by an educational or non-profit body or a member or employee of that body in his or her capacity as such;

"**notice**" means notice in writing, and "**notify**" and "**notified**" have corresponding meanings;

"**objects of this Act**" means the objects of this Act referred to in section 3(1);

"**official**", in relation to a *governmental body*, means any person in the employ (permanently or temporarily and full-time or part-time) of that governmental body, including the *head* of the body or a member of a body contemplated in subsection (2)) in his or her capacity as such or, in the case of a body contemplated in paragraph (c) of the definition of "*governmental body*", in the course and scope of the engagement of the body;

"**organ**", in relation to a *governmental body*, means any body contemplated in subsection (2) or any *official* of that governmental body;

"**personal information**" means information about an identifiable individual;

"**personal information bank**" means a collection or compilation of *personal information* that is organised or capable of being retrieved by using an individual's name or an identifying number or other particular assigned to the individual;

"**personal requester**" means a *requester* who seeks access to a *record* containing *personal information* about himself or herself;

"**prescribed**" means prescribed by regulation in terms of section 86(1);

"**private body**" means a natural person or a juristic person (other than a *governmental body*) in possession of or controlling a *personal information bank*;

"**public safety or environmental risk**" includes the risk or potential risk to the environment or the public (including individuals in their place of work) associated with--

(a) any product which is offered for sale or otherwise available to the public;

(b) any substance which is released into the environment or workplace or is present in food for human or animal consumption;



(c) any form of public transport; or

(d) any installation or manufacturing process or substance used therein;

"**record**" means recorded information regardless of form or medium, and includes--

(a) a record which is capable of being produced by means of computer equipment (whether hardware or software or both) which is used for that purpose by a *governmental body*; and

(b) a part of a record,

and when used in relation to--

(i) a *governmental body*, means a record in the possession or under the control of that governmental body or of an *official* of the body; or

(ii) a *private body*, means a record in the possession or under the control of--

(aa) that private body;

(bb) any other body (including a natural person) in so far as it performs work on behalf of, under the control of, or in the interest of, the private body;

(cc) any person in the employ (permanently or temporarily and full-time or part-time) of the private body or other body contemplated in subparagraph (ii) (including the *head* of the body) in his or her capacity as such or, in the case of the said other body, in the course and scope of the engagement of the other body,

and whether or not it was created by the body and whether was created before or after the commencement of this section;

"**request fee**" means a fee *prescribed* for the purposes of section 18;

"**request for access**" means a request for access to a *record* of a *governmental body* in terms of section 10, and "**requester**" has a corresponding meaning;

"**request for correction**" means a request for the correction of *personal information* in a *record* of a *governmental body* in terms of section 53(2) and "**requester**" has a corresponding meaning;

"**third party**" in relation to a *request for access* in Chapter 2 of Part 3, means any person (including the Government of a foreign state,

an *international organisation* or an organ of that Government or organisation) other than the requester in question or a *governmental body*;

"**this Act**" includes any regulation made and in force in terms of section 86(1);

"**transfer**", in relation to a *record*, means transferred in terms of section 16(1) or (2), and "**transferred**" has a corresponding meaning;

"**urgent appeal application**" means an application referred to in section 71(1);

"**urgent request application**" means an application referred to in section 21(1);

"**working day**" means any day other than Saturday, Sunday or a public holiday.

(2) For the purposes of *this Act*, a board, council, committee, commission or other body--

(a) established or constituted in terms of legislation; or

(b) wholly or partly constituted by appointment made by the President, the Deputy President, a Minister, the Premier of a province, a member of the Executive Council of a province or of the municipal council of a municipality, a *governmental body*, or more than one of such authorities,

to manage or administer any of the operations of, perform any function of, or advise or assist, a *governmental body* is not a *governmental body*, but is deemed to be comprised within that *governmental body*.

## **Application of Act**

2. *This Act* applies despite any other legislation whether that legislation came into effect before or after the commencement of this section.

## **Objects of Act**

3.(1) The objects of *this Act* are--

(a) to provide for public access, as swiftly, inexpensively and effortlessly as reasonably possible, to information held by *governmental bodies* without jeopardising good governance, personal privacy and commercial confidentiality;

(b) to provide for the disclosure of information contained in *records* held by *governmental bodies* to which the public have access under *this Act*;

(c) to require *governmental bodies* to make information available that will assist the public in understanding the functions of *governmental bodies*, their operation and the criteria employed in making decisions;

(d) to provide individuals with access to information concerning themselves held by *governmental or private bodies*;

(e) to provide a mechanism for individuals to correct *inaccurate* information about themselves held by *governmental or private bodies*;

(f) to protect individuals against abuse of information concerning themselves held by *governmental or private bodies*;

(g) to protect individuals who make known evidence disclosing *contraventions* of the law, maladministration or corruption in *governmental bodies*; and

(h) generally, to promote transparency and accountability of all organs of state by providing the public with timely, accessible and accurate information and by empowering the public to effectively scrutinise, and participate in, governmental decision-making that affect them.

(2) When interpreting a provision of *this Act*, every court of law must prefer any reasonable interpretation of the provision that is consistent with the *objects of this Act* over any alternative interpretation that is inconsistent with those objects.

### **Designation of information officers, and delegation of powers by information officer and head of governmental body**

4.(1) For the purposes of *this Act*, each *governmental body* must, subject to legislation governing the employment of personnel of the governmental body concerned, designate--

(a) a person as the information officer of the body; and

(b) such number of persons as deputy information officers as may be necessary.

(2) The *information officer* of a *governmental body*--

(a) has direction and control over any deputy information officer of that body;

(b) may, subject to the conditions he or she determines, delegate a power conferred, or assign a duty imposed, on that information officer by *this Act* to that deputy information officer.

(3) The *head* of a *governmental body* may, subject to the conditions the head determines, delegate a power conferred, or assign a duty imposed, on the head by *this Act* to any *official* other than the *information officer* or a deputy information officer of that body.

(4) A delegation or assignment in terms of subsection (2)(b) or (3) does not prevent the exercise of the power delegated, or the performance of the duty assigned, by the information officer or head of the governmental body in question.

## PART 2

### GUIDE ON ACT AND MANUALS ABOUT FUNCTIONS OF GOVERNMENTAL BODIES

#### Guide on how to use Act

5.(1) Within 6 months after the commencement of this section, the Human Rights Commission must publish in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by an individual who wishes to exercise any right contemplated in *this Act*.

(2) Without limiting the generality of subsection (1), the *guide* must include a description of--

(a) the *objects of this Act*;

(b) the postal and street address, phone and fax number and, if available, electronic mail address of--

(i) the *information officer* of every *governmental body*; and

(ii) every deputy information officer of every *governmental body* appointed in terms of section 4(1)(b) (if any);

(c) the manner and form in which a request for--

(i) access to a *record* of a *governmental body*;

(ii) access to a *record* of a *private body* containing *personal information*;  
and

(iii) correction of *personal information* held by a *private body* and a *governmental body*,

contemplated in sections 10, 51, 52 and 53 should be made;

(d) the assistance provided by the *information officer* of a *governmental body* and the Human Rights Commission in terms of *this Act*;

(e) the manner of lodging--

(i) an *internal appeal* with the *head* of a *governmental body*; and

(ii) an *application* with a High Court;

(f) all remedies in law available in respect of an act or failure to act in respect of a right conferred, or duty imposed, by *this Act* other than the remedies referred to in paragraph (e);

(g) the manual to be published by every *governmental body* in terms of section 6, the information contained therein and how to obtain access to the manual; and

(h) the categories of *records* open to the public in terms of legislation as contemplated in section 44 and how to obtain access to those *records*.

(3) The Human Rights Commission must, if necessary, update and publish the guide at intervals of not more than one year.

(4) The Human Rights Commission must, as soon as possible after the guide is published in terms of subsection (1) or (3), supply, in each official language, to--

(a) the *head* of each *governmental body*, such number of copies of that guide as the *head* of the body has, upon request by the Commission, indicated he or she requires to comply with section 7(1)(a);

(b) the Director-General: Communications, such number of copies of that guide as the Director-General: Communications has, upon request by the Commission, indicated he or she requires to comply with section 7(2); and

(c) "every legal deposit library as defined in section 1 of the Legal Deposit of Publications Act, 1982 (Act No. 17 of 1982)" [**"official publications depository as defined in section 1 of the Legal Deposit Act, 1997", if adopted by Parliament – Bill 19B–97**], and such other libraries as may be *prescribed*, at least one copy of that guide.

**Manual on functions of, and index of records held by, governmental**

6.(1) Within 12 months after the commencement of this section, the *head* of a *governmental body* must publish in at least two official languages a manual containing--

(a) a description of its structure, powers and duties, including those of its *organs*;

(b) the postal and street address, phone and fax number and, if available, electronic mail address of the *information officer* of the body and of every deputy information officer of the body appointed in terms of section 4(1)(b) (if any);

(c) a description of the guide referred to in section 5(1) or (3) and how to obtain access to it;

(d) in sufficient detail to facilitate a *request for access* to, and for *correction of personal information* in, a *record* of the body, a description of--

(i) the subjects on which the body holds *records* and the categories of *records* held on each subject;

(ii) every *personal information bank* held by the body, including, in respect of each bank--

(aa) the identification of the bank and a description of the categories of individuals to whom the bank relates;

(bb) a statement of the purposes for which the information in the bank was obtained or the bank was compiled and a statement of the uses compatible with those purposes for which the information in the bank is used or disclosed; and

(cc) a statement of the standards of retention and disposal applied to information in the bank as contemplated in section 62(1) and (3);

(e) a description of the categories of *records* of the body open to the public in terms of legislation as contemplated in section 44 (if applicable) and how to obtain access to those *records*;

(f) a description of the duty of the *head* of the body to disclose in terms of section 9 *records* revealing a serious *public safety or environmental risk*;

(g) a description of the services available to members of the public from the body and how to use those services;

(h) a description of any arrangement or provision for a person (other than a *governmental body* or an *organ* thereof) by consultation, making representations or otherwise, to participate in or influence--

(i) the formulation of policy; or

(ii) the exercise of powers or performance of duties,

by the body or its *organs*;

(i) a description of all remedies available in respect of an act or a failure to act by the body or an *organ* thereof; and

(j) a description of all remedies (including the procedure contemplated in section 63) available to a member of the public or an *official* of the body who wishes to report or otherwise remedy an impropriety contemplated in section 63 and the protection for an *official* of the body against reprisals provided for in section 65.

(2) A *governmental body* must, if necessary, update and publish its manual referred to in subsection (1) at intervals of not more than one year.

(3) The *head* of a *governmental body* must, as soon as possible after a manual is published in terms of subsection (1) or (2), supply, in at least two official languages, to--

(a) the Director-General: Communications, such number of copies of the manual as that Director-General has, upon request by the *head* of the body, indicated that he or she requires to comply with section 7(2);

(b) every "legal deposit library" [**"official publications depository"**] referred to in section 5(4)(c) and such other libraries as may be *prescribed*, at least one copy of the manual; and

(c) the Human Rights Commission, at least one copy of the manual.

(4) If the functions of two or more *governmental bodies* are closely connected, the Human Rights Commission may direct that the two or more bodies publish one manual only.

(5) Where an organ of state complies with any requirement stipulated in this section in respect of a *governmental body* as if the organ were the *head* of the body, the *head* of the body is deemed to have complied with such requirement.

## **Distribution of guide and manuals**



7.(1) The *head* of a *governmental body* must, as soon as possible after--

(a) receipt of copies of the guide supplied in terms of section 5(4)(a); and

(b) publication of its manual in terms of section 6(1) or (2),

supply at least one copy of that guide, in each official language, and the manual, in at least two official languages, to every head, branch or division office of that governmental body including the office of its *information officer*.

(2) The Director-General: Communications must, as soon as possible after receipt of copies of the guide and the manuals supplied in terms of section 5(4)(b) and 6(3)(a), respectively, distribute one copy of that guide, in each official language, and each manual, in at least two official languages, to every post office as defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958).

(3) The person in charge of--

(a) an office of the governmental body referred to in subsection (1) must provide a copy of the guide and each manual;

(b) a post office referred to in subsection (2) must provide a copy of the guide and each manual;

(c) every library contemplated in sections 5(4)(c) and 6(3)(b) must provide a copy of the guide and each manual,

in the official language which that guide or manual, as the case may be, is required to be available, upon request, to any person during normal office hours--

(i) in the case of an office of a *governmental body* and a library, for inspection without charge and for copying or purchase or both, upon payment of the *prescribed* fee; or

(ii) in the case of a post office, for inspection without charge and, if reasonably possible, for copying upon payment of the *prescribed* fee.

### **Information in telephone directory**

8.(1) The Director-General: Communications must ensure the publication in every telephone directory issued by Telkom S.A. Limited of the postal and street address, phone and fax number and (if available) electronic mail



address of the *information officer* of every *governmental body* and every deputy information officer designated for that body in terms of section 4(1)(b).

(2) The information contemplated in subsection (1) must be published after the expiry of a period of 6 months after the commencement of this section and thereafter in every telephone directory that is issued by Telkom S.A. Limited.

(3) The *head* of a *governmental body* must promptly *notify* the Director-General: Communications of a change in any information published in a telephone directory as required by subsection (1).

### **Announcement of public safety or environmental risk**

9.(1) Despite any other legislation, whether that legislation came into effect before or after the commencement of this section, but subject to this section, the *head* of a *governmental body* must, if there are reasonable grounds for believing that--

(a) a *record* of the body reveals a serious *public safety or environmental risk*; and

(b) it is in the public interest to disclose the record to the public or persons affected,

as soon as reasonably possible, so disclose the record.

(2) If the record referred to in subsection (1) contains information contemplated in section 30(1) or 32(1) (in this section referred to as "third party information"), the head of the governmental body in question must, before disclosing the record, inform by the fastest means reasonably possible, the person to whom the information relates of the intended disclosure, unless all necessary steps to locate the person within a reasonable period have been unsuccessful.

(3) When informing a person in terms of subsection (2), the head of the governmental body in question must--

(a) state that he or she intends to disclose a *record* that contains third party information and describe that information; and

(b) inform the third party that he or she may, within the period referred to in subsection (4) after he or she is informed, make written or oral representations to the *head* of the body why the third party information should not be disclosed.

(4) A third party who is informed in terms of subsection (2) of an intended disclosure may, within the reasonable period determined by the head of the governmental body in question after he or she has been informed, make written or oral representations to that head why the third party information should not be disclosed.

(5)(a) The head of the governmental body in question must--

(i) after due regard to any representations made by a third party in terms of subsection (4) and the grounds for disclosure contemplated in subsection (1)(a) and (b), decide whether the third party information should be disclosed or not; and

(ii) *notify* the third party informed in terms of subsection (2) and a third party not located as contemplated in that subsection, but who or which can be located by taking all necessary steps before the decision is taken, of the decision.

(b) If a third party cannot be located as contemplated in subsection (2), any decision whether to disclose the information concerned must be made with due regard to the fact that the third party did not have the opportunity to make representations why the third party information should not be disclosed.

(6) If the *head* of a *governmental body* decides pursuant to subsection (5) to disclose the third party information, the notice in terms of subsection (5)(a) must state--

(a) the findings on all material questions of fact, referring to the material on which those findings were based;

(b) the reasons for the decision in such manner as to enable the third party to understand the justification for the decision of the head of the body and make an informed decision about whether to lodge an *application* with a High Court or to utilise any other remedy in law available to the third party;

(c) that the third party may lodge an *application* with a High Court against the decision of the *head* of that body within 10 *working days* after notice is given, and the procedure for lodging that application; and

(d) that the third party information will be disclosed after the expiry of 10 *working days* after *notice* is given, unless an *application* is lodged within that period.

(7) If the *head* of a *governmental body* decides pursuant to subsection (5)

to disclose the third party information, the head must disclose that information after the expiry of 10 *working days* after *notice* is given in terms of that subsection, unless an *application* with a High Court is lodged against the decision within that period.

## PART 3

### ACCESS TO RECORDS OF GOVERNMENTAL BODIES

#### CHAPTER 1

#### RIGHT AND MANNER OF ACCESS

##### **Right of access to records of governmental bodies**

**10.** Despite any other legislation, whether that legislation came into effect before or after the commencement of this section, any person must, on request, but subject to *this Act*, be given access to any *record* of a *governmental body*.

##### **Parties to court proceedings excluded from access under Act**

**11.** No party to criminal or civil proceedings may, for the purpose of those proceedings, request access in terms of *this Act* to a *record* of a *governmental body*.

##### **Right of disclosure of record to which access is given**

**12.** Despite any other legislation, whether that legislation came into effect before or after the commencement of this section, but subject to the common law, any person, whether or not he or she is the requester concerned, may publish, broadcast or otherwise disclose information contained in a *record* of a *governmental body* to which access is granted in terms of this Act.

##### **Access to records of governmental bodies under other law**

**13.** Nothing in *this Act* prevents a *governmental body* or any of its *organs* from

(a) giving access to a *record*; or

(b) correcting *personal information*,

other than as required by *this Act*, if that body or organ is permitted or required to do so by other legislation or the common law.

##### **Form of requests**

14.(1) A *request for access* must be made in the *prescribed* form to the *information officer* of the governmental body in question at his or her address or fax number or electronic mail address.

(2) The form for a *request of access* prescribed by regulation in terms of section 86(1)(a), read with subsection (1), must at least require from the requester concerned--

(a) to provide sufficient particulars to enable an *official* of the governmental body concerned to identify the *record* or *records* requested;

(b) to indicate which applicable form of access referred to in section 26(2) is required;

(c) to state whether the record in question is preferred in a particular language;

(d) to state whether the requester is a *personal, non-commercial* or *commercial requester* and, in the case of a *commercial requester*, to include the *request fee*;

(e) to specify a postal address or phone or fax number and, if the request includes an *urgent request application*, a phone number, for the requester in the Republic;

(f) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and

(g) in the case of a *request for access* to a *record* containing *personal information*, to state the capacity contemplated in subsection (5) in which the requester is making the request and to submit--

(i) the requester's identity document or a certified copy thereof or any other reasonable proof of the requester's identity; or

(ii) in the case of an authorised representative referred to in subsection (5)(a), reasonable proof of his or her appointment as representative.

(3) If a *requester* can, according to the purposes for which access is sought, be classified as a *personal, non-commercial* and *commercial requester* or as any two of those requesters, that requester is deemed, for the purposes of *this Act*, to be that type of requester who would, upon the request for access in question being granted, be liable to pay the higher or highest *access fee* in respect of the request.

(4)(a) An individual who because of illiteracy, poor literacy or a physical disability is unable to make a *request for access* to a *record* of a *governmental body* in accordance with subsection (1), may make that request orally.

(b) The information officer of that body must reduce that oral request to writing in the *prescribed* form and provide a copy thereof to the requester in question.

(5) A *request for access* to a *record* containing *personal information* may be made--

(a) by the individual to whom the *personal information* relates or his or her authorised representative;

(b) if the individual referred to in paragraph (a) is--

(i) under the age of 16 years, by a person having parental responsibility for the individual;

(ii) incapable of managing his or her affairs, by a person appointed by the court to manage those affairs;

(iii) deceased, by the executor of his or her estate.

### **Duty to assist requesters**

15.(1) If a *requester* informs the *information officer* of a *governmental body* that he or she wishes to make a *request for access* to a *record* of that or another *governmental body*, the *information officer* must render such assistance, free of charge, as is necessary to enable that requester to comply with section 14(1).

(2) If a *requester* has made a *request for access* that does not comply with section 14(1), the information officer in question may not refuse the request because of such non-compliance unless the information officer has--

(a) *notified* that requester of an intention to refuse the request and stated in the *notice*--

(i) the reasons for the contemplated refusal; and

(ii) that the information officer or another *official* identified by the information officer would assist that requester in order to make the request in a form that would remove the ground for refusal;

(b) given the requester a reasonable opportunity to seek such assistance;

(c) as far as reasonably possible, furnished the requester with any information, including information about the *records* (other than information on the basis of which a *request for access* is required or permitted by this Act to be refused) held by the body which are relevant to the request, that would assist the making of the request in such a form; and

(d) given the requester a reasonable opportunity to confirm the request or alter it to comply with section 14(1).

(3) When computing any period referred to in section 20(1) or 21(2) or (3), the period commencing on the date on which notice is given in terms of subsection (2) and ending on the date on which the person confirms or alters the request for access in question must be disregarded.

(4) If it is apparent on receipt of a *request for access* that it should have been made to another *governmental body*, the information officer of the governmental body in question must--

(a) render such assistance as is necessary to enable the person to make the request; or

(b) transfer the request in accordance with section 16,

whichever will result in the request being dealt with earlier, to the *information officer* of the appropriate *governmental body*.

### **Transfer of requests**

**16.(1)** If a *request for access* to a *record* is made to the *information officer* of a *governmental body* and--

(a) the record is not in the possession or under the control of that body but is in the possession of another *governmental body*; or

(b) the subject-matter of the record is more closely connected with the functions of another *governmental body* than those of the governmental body of the information officer to whom the request is made; or

(c) the record contains commercial information contemplated in section 39(2) in which any other *governmental body* has a greater commercial interest,

the information officer to whom the request is made must as soon as reasonably possible, but in any event, within 14 days after the request is received--

(i) transfer the request to the information officer of the other *governmental body* or, if there is in the case of paragraph (c) more than one other governmental body having a commercial interest, the other governmental body with the greatest commercial interest; and

(ii) if the governmental body of the information officer to whom the request is made is in possession of the record and considers it helpful to do so to enable the information officer of the other governmental body to deal with the request, send the record or a copy of the record to that information officer.

(2) If a *request for access to a record* is made to the *information officer of a governmental body* and--

(a) the record is not in the possession or under the control of that body and the information officer does not know which *governmental body* has possession or control of the record; and

(b) the subject-matter of the record is not closely connected to the functions of that body and the information officer does not know whether the record is more closely connected with the functions of another *governmental body* than those of the governmental body of the information officer to whom the request is made; and

(c) the record--

(i) was created by or for another *governmental body*, or

(ii) was not so created by or for any *governmental body*, but was received first by another *governmental body*,

the information officer to whom the request is made, must as soon as reasonably possible, but in any event, within 14 days after the request is received, transfer the request to the information officer of the governmental body--

(i) by or for which the *record* was created; or

(ii) which received it first,

as the case may be.

(3) If a *request for access* which is to be transferred includes an *urgent request application*, the request must be so transferred immediately or, if that is not reasonably possible, as soon as reasonably possible, but in any event, within five *working days* after it is received.



(4) Subject to subsection (5), the information officer to whom a *request for access* is transferred, must give priority to that request in relation to other requests as if it was received by him or her on the date it was received by the information officer who transferred the request.

(5) If a *request for access* is *transferred*, any period referred to in section 20(1) or 21(2) or (3) must be computed from the date the request is received by the information officer to whom the request is transferred.

(6) Upon the *transfer* of a *request for access*, the information officer making the transfer must promptly *notify* the requester concerned of--

(a) the transfer;

(b) the reasons for the transfer; and

(c) the period within which the request should be dealt with.

### **Preservation of records until final decision on request**

**17.** If the *information officer* of a *governmental body* has received a *request for access* to a record of the body, the *head* of the body must take the steps that are reasonably necessary to preserve the record, without deleting any information contained in it, until the information officer has notified the requester in question of his or her decision in terms of section 20 and--

(a) the periods for lodging an *internal appeal* with that head, an *application* with a High Court or an appeal against a decision of that Court have expired; or

(b) that internal appeal, application or appeal against a decision of that Court or other legal proceedings in connection with the request has been finally determined,

whichever is the later.

### **Payment of request fee**

**18.(1)** A *commercial requester* must, when making his or her *request for access*, pay the *prescribed* request fee.

(2) If--

(a) there are reasonable grounds for believing that a *requester* is a *commercial requester*; and

(b) that requester has not paid the *prescribed* request fee,



the information officer of the governmental body in question must by *notice* require the requester to pay that fee and in that notice state that the requester may lodge an *internal appeal* with the *head* of the body against the payment of that fee, and the procedure (including the period) for lodging the *internal appeal*.

(3) If the *prescribed* request fee is payable in respect of a *request for access*, the decision on the request in terms of section 20 may be deferred until the fee is paid.

### **Payment of deposit**

**19.(1)** If the search for a *record* of a *governmental body* in respect of which a *request for access* has been made and the preparation of the record for disclosure (including any arrangements contemplated in section 26(2)(a) and (b)(i) and (ii)(aa)) would, in the opinion of the information officer of the body require--

(a) in the case of a *non-commercial requester*, more than 30 hours; or

(b) in the case of a *commercial requester*, more than six hours,

the information officer may by *notice* require the requester in question to pay the *prescribed* portion (being not more than one third) of the *access fee* which would be payable if the request is granted as a deposit.

(2) No deposit is payable in respect of a *request for access* by--

(a) a *personal requester*; or

(b) a member of Parliament, a provincial legislature or a municipal council in connection with the member's official duties.

(3) The notice referred to in subsection (1) must state--

(a) the amount of the deposit; and

(b) that the requester in question may lodge an *internal appeal* with the *head* of the governmental body in question against the payment of a deposit or the amount thereof, and the procedure (including the period) for lodging the *internal appeal*.

(4) If a deposit is payable in respect of a *request for access*, the decision on the request in terms of section 20 may be deferred until the deposit is paid.

(5) If a deposit has been paid in respect of a *request for access* which is refused, the information officer concerned must repay the deposit to the requester concerned.

### **Decision on request and notice thereof**

20.(1) The *information officer* to whom a *request for access* is made or *transferred*, must, subject to sections 21 and 22 and Chapter 3 of this Part, as soon as reasonably possible, but in any event, within 30 days, after the request is received or *transferred*--

(a) decide in accordance with this Act whether to grant the request; and

(b) *notify* the requester concerned of the decision and, if that requester stated as contemplated in section 14(2)(f) that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

(2) The notice in terms of subsection (1) must, if the request for access--

(a) is granted, state--

(i) the *access fee* (if any) to be paid upon access;

(ii) the form in which access will be given; and

(iii) that the requester concerned may lodge an *internal appeal* with the *head* of the governmental body in question against the *access fee* to be paid or the form of access granted, and the procedure (including the period) for lodging the internal appeal;

(b) is refused, state--

(i) the findings on all material questions of fact, referring to the material on which those findings were based;

(ii) the reasons for the refusal (including the provision of this Act relied upon to justify the refusal) in such manner as to enable the requester to understand the justification for the refusal and make an informed decision about whether to lodge an *internal appeal* with the *head* of the governmental body or to utilise any other remedy in law available to the requester; and

(iii) that the requester may lodge an *internal appeal* with the *head* of the governmental body against the refusal of the request, and the procedure (including the period) for lodging the internal appeal.

## Urgent requests

21.(1) A *requester* who wishes to obtain access to a *record* of a *governmental body* urgently must include an application to that effect in the *request for access*, and give reasons for the urgency.

(2) If a *request for access* includes an *urgent request application*, the information officer concerned must, subject to Chapter 3 of this Part--

(a) immediately; or

(b) if that is not reasonably possible, as soon as reasonably possible, but in any event, within five *working days*,

after the request has been received or *transferred*, decide on the request and give *notice* of the decision in accordance with section 20, unless there are reasonable grounds for believing that--

(i) the nature of the reasons for the urgency furnished by the requester concerned is such that the requester will suffer no prejudice if the request is decided upon within the applicable period contemplated in section 20(1); or

(ii) it is impractical to decide on the request within five *working days* after the request has been received or *transferred*.

(3) If the information officer concerned refuses an *urgent request application* on the grounds referred to in subsection (2)(i) or (ii), he or she must--

(a) immediately; or

(b) if that is not reasonably possible, as soon as reasonably possible, but in any event, within five *working days*,

after the request concerned has been received or *transferred*, *notify* the requester in question of the refusal and state in the *notice*

(i) the findings on all material questions of fact, referring to the material on which those findings were based;

(ii) the reasons for the refusal (including the provision of this section relied upon to justify the refusal) in such manner as to enable the requester to understand the justification for the refusal and make an informed decision about whether to lodge an *internal appeal* with the head of the governmental body in question or an *application* with a High Court or to utilise any other remedy in law available to the requester; and

(iii) that the requester may lodge an *internal appeal* with the *head* of the governmental body, or an *application* with a High Court, against the refusal of that urgent request application, and the procedure (including the period) for lodging the internal appeal or application with a High Court.

(4) If the notice of a decision in terms of subsection (2) or (3) is not given by fax, the requester in question must be informed by phone of the decision concerned.

### **Extension of period to deal with request**

22.(1) Subject to section 21, the information officer to whom a *request for access* has been made or *transferred*, may extend the period of 30 days referred to in section 20(1) (in this section referred to as the original period), once for a further period of not more than 30 days, if

(a) the request is for a large number of *records* or requires a search through a large number of *records* and compliance with the original period would unreasonably interfere with the operations of the governmental body in question;

(b) the request requires a search for *records* in, or collection thereof from, an office of the governmental body not situated in the same town or city as the office of the information officer that cannot reasonably be completed within the original period;

(c) consultation among divisions of the governmental body or with another *governmental body* is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;

(d) more than one of the circumstances contemplated in paragraphs (a), (b) and (c) exist in respect of the request making compliance with the original period not reasonably possible.

(2) If a period is extended in terms of subsection (1), the information officer concerned must, as soon as reasonably possible, but in any event, within 30 days, after the request is received or *transferred*, *notify* the requester in question of such extension and state in the *notice--*

(a) the period of the extension;

(b) the reasons for the extension (including the provision of this Act relied upon to justify the refusal) in such manner as to enable the requester to understand the justification for the extension and make an informed decision about whether to lodge an *internal appeal* with the head of the governmental body in question or to utilise any other remedy in law available to the requester; and

(c) that the requester may lodge an *internal appeal* with the *head* of the governmental body against the extension, and the procedure (including the period) for lodging the internal appeal.

### **Deemed refusal of request**

23. If an *information officer* fails to give his or her decision on--

(a) a *request for access* within the period contemplated in section 20(1); or

(b) a *request for correction* within the period contemplated in section 53(5),

the information officer is, for the purposes of *this Act*, deemed to have refused the request in question.

### **Severability**

24.(1) Despite any other provision of *this Act*, if a *request for access* to a *record* of a *governmental body* containing information which is required by section 30 or 32, or permitted by section 31, 33, 34, 35, 37, 38, 39, 40 or 43, to be refused, is made, every part of the *record* which--

(a) does not contain; and

(b) can reasonably be severed from any part that contains,

any such information, must be disclosed.

(2) Access must be given to the part or parts of a *record* required by subsection (1) to be disclosed by--

(a) making a copy of the record and deleting the information concerned on the copy; and

(b) making a note on every part of the copy where information is deleted of the fact of the deletion.

(3) If a *request for access* to--

(a) a part of a *record* is granted; and

(b) the other part of the record is refused,

as contemplated in subsection (1), the provisions of section 20(2)(a), subject to subsection (2) of this section, apply to paragraph (a) and the provisions of section 20(2)(b) to paragraph (b).

## Access fees

25.(1) A *requester* whose *request for access* to a record of a *governmental body* has been granted may be given access to the record only if he or she has paid the applicable *prescribed* access fee (if any).

(2) Regulations made in respect of access fees in terms of section 86(1)(a), read with subsection (1) must prescribe a reasonable access fee for--

(a) the cost of making a copy of the record, or of a transcription of the content of record, as contemplated in section 26(2)(a) and (b)(i), (ii)(bb), (iii), (iv) and (v) and, if applicable, the cost of postage (in this section referred to as an access fee for reproduction); and

(b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 26(2)(a) and (b)(i) and (ii)(aa)) a record for disclosure to the requester concerned (in this section referred to as an access fee for search and preparation).

(3) A *personal requester* must pay an access fee for reproduction only.

(4) A *non-commercial requester* must pay an access fee for reproduction and for search and preparation for any time reasonably required in excess of 24 hours to search for and prepare (including making any arrangements contemplated in section 26(2)(a) and (b)(i) and (ii)(aa)) the record for disclosure.

(5) A *commercial requester* must pay an access fee for reproduction and for search and preparation.

(6) A member of Parliament, a provincial legislature or a municipal council who makes a *request for access* in connection with his or her official duties, is not liable to pay any access fee in respect of the request.

## Access and forms of access

26.(1) If a *requester* has been given notice in terms of section 20(1) that his or her *request for access* has been granted, that requester must, subject to subsections (3) and (9)

(a) if an *access fee* is payable, upon payment of that fee; or

(b) if no *access fee* is payable, immediately,

be given access in the applicable forms referred to in subsection (2) as the requester indicated in the request and in the language contemplated in section 27.

(2) The forms of access to a *record* granted in terms of this Part are the following:

(a) If the record is in written or printed form, by supplying a copy of the record or by making arrangements for the inspection of the record;

(b) if the record is not in written or printed form--

(i) in the case of a *record* from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily available to the governmental body in question, by making arrangements to view those images or be supplied with copies or transcriptions of them;

(ii) in the case of a *record* in which words or information are recorded in such manner that they are capable of being reproduced in the form of sound by equipment which is ordinarily available to the governmental body in question--

(aa) by making arrangements to hear those sounds; or

(bb) where the governmental body is capable of producing a written or printed transcription of those sounds by the use of equipment which is ordinarily available to it, by supplying such a transcription;

(iii) in the case of a *record* which is held on computer, or in electronic or machine-readable form, and from which the governmental body in question is capable of producing a printed copy of the record, or part of it, or of information derived from it by using computer equipment and expertise ordinarily available to the governmental body, by supplying such a copy;

(iv) in the case of a *record* available in computer readable form or capable of being made available in computer readable form, by supplying a copy in that form;

(v) in any other case, by supplying a copy of the *record*.

(3) Subject to section 24, if a *requester* has requested access in a particular form, access must be given in that form, unless to do so would--

(a) interfere unreasonably with the effective administration of the governmental body concerned;

(b) be detrimental to the preservation of the record; or



(c) amount to an infringement of copyright not owned by the State or the governmental body concerned.

(4) If a *requester* has requested access in a particular form and, for a reason referred to in subsection (3), access in that form is refused but access is given in another form, the fee charged (if any) may not exceed what would have been charged if that requester had been given access in the form requested.

(5) If a *requester* with a visual or auditory disability is prevented by that disability from reading, viewing or listening to the record in question in the form in which it is held by the governmental body in question, the information officer of the body must, if that requester so requests, take reasonable steps to make the record available in a form in which it is capable of being read, viewed or heard by the requester.

(6) If a *record* is made available in accordance with subsection (5), the requester concerned may not be required to pay an *access fee* which is more than the fee which he or she would have been required to pay but for the disability.

(7) If a *record* is made available in terms of this Act to a *requester* for inspection, viewing or hearing, he or she may make copies of or transcribe the record using his or her own equipment, unless to do so would--

(a) interfere unreasonably with the effective administration of the governmental body concerned;

(b) be detrimental to the preservation of the *record*; or

(c) amount to an infringement of copyright not owned by the State or the governmental body concerned.

(8) If a copy of a *record* is required by this Act to be supplied to a *requester*, the copy must, on his or her request, be supplied by posting it to him or her.

(9) If an *internal appeal* with the *head* of a *governmental body* or an *application* with a High Court is lodged against the granting of a *request for access* to a *record*, access to the record may be given only when the decision to grant the request is finally confirmed.

## **Language of access**

27. A *requester* whose *request for access* to a *record* of a *governmental body* has been granted must, if--



(a) the record exists in the language that the requester prefers, be given access in that language; or

(b) the record does not exist in the language so preferred or that requester has no preference, be given access in any language the record exists in.

## **Reports to Human Rights Commission**

**28.** The *head* of each *governmental body* must annually submit to the Human Rights Commission a report stating in relation to the governmental body--

(a) the number of *requests for access* received;

(b) the number of *requests for access* granted in full;

(c) the number of *requests for access* granted pursuant to section 45;

(d) the number of *requests for access* refused in full and refused partially, the number of times each provision of this Act relied on to refuse access was invoked to justify refusal in full and partial refusal;

(e) the number of *requests for correction* and the number of cases in which a correction was made;

(f) the number of cases in which the periods stipulated in sections 20(1) and 53(5), respectively, were extended in terms of section 22(1) and section 53(3), read with section 53(4), respectively;

(g) the number of *urgent request applications* and *urgent appeal applications* made and the number of cases in which the application was granted;

(h) the number of *internal appeals* lodged with the *head* of the body and the number of cases in which, as a result of an *internal appeal*, access was given to a *record* or a part thereof or a correction of *inaccurate personal information* was made;

(i) the number of *internal appeals* which were lodged on the ground that a *request for access* or *for correction* was deemed to have been refused in terms of section 23;

(j) the number of *applications* to a High Court which were lodged on the ground that an *internal appeal* was deemed to have been dismissed in terms of section 70(5); and

(k) such other matters as may be *prescribed*.

## CHAPTER 2

### GROUNDINGS FOR REFUSAL OF ACCESS TO RECORDS

#### **Mandatory and discretionary grounds for refusal**

29. The *information officer* of a *governmental body*--

(a) must refuse a *request for access* to a *record* contemplated in section 30(1) or 32(1), except if the provisions of section 45(1) apply;

(b) may refuse a *request for access* to a *record* contemplated in--

(i) section 31(1), 34(a), 35(1)(c)(ii), (iii) or (vi) or (d) or 36, except if the provisions of section 45(1) apply;

(ii) section 33(1) or (3), 34(b), 35(1)(a), (b) or (c)(i), (iv) or (v), 37, 38(1) or 39(1) or (2), except if the provisions of section 45(2) apply;

(iii) section 40(1), 41, 42(1), 43(1) or 44.

#### **Mandatory protection of personal privacy**

30.(1) Subject to subsection (2), the *information officer* of a *governmental body* must refuse a *request for access* to a *record* of the body the disclosure of which would constitute an invasion of the privacy of an identifiable individual (including an individual who died less than 20 years before the request is received) other than the requester concerned or other person contemplated in section 14(5).

(2) Subsection (1) does not apply to a *record* in so far as it consists of information--

(a) already publicly available;

(b) about an individual who has consented to its disclosure to the requester concerned;

(c) about an individual's physical or mental health, or well-being, who is--

(i) under the age of 18 years;

(ii) under the care of the requester; and

(iii) is incapable of understanding the nature of the request,

and if giving access would be in the individual's best interests;

(d) about an individual who is deceased and the requester is, or is requesting with the consent of, the individual's next of kin; or

(e) about an individual who is or was an *official* of a *governmental body* and relates to the position or functions of the individual, including--

(i) the fact that the individual is or was an *official* of that governmental body;

(ii) the title, work address, work phone number of the individual and other similar particulars of the individual;

(iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual;

(iv) the name of the individual on a *record* prepared by the individual in the course of employment.

(3) For the purposes of subsection (2)(d), the "individual's next of kin" means--

(a) an individual to whom the individual was married, with whom the individual lived as if they were married or with whom the individual habitually cohabited, immediately before the individual's death; or

(b) a parent, child, brother or sister of the individual;

(c) if there is no next of kin referred to in paragraphs (a) and (b) or the requester concerned cannot locate such next of kin after all reasonable steps were taken by the requester to locate such next of kin, an individual who is related to the individual in the second degree of affinity or consanguinity.

### **Health of requesters**

31.(1) The *information officer* of a *governmental body* may refuse a *request for access* to a *record* of the body about the requester's physical or mental health, or well-being, which was provided by a *health practitioner* in his or her capacity as such if

(a) the disclosure of the *record* to that requester is likely to cause serious harm to his or her physical or mental health, or well-being; and

(b) the information officer has disclosed the record to, and consulted with, a *health practitioner* who--

(i) carries on an occupation of the same kind as that health practitioner who provided the record; and

(ii) has been nominated by the requester or his or her authorised representative; and

(c) that health practitioner so consulted is of the opinion that the serious harm contemplated in paragraph (a) is likely to result.

(2) If the requester referred to in subsection (1) is--

(a) under the age of 16 years, the nomination in terms of that subsection must be by a person having parental responsibilities for the requester; or

(b) incapable of managing his or her affairs, the nomination in terms of that subsection must be by a person appointed by the court to manage those affairs.

(3) If--

(a) access has been given to a *record* of a *governmental body* containing information about the requester's physical or mental health, or well-being, which was provided by, or originated from, a *health practitioner*; and

(b) such access was given without that health practitioner's knowledge; and

(c) that health practitioner can be located by taking all necessary steps,

the information officer concerned must *notify* that health practitioner that access has been so given.

### **Mandatory protection of third party commercial information**

**32.(1)** Subject to subsection (2), the *information officer* of a *governmental body* must refuse a *request for access* to a *record* of the body containing--

(a) (i) trade secrets of a *third party*; or

(ii) financial, commercial, scientific or technical information, other than trade secrets, supplied in confidence by a *third party* and treated consistently as confidential by that third party,

the disclosure of which could reasonably be expected to cause substantial harm to the commercial or financial interests of that third party; or

(b) information supplied by a *third party* the disclosure of which would be

likely to put that third party at a substantial and unfair disadvantage in contractual or other negotiations or cause it substantial and unfair prejudice in commercial competition.

(2) Subsection (1) does not apply to a *record* in so far as it consists of information--

(a) already publicly available;

(b) about a *third party* who has consented to its disclosure to the requester concerned;

(c) about the safety of goods or services supplied by a *third party* and the disclosure of the information would be likely to result in better informed choices by persons seeking to acquire those goods or services; or

(d) supplied to, or about the results of any test or other investigation carried out by, a *governmental body* regarding a *public safety or environmental risk*.

(3) If a *request for access* to a *record* contemplated in subsection (2)(d) is granted in terms of this Act, the information officer concerned must at the same time as access to the record is given, provide the requester concerned with a written explanation of the methods used in conducting the test or other investigation in question.

### **Records supplied in confidence**

**33.**(1) Subject to subsection (2), the *information officer* of a *governmental body* may refuse a *request for access* to a *record* of that body containing information supplied in confidence to any *governmental body* by a *third party* if--

(a) the disclosure of the record would be likely to prejudice the future supply of similar *records*, or *records* from the same source; and

(b) the last-mentioned governmental body has no legal right to demand, or that third party has no legal obligation to supply, the *record*; and

(c) it is in the public interest that similar *records*, or *records* from the same source, should continue to be supplied.

(2) Subsection (1) does not apply to a *record*--

(a) if it has been supplied to the governmental body concerned for the purpose of

(i) securing some advantage, grant, permit, contract or concession from any *governmental body*; or

(ii) dissuading any *governmental body* from taking any action against the person who supplied the record or on whose behalf the record was supplied; or

(b) in so far as it consists of information independently obtained by the body or already publicly available; or

(c) if the third party concerned has consented to its disclosure to the requester concerned.

(3) The *information officer* of a *governmental body* may refuse a *request for access to a record* of the body containing information--

(a) supplied in confidence to a *governmental body* by a *third party* or another *governmental body*; and

(b) held by a *governmental body* for the purpose of enforcing legislation imposing a tax, duty or levy.

### **Safety of individuals and security of structures and systems**

34. The *information officer* of a *governmental body* may refuse a *request for access to a record* of the body the disclosure of which would be likely--

(a) to endanger the life or physical safety of an individual;

(b) seriously to endanger the maintenance or enforcement of methods for the security of a particular building, installation or information storage, computer or communication system (including, but not limited to, a prison as defined in section 1 of the Correctional Services Act, 1959 (Act No. 8 of 1959), and a police station).

### **Law enforcement**

35.(1) The *information officer* of a *governmental body* may refuse a *request for access to a record* of the body--

(a) containing methods, techniques, procedures or guidelines for

(i) the prevention, detection, suppression or investigation of offences; or

(ii) the prosecution of alleged offenders,

if the disclosure of those methods, techniques, procedures or guidelines would be likely to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence;

(b) the disclosure of which would be likely--

(i) to impede; or

(ii) to result in a miscarriage of justice in,

the prosecution of an alleged offender, if the prosecution is being prepared or about to commence or pending;

(c) the disclosure of which would be likely--

(i) to prejudice the investigation of any offence or possible offence of the law which is about to commence or is in progress or, if it has been suspended or terminated, is likely to be resumed;

(ii) to reveal, or enable a person to ascertain, the identity of a confidential source of information in respect of a law enforcement matter;

(iii) to result in the intimidation or coercion of a witness, or a person who might be or has been called as a witness, in criminal proceedings or other proceedings to enforce the law, or to endanger the life or physical safety of such witness or person;

(iv) to result in the commission of an offence;

(v) subject to subsection (2), to facilitate escape from legal custody; or

(vi) to deprive an individual of a right to a fair trial or an impartial adjudication; or

(d) containing arrangements for the protection of an individual in accordance with a witness protection scheme.

(2) Subsection (1)(c)(v) does not apply to a *record* in so far as it consists of information about the general conditions of detention of persons in custody.

(3)(a) If a *request for access* to a *record* of a *governmental body* may be refused in terms of subsection (1)(a), (b), (c) or (d), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in subsection (1)(a),



(b), (c) or (d), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.

(b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 20(2)(b), must--

(i) state that fact;

(ii) identify the provision of subsection (1) in terms of which access would have been refused if the record existed;

(iii) state the findings and the reasons for the refusal as required by section 20(2)(b)(i) and (ii), respectively, so far as they can be given without causing the harm contemplated in subsection (1)(a), (b), (c) or (d); and

(iv) state that the requester in question may lodge an *internal appeal* with the head of the governmental body in question against the refusal as required by section 20(2)(b)(iii).

### **Legal professional privilege**

**36.** The *information officer* of a *governmental body* may refuse a *request for access to a record* of the body which would be privileged from production in legal proceedings on the ground of legal professional privilege unless--

(a) the person entitled to the privilege has waived the privilege; or

(b) the legal proceedings to which the record relates have been finally determined.

### **Defence and security of Republic**

**37.(1)** The *information officer* of a *governmental body* may refuse a *request for access to a record* of the body if its disclosure would be likely substantially to harm the national defence or security of the Republic by--

(a) frustrating any measure for the prevention, detection or suppression of--

(i) aggression against the Republic;

(ii) sabotage or terrorism aimed at the people of the Republic or a strategic asset of the Republic, whether inside or outside the Republic;

(iii) an activity aimed at changing the constitutional order of the Republic by the use of force or violence; or



(iv) a foreign or hostile intelligence operation;

(b) jeopardising the effectiveness of a *governmental body*, branch of that body or person responsible for the prevention, detection or suppression of an activity contemplated in paragraph (a)(i), (ii), (iii) or (iv) by disclosing its or his or her capabilities, deployment or performance;

(c) jeopardising the effectiveness of--

(i) arms; or

(ii) other equipment, including communication or cryptographic systems,

used, or intended to be used, or being developed, designed, produced or investigated for preventing, detecting or suppressing an activity contemplated in paragraph (a)(i), (ii), (iii) or (iv) by disclosing their or its capabilities, quantity, deployment or performance; or

(d) jeopardising the effectiveness of methods or equipment for collecting, assessing or handling information used for the prevention, detection or suppression of an activity contemplated in paragraph (a)(i), (ii), (iii) or (iv), or disclosing the identity of a confidential source of information used for that purpose.

(2)(a) If a *request for access* to a *record* of a *governmental body* may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in subsection (1)(a), (b), (c) or (d), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.

(b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 20(2)(b), must--

(i) state that fact;

(ii) identify the provision of subsection (1) in terms of which access would have been refused if the record existed;

(iii) state the findings and the reasons for the refusal as required by section 20(2)(b)(i) and (ii), respectively, so far as they can be given without causing the harm contemplated in subsection (1)(a), (b), (c) or (d); and

(iv) state that the requester may lodge an *internal appeal* with the head of

the governmental body in question against the refusal as required by section 20(2)(b)(iii).

### **International relations**

**38.(1)** The *information officer* of a *governmental body* may refuse a *request for access to a record* of the body the disclosure of which would be--

(a) in *contravention* of an obligation imposed on the Republic by international law; or

(b) subject to subsection (2), likely to cause substantial harm to the capacity of the Republic to maintain or conduct relations in the best interests of the Republic with another state or an *international organisation*.

(2) Subsection (1)(b) does not apply to a *record* if it came into existence more than 20 years before the request.

### **Economic interests of Republic and commercial activities of governmental bodies**

**39.(1)** The *information officer* of a *governmental body* may refuse a *request for access to a record* of the body if its disclosure would be likely substantially to jeopardise the financial welfare of the Republic or any part thereof or the ability of the government to manage the economy of the Republic or any part thereof effectively in the best interests of the Republic by prematurely disclosing--

(a) a contemplated change in, or maintenance of, a policy materially affecting the currency, coinage, legal tender, exchange rates or foreign investment;

(b) a contemplated change in or decision not to change--

(i) credit or interest rates;

(ii) customs or excise duties, taxes or any other source of revenue;

(iii) the regulation or supervision of financial institutions;

(iv) government borrowing; or

(v) the regulation of prices of goods or services, rents or wages, salaries or other incomes; or

(c) a contemplated--

(i) sale or acquisition of immovable or movable property; or

(ii) international trade agreement.

(2) Subject to subsection (3), the *information officer* of a *governmental body* may refuse a *request for access* to a *record* of the body containing--

(a) (i) trade secrets of the State or a *governmental body*; or

(ii) financial, commercial, scientific or technical information, other than trade secrets, held by a *governmental body* for the purpose of conducting a commercial activity which it is authorised by law to conduct and which it does conduct or is about to conduct,

the disclosure of which could reasonably be expected to cause substantial harm to the commercial or financial interests of the State or a *governmental body*;

(b) information the disclosure of which would be likely to put a *governmental body* at a substantial and unfair disadvantage in contractual or other negotiations or cause it substantial and unfair prejudice in commercial competition;

(c) the results of original research undertaken by an *official* of a *governmental body* the disclosure of which could reasonably be expected to deprive that *governmental body* or official of the benefit of first publication of those results; or

(d) a *computer program* owned by a *governmental body* or the State, except in so far as it is required to give access to a *record* to which access is granted in terms of this Act.

(3) Subsection (2) does not apply to a *record* in so far as it consists of information

(a) already publicly available;

(b) about or owned by a *governmental body* which has consented to its disclosure to the requester concerned;

(c) about the safety of goods or services supplied by a *governmental body* and the disclosure of the information would be likely to result in better informed choices by persons seeking to acquire those goods or services; or

(d) supplied to, or about the results of any test or other investigation carried out by, a *governmental body* regarding a *public safety or environmental risk*.

(4) If a request for access to a *record* contemplated in subsection (3)(d) is granted in terms of this Act, the information officer concerned must at the same time as access to the record is given, provide the requester concerned with a written explanation of the methods used in conducting the test or other investigation in question.

### **Operations of governmental bodies**

**40.**(1) Subject to subsections (3) and (4), the *information officer* of a *governmental body* may refuse a *request for access to a record* of the body--

(a) containing an opinion, advice or recommendation obtained or prepared, or an account of a consultation or deliberation that has occurred, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power conferred, or performance of a duty imposed, by the law if--

(i) the knowledge that disclosure of the record were possible could reasonably be expected to have frustrated the deliberative process in a *governmental body* or between *governmental bodies* by inhibiting the candid--

(aa) communication of such opinion, advice or recommendation; or

(bb) conduct of such consultation or deliberation; or

(ii) the disclosure of which would, by premature disclosure of a policy or contemplated policy, be likely substantially to frustrate the success of that policy;

(b) the disclosure of which would be likely to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by a *governmental body*;

(c) containing evaluative material, whether or not the person who supplied it is identified in the record, if the disclosure of the material would breach an express or implied promise--

(i) which was made to the person who supplied the material; and

(ii) which was to the effect that the material or the identity of the person who supplied it or both would be held in confidence; or

(d) containing a working draft or note of an *official* of a *governmental body*,

and if the refusal of the request would be in the public interest.

(2) For the purposes of subsection (1)(c) "evaluative material" means an evaluation or opinion compiled--

(a) for the purpose of determining the suitability, eligibility or qualifications of the individual to whom the evaluation or opinion relates--

(i) for employment or for appointment to office;

(ii) for promotion in employment or office or for continuance in employment or office;

(iii) for removal from employment or office; or

(iv) for the awarding of any scholarship, award, bursary, honour or similar benefit; or

(b) for the purpose of determining whether any scholarship, award, bursary, honour or similar benefit should be continued, modified, cancelled or renewed.

(3) Subsection (1) does not apply to a *record* in so far as it consists of an account of, or a statement of reasons for, a decision taken in the exercise of a power conferred or performance of a duty imposed by the law.

(4) Subsection (1)(a) does not apply to a *record*--

(a) if the record came into existence more than 15 years before the request concerned; or

(b) in so far as it consists of--

(i) factual material (including any statistical data);

(ii) the analysis, interpretation or evaluation of, or any projection based on, factual material referred to in subparagraph (i);

(iii) a report on the performance or efficiency of a *governmental body* or any program, project or activity under its supervision;

(iv) a report of a body contemplated in section 1(2);

(v) a report of a scientific or technical expert; or

(vi) the results of, or report on, any test or other investigation regarding a *public safety or environmental risk*.

(5) If a *request for access to a record* contemplated in subsection (4)(b)(vi) is granted in terms of this Act, the information officer concerned must at the same time as access to the record is given, provide the requester concerned with a written explanation of the methods used in conducting the test or other investigation in question.

### **Frivolous or vexatious requests**

**41.** The *information officer of a governmental body* may refuse a *request for access to a record* of the body if the request is manifestly frivolous or vexatious.

### **Records that cannot be found or do not exist**

**42.(1)** The *information officer of a governmental body* may refuse a *request for access to a record* of the body if--

(a) a thorough search to find the record has been conducted, but it cannot be found; or

(b) there are reasonable grounds for believing that the record does not exist.

(2) If an *information officer* refuses a *request for access to a record* in terms of subsection (1), he or she must, in the notice to be given in terms of section 20(1)(b), give a full account of all steps taken to find the record or to determine whether the record exists, as the case may be, including all communications with every person conducting the search on behalf of the information officer.

### **Published records and records to be published**

**43.(1)** Subject to this section, the *information officer of a governmental body* may refuse a *request for access to a record* of the body--

(a) which is to be published within 60 days after the date on which the request is received or such further period as is reasonably necessary for printing or translating the record for the purpose of publishing it;

(b) which can be copied at a library to which the public has access at a fee no greater than would be charged for access in terms of *this Act*;

(c) which is available for purchase at a fee no greater than would be charged for access in terms of *this Act* by the public in accordance with arrangements made by or on behalf of a *governmental body*;

(d) the publication of which is required by law within 90 days after the request concerned is received; or

(e) which has been prepared for submission to Parliament unless a period of 90 days after such preparation has expired and the record has not been so submitted.

(2) The information officer concerned must, in the notice referred to in section 20(2)(b)--

(a) in the case of a refusal of a *request for access* in terms of subsection (1)(a) or (d), state the date on which the record in question is to be published;

(b) in the case of a refusal of a request in terms of subsection (1)(b) or (c), identify the title and publisher of the record and, in the case of a refusal in terms of--

(i) subsection (1)(b), the library concerned nearest to the requester concerned; or

(ii) subsection (1)(c), state where it can be purchased; or

(c) in the case of a refusal of a *request for access* in terms of subsection (1)(e), state the date on which the record is to be submitted to Parliament.

(3) If an *information officer* is considering to refuse a *request for access* to a *record* in terms of subsection (1)(a), (d) or (e), he or she must *notify* the requester in question of such consideration and that the requester may, within 30 days after that notice is given, make representations to the information officer why the record is required before publication or submission to Parliament.

(4) If notice is given to a *requester* in terms of subsection (3), the information officer concerned must, after due consideration of any representations made in response to the notice, grant the request, unless there are reasonable grounds for believing that the requester will suffer no material prejudice if access to the record in question is deferred until the record is published or submitted to Parliament.

(5) If the record in respect of which a *request for access* has been refused in terms of subsection (1)(a) is not published within 60 days after the date on which the request is received or such further period as is reasonably necessary for printing or translating the record for the purpose of publishing it, the requester concerned must be given access to the record.

### **Records already open to public**



44. The *information officer* of a *governmental body* may refuse a *request for access* to a *record* of the body that is open to public access in accordance with any other legislation, unless the Human Rights Commission determines that the manner in which access may be obtained and the fee payable for access in terms of the other legislation in question is more onerous than the manner in which access may be obtained to the record and the *request fee* (if any) and *access fee* payable in terms of *this Act*.

### **Mandatory disclosure in public interest**

45.(1) Despite any other provision of *this Act*, but subject to Chapter 3 of this Part, the *information officer* of a *governmental body* must grant a *request for access* to a *record* contemplated in section 30(1), 31(1), 32(1), 34(a), 35(1)(c)(ii), (iii) or (vi) or (d) or 36 if--

(a) disclosure of the record would reveal evidence of substantial--

(i) abuse of authority, illegality or neglect in the performance of the duties of an *official* of a *governmental body*;

(ii) injustice to an individual, including a deceased individual;

(iii) danger to the environment or the health or safety of an individual or the public; or

(iv) unauthorised use of the funds or other assets of a *governmental body*; and

(b) giving due weight to the importance of open, accountable and participatory administration, the public interest in the disclosure of the record clearly outweighs the need for non-disclosure contemplated in the provision in question.

(2) Despite any other provision of *this Act*, but subject to Chapter 3 of this Part, the *information officer* of a *governmental body* must grant a *request for access* to a *record* contemplated in section 33(1) or

(3), 34(b), 35(1)(a), (b), (c)(i), (iv) or (v), 37(1), 38(1) or 39(1) or (2), if giving due weight to the importance of open, accountable and participatory administration, the public interest in the disclosure the *record* clearly outweighs the need for non-disclosure contemplated in the provision in question.

## **CHAPTER 3**

### **THIRD PARTY INTERVENTION**

#### **Notice to third parties**

46.(1) If the *information officer* of a *governmental body* is considering a *request for access to a record* contemplated in section 30(1) or 32(1), the information officer must, as soon as reasonably possible, but in any event--

(a) within 21 days; or

(b) if an *urgent request application* has been granted, within five *working days*,

after that request is received or *transferred*, inform by the fastest means reasonably possible a third party to whom or which the record relates of the request, unless all necessary steps to locate that third party have been unsuccessful.

(2) When informing a third party in terms of subsection (1), the information officer concerned must--

(a) state that he or she is considering a *request for access to a record* contemplated in section 30(1) or 32(1), as the case may be, and describe the content of the record;

(b) furnish the name of the requester concerned;

(c) in the case of a record contemplated in

(i) section 30(1), describe the provisions of section 30; or

(ii) section 32(1), describe the provisions of section 32;

(d) in any case where the *information officer* believes that the provisions of section 45(1) might apply, describe those provisions, specify which of the circumstances referred to in paragraph (a)(i) to (iv) of section 45(1) in the opinion of the information officer might apply and state the reasons why he or she is of the opinion that section 45(1) might apply; and

(e) state that the third party may--

(i) within 21 days; or

(ii) if an *urgent request application* has been granted, within 10 *working days*,

after the third party is informed, make written or oral representations to the information officer why the request for access should be refused.

(3) If a third party is not informed in writing of a *request for access* in terms of subsection (1), the information officer concerned must, on request, give written notice stating the matters referred to in subsection (2) to the third party.

### **Representations by third parties**

47. A third party who or which is informed of a *request for access* as required by section 46(1) may--

(a) within 21 days; or

(b) if an *urgent request application* has been granted, within 10 *working days*,

after the third party has been informed, make written or oral representations to the information officer concerned why the request should be refused.

### **Decision on representations for refusal and notice thereof**

48.(1) The *information officer* of a *governmental body* must, as soon as reasonably possible, but in any event--

(a) within 30 days; or

(b) if an *urgent request application* has been granted, within 15 *working days*,

after every third party is informed as required by section 46(1)--

(i) after giving due regard to any representations made by a third party in terms of section 47, decide whether to grant the request for access in question; and

(ii) *notify* the third party so informed and a third party not located as contemplated in section 46(1), but who or which can, after taking all necessary steps, be located before the decision is taken, of the decision.

(2) If a third party cannot be located as contemplated in section 46(1), any decision whether to grant the request for access in question must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 47 why the request should be refused.

(3) The notice in terms of subsection (1)(ii) must, if the request for access is granted, state--

(a) the findings on all material questions of fact, referring to the material on which those findings were based;

(b) the reasons for granting the request (including the provision of this Act relied upon to justify the granting) in such manner as to enable the third party to understand the justification for the granting of the request and make an informed decision about whether to lodge an *internal appeal* with the *head* of the governmental body concerned or to utilise any other remedy in law available to the third party; and

(c) that the third party may lodge an *internal appeal* against the decision with the head of the governmental body in question--

(i) within 30 days; or

(ii) if an *urgent request application* has been granted, within 10 *working days*,

after notice is given, and the procedure for lodging the internal appeal; and

(d) that the requester in question will be given access to the *record* after the expiry of the applicable period contemplated in paragraph (c)(i) or (ii), unless an *internal appeal* is lodged within that period.

(4) If the *information officer* of a *governmental body*, pursuant to subsection (1), decides to grant the request for access in question, he or she must give the requester in question access to the record in question after the expiry of--

(a) 30 days; or

(b) if an *urgent request application* has been granted, 10 *working days*,

after notice is given in terms of subsection (1)(ii), unless an *internal appeal* with the head of the governmental body is lodged against the decision within the applicable period contemplated in paragraph (a) or (b).

## **PART 4**

### **CORRECTION AND PROTECTION OF PERSONAL INFORMATION HELD BY PRIVATE AND GOVERNMENTAL BODIES**

#### **Application of Part**

**49.(1)** This Part applies despite any other legislation, whether that legislation came into effect before or after the commencement of this section.

(2) This Part, except sections 51, 52 and 53, does not apply to information-

(a) already publicly available;

(b) created or acquired and preserved solely for public reference or exhibition purposes in a library or museum;

(c) placed by or on behalf of a person other than a *governmental body* in--

(i) an archives repository established under--

(aa) section 11(1) of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996); or

(bb) an equivalent provision of a provincial law pertaining to the custody of the *records of governmental bodies* in the relevant provincial sphere of government; or

(ii) a library or museum controlled by a *governmental body*; or

(d) about an individual who is or was an *official* of a *governmental body* if the information relates to the position or functions of that official, including--

(i) the fact that the individual is or was an *official* of that governmental body;

(ii) the title, work address, work phone number and other similar particulars of the individual;

(iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; or

(iv) the name of the individual on a *record* prepared by the individual in the course of employment.

### **Parties to civil proceedings excluded from access to private bodies' records under Act**

**50.** No party to criminal or civil proceedings may, for the purpose of those proceedings, request access in terms of section 51 to a *record* of a *private body* containing personal information.

### **Access to personal information held by private bodies**

**51.(1)** Subject to section 50 and this section, an individual must, on

request, be given access to any *record* of a *private body* containing *personal information* about the individual (in this section referred to as a "request for access").

(2) A request for access must--

(a) be made orally or in writing to the *head* of the *private body* concerned at his or her address, fax number or electronic mail address;

(b) provide sufficient particulars to enable the *head* of the *private body* to identify the *record* requested;

(c) specify a postal address or phone number for the requester in the Republic; and

(d) state the capacity contemplated in subsection (4) in which the requester is making the request.

(3) The requester in respect of a request for access must submit--

(a) the requester's identity document or a certified copy thereof or any other reasonable proof of the requester's identity;

(b) in the case of an authorised representative referred to in subsection (4)(a), reasonable proof of his or her appointment as representative. .

(4) A request for access may be made--

(a) by the individual to whom the *personal information* in the *record* relates or his or her authorised representative;

(b) if the individual referred to in paragraph (a) is--

(i) under the age of 16 years, by a person having parental responsibility for the individual;

(ii) incapable of managing his or her affairs, by a person appointed by the court to manage those affairs;

(iii) deceased, by the executor of the estate of the individual.

(5) The *head* of the *private body* to whom a request for access is made, must, subject to subsection (7), give access to the *record* to the individual as soon as reasonably possible, but in any event, within 30 days, after the request and the proof contemplated in subsection (3), whichever is the later, have been received.

(6) If, in accordance with this section, access is given to a *record* containing *personal information*--

(a) the *head* of the *private body* must inform the individual in question that he or she may request the correction of the information in terms of section 52;

(b) the form of access must be determined by the *head* of the *private body*, except that a copy of the *record* must, upon request, be provided at a reasonable fee.

(7)(a) Subject to this subsection, the provisions requiring or permitting the refusal or granting of a *request for access* to a *record*, or a part thereof, of a *governmental body* contained in sections 24(1) and (2), 30, 31(1) and (2), 32(1) and (2), 33, 34, 35 (except subsection (3)(b)(iv)), 36, 37 (except subsection (2)(b)(iv)), 38, 39(1), (2) and (3), 40(1) to (4), 41, 42, 43(1), (2) and (5) and 44 apply, with the changes required by the context, to a request for access.

(b) Any reference in a provision contemplated in paragraph (a) to--

(i) the *information officer* of a *governmental body*,

(ii) a *record* of a *governmental body*, and

(iii) a *notice* in terms of section 20,

must be construed as a reference to the *head* of a *private body*, a *record* of a *private body* and a *notice* in terms of paragraph (c) of this subsection, respectively.

(c) If a request for access is refused in accordance with paragraph (a), the *head* of the *private body* in question must *notify* the requester of the refusal and of the reasons for the refusal as soon as reasonably possible, but in any event, within 30 days, after the request and the proof contemplated in subsection (3), whichever is the later, have been received.

(8) The *head* of a *private body* may, subject to the conditions the head determines, delegate a power conferred, or assign a duty imposed, on the head by this Part to any employee of the private body.

### **Correction of personal information held by private bodies**

52.(1) A *record* may be corrected in terms of this section by amending, supplementing or, subject to subsection (6), by deleting the *inaccurate* information.



(2) An individual who is given access to a *record* of a *private body* in terms of section 51, may request the correction of *inaccurate* information about that individual in that record (in this section referred as a "request for correction").

(3) A request for correction must--

(a) be made orally or in writing to the *head* of the *private body* concerned at his or her address, fax number or electronic mail address;

(b) provide sufficient particulars to enable the *head* of the *private body* to identify the *record* which contains the information that the requester regards as *inaccurate*;

(c) specify the respect in which the requester regards the information as *inaccurate* and provide any information regarding the inaccuracy that is in the possession or under the control of the requester; and

(d) specify a postal address or fax number for the requester in the Republic.

(4) The *head* of a *private body* to whom a request for correction is made, must, as soon as reasonably possible, but in any event, within 30 days, decide on the request.

(5) If the *head* of a *private body* decides that the information identified in a request for correction is *inaccurate* the *head* must, free of charge and within the period contemplated in subsection (4)--

(a) correct the information and send a copy of the part of the relevant record containing the correction to the requester; and

(b) determine, so far as reasonably possible, whether the inaccurate information is in any other *record* of the private body and, if it is, make the same correction on the other record.

(6) If the *head* of a *private body* decides upon a request for correction to delete information contained in a *record*, the *head* must, before making the deletion

(a) make a copy of the part of the record to be deleted;

(b) make a note on that copy of the deletion to be made in the original record; and

(c) retain such copy for as long as the record is retained.

(7) If the *head* of a *private body* decides that the information referred to in a request for correction is not *inaccurate* and that request is not irrelevant, frivolous or vexatious, the head must, free of charge and within the period contemplated in subsection (4)--

(a) make a note in the record as near as reasonably possible to the point where the information appears--

(i) of the decision of the head that the information is not *inaccurate*;

(ii) that the accuracy of the information is disputed by the requester; and

(iii) that the request is attached to the record,

and attach the request to the record; and

(b) *notify* the requester--

(i) of the decision that the information is not *inaccurate*; and

(ii) that a note was made on the record as required by paragraph (a),

and send a copy of the note to the requester.

(8) If a *record* has been corrected in terms of subsection (5), any disclosure or use of the record after such correction must be in its corrected form.

(9) If a note has been made in a *record* as contemplated in subsection (7)(a), any disclosure of the information concerned in the record must include that note and the relevant request attached thereto.

### **Correction of personal information held by governmental bodies**

53.(1) A *record* may be corrected in terms of this section by amending, supplementing or, subject to subsection (7), by deleting the *inaccurate* information.

(2) An individual who is given access a *record* of a *governmental body* in terms of section 10, may request the correction of *inaccurate* information about that individual in that record.

(3)(a) A *request for correction* must be made in the *prescribed* form or orally to the information officer of the governmental body in question at his or her address, fax number or electronic mail address.

(b) The form for a *request for correction* prescribed by regulation in terms

of section 86(1)(a), read with paragraph (a), must at least require from the requester concerned--

(i) to provide sufficient particulars to enable an *official* of the governmental body concerned to identify the *record* which contains the information that the requester regards as *inaccurate*;

(ii) to specify the respect in which the requester regards the information as *inaccurate* and to provide any information regarding the inaccuracy that is in the possession or under the control of the requester; and

(iii) to specify a postal address or fax number for the requester in the Republic.

(4) Sections 14(4), 15, 16, 17, 21 and 22 apply with the changes required by the context to a *request for correction*.

(5) The *information officer* to whom a *request for correction* is made or *transferred*, must, subject to sections 21 and 22(1), read with subsection (4), as soon as reasonably possible, but in any event within 30 days, after the request is received or transferred, decide on the request.

(6) If the *information officer* of a *governmental body* decides that the information identified in a *request for correction* is *inaccurate* the *information officer* must, free of charge and within the period contemplated in subsection (5)--

(a) correct the information and send a copy of the part of the relevant record containing the correction to the requester in question;

(b) determine, so far as reasonably possible, whether the *inaccurate* information is in any other *record* of that governmental body and, if it is, make the same correction on the other record;

(c) determine, so far as reasonably possible, whether the *inaccurate* information has been supplied by that governmental body to any other *governmental body* or person and *notify* any such other governmental body or person of the correction which it has made; and

(d) send to the requester a copy of each notice which it gives in terms of paragraph (c).

(7) If the *information officer* decides upon a *request for correction* to delete information contained in a *record*, he or she must, before making the deletion--

(a) make a copy of the part of the record to be deleted;

(b) make a note on that copy of the fact of the deletion to be made in the original record; and

(c) retain such copy for as long as the record is retained.

(8) A *governmental body* which has been notified in terms of subsection (6)(c) that such *governmental body* has been supplied with *inaccurate* information must, as soon as reasonably possible, but in any event within 30 days, after being so notified--

(a) if the body accepts that the information is *inaccurate*, correct that information and *notify* the individual to whom the information relates that the correction has been made;

(b) if the body is of the opinion that the information is not *inaccurate*, make a note and notify the requester as contemplated in subsection (9)(a) and (b).

(9) If the *information officer* of a *governmental body* decides that the information identified in a *request for correction* is not *inaccurate* and that request is not irrelevant, frivolous or vexatious, the information officer must, free of charge and within the period contemplated in subsection (5)--

(a) make a note in the relevant record as near as reasonably possible to the point where the information appears--

(i) of the decision of the information officer that the information is not *inaccurate*;

(ii) that the accuracy of the information is disputed by the requester concerned; and

(iii) that the request is attached to the record,

and attach the request to the record;

(b) *notify* the requester--

(i) of the decision that the information is not *inaccurate*;

(ii) that a note was made on the record as required by paragraph (a);

(iii) that he or she may lodge an *internal appeal* with the *head* of that governmental body against the decision that the information is not *inaccurate*, and of the procedure (including the period) for lodging the internal appeal,

and send a copy of the note to the requester;

(c) take reasonable steps to enable the requester to provide a statement of any further reasons why he or she considers the information to be *inaccurate*; and

(d) unless there are reasonable grounds for considering the statement irrelevant, defamatory or unnecessarily voluminous, attach the statement so provided to the record.

(10) If a *record* containing *personal information* has been corrected in terms of subsection (6) or (8), any disclosure or use of the record after such correction must be in its corrected form.

(11) If a note has been made in a *record* as contemplated in subsection (9)(a), any disclosure of the information concerned in the record must include that note and the request for correction concerned and any statement attached as contemplated in subsection (9)(a) and (d) respectively.

### **Use of personal information by private bodies**

54. Subject to sections 58 and 59, a *record* of a *private body* containing *personal information* may not, without the consent of the individual to whom the information relates, be used by the private body, except for--

(a) the purpose for which the information contained therein was obtained or compiled or for a use compatible with that purpose;

(b) the purpose of avoiding prejudice to the maintenance of the law including the prevention, detection, investigation, prosecution and punishment of an offence;

(c) the purpose of averting or lessening an imminent and serious threat to the health or safety of an individual or the public;

(d) any *prescribed* purpose.

### **Use of personal information by governmental bodies**

55. Subject to sections 58 and 59, a *record* of a *governmental body* containing *personal information* may not, without the consent of the individual to whom the information relates, be used by the governmental body, except--

(a) for the purpose for which the information was obtained or compiled or for a use compatible with that purpose;

(b) for a purpose for which the information may be disclosed by a *governmental body* in terms of section 57(1).

### **Disclosure of personal information by private bodies**

56. Subject to sections 58 and 59, a *record* of a *private body* containing *personal information* may not, without the consent of the individual to whom the information relates, be disclosed by the private body, except--

(a) in accordance with legislation that authorises its disclosure;

(b) for the purpose of complying with a subpoena, warrant issued or order made by a court, person or body which is authorised to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

(c) for the purpose of avoiding prejudice to the maintenance of the law including the prevention, detection, investigation, prosecution and punishment of an offence;

(d) for the purpose of averting or lessening an imminent and serious threat to the health or safety of an individual or the public;

(e) for any *prescribed* purpose.

### **Disclosure of personal information by governmental bodies**

57.(1) Subject to sections 58 and 59, a *record* of a *governmental body* containing *personal information* may not, without the consent of the individual to whom the information relates, be disclosed by the governmental body, except--

(a) as contemplated in section 56(a), (b), (c) or (d) or in accordance with Part 3;

(b) to an Attorney-General for the purpose of criminal proceedings or to a legal practitioner representing the State, the Government of the Republic, any functionary thereof or a *governmental body* in civil proceedings for the purpose of those civil proceedings;

(c) to a *governmental body*, on the written request of that body, for the purpose of enforcing the law or carrying out an investigation in terms of

legislation, if the request specifies the purpose and describes the information to be disclosed;

(d) under an agreement between the Government of the Republic or an organ thereof and the Government of a foreign state, an *international organisation* or an organ of that Government or organisation, for the purpose of administering or enforcing the law or carrying out an investigation;

(e) to an *official* of a *governmental body* for the purpose of an internal audit or to the Auditor-General or an *official* from his or her office for the purpose of audit or to a person appointed to carry out an audit in respect of a *governmental body*;

(f) to an archives repository in accordance with--

(i) section 11 of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996); or

(ii) an equivalent provision of a provincial law pertaining to the custody of *records of governmental bodies* in the relevant provincial sphere of government;

(g) to any person or body for research or statistical purposes if

(i) there are reasonable grounds for believing that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates; and

(ii) the *information officer* of the governmental body concerned obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(h) to a *governmental body* for the purpose of locating an individual in order to collect a debt owing to the State or a *governmental body* by that individual or to make a payment owing to that individual by the State, or a *governmental body*;

(i) for any *prescribed* purpose.

(2) *Personal information* in a *record* which has been transferred to an archives repository by a *governmental body* in accordance with--

(a) section 11 of the National Archives of South Africa Act, 1996;



(b) an equivalent provision of a provincial law pertaining to the custody of *records of governmental bodies* in the relevant provincial sphere of government,

may be disclosed in accordance with--

(i) in the case of paragraph (a), section 12 of the National Archives of South Africa Act, 1996;

(ii) in the case of paragraph (b), an equivalent provision of such provincial law,

to any person or body for research or statistical purposes.

### **Individual's consent for use or disclosure of personal information**

58.(1) The person whom or which, and the form and manner in which, the consent of an individual must be obtained for the use or disclosure of a *record* containing *personal information* about the individual as required by section 54, 55, 56 or 57 are as *prescribed*.

(2) Different regulations may be made in terms of section 86(1)(a), read with subsection (1), in respect of--

(a) *governmental bodies* and *private bodies*; and

(b) categories of *governmental bodies* and of *private bodies*.

(3) Regulations made in terms of section 86(1)(a), read with subsection (1), may provide for the consent of an individual in respect of the use or disclosure of a *record* containing *personal information* for a specific purpose or a category of purposes.

(4) Any consent given as contemplated in this section may be withdrawn as *prescribed*.

### **Use and disclosure of records held before commencement**

59.(1) For a *prescribed* period after the commencement of section 54, 55, 56 or 57, section 54, 55, 56 or 57, respectively, does not apply to any *record* containing *personal information* which--

(a) was in the possession or under the control of a *governmental* or *private body* immediately before such commencement; and

(b) is in such possession or control after such commencement.

(2) If, before end of the prescribed period referred to in subsection (1), such governmental or private body has taken the *prescribed* steps to obtain the consent of the individual to whom the personal information contained in such record relates for the use or disclosure, as the case may be, of the record by that body as contemplated in section 54, 55, 56 or 57, as the case may be, the individual is deemed to have given such consent for the purposes of section 54, 55, 56 or 57, as the case may be, whether or not the individual in fact gave his or her consent.

(3) Any consent given pursuant to such prescribed steps or so deemed to have been

given may be withdrawn as *prescribed*.

### **Register of uses and disclosures not in governmental body's manual**

**60.**(1) The *head* of a *governmental body* must keep a register of--

(a) any use by the body of *personal information* in a *personal information bank* of the body; or

(b) any use or purpose for which such information is disclosed by the body,

if the use or purpose of such information is not included in the statements of uses and purposes set out in accordance with section 6(1)(d)(ii)(bb) in the manual of the body published in terms of section 6, and attach the register to the *personal information*.

(2) For the purposes of *this Act*, a register attached in terms of subsection (1) is deemed to form part of the *personal information* to which it is attached.

(3) If the *personal information* in a *personal information bank* of a *governmental body* is used or disclosed for a use compatible with the purpose for which the information was obtained or compiled by the body but the use is not included in the statement of compatible uses set out in accordance with section 6(1)(d)(iii)(bb) in the manual of the body, the *head* of the body must ensure that the use is included in the next manual to be published.

### **Collection of personal information by governmental bodies**

**61.**(1) No *personal information* may be collected by a *governmental body* unless such collection is--

(a) required or permitted by legislation; or

(b) required for the performance of the functions of the body.

(2) A *governmental body* must, if reasonably possible, collect *personal information* which is intended to be or may be used in taking any decision which affects an individual's right or determines its content, directly from that individual except if--

(a) the individual authorises otherwise; or

(b) *personal information* contained in a *record* may be disclosed to the body in terms of section 57(1).

(3) If a *governmental body* collects *personal information* directly from an individual, the body must inform the individual of--

(a) the fact that, and the purpose for which, the information is being collected;

(b) the name and address of the body that--

(i) is collecting the information; and

(ii) will hold the information;

(c) if the collection of the information is required or permitted by legislation

(i) that legislation; and

(ii) whether the supply of the information by the individual is voluntary or compulsory;

(d) the rights of access to, and correction of, *personal information* contemplated in *this Act*.

(4) Subsections (2) and (3) do not apply if compliance therewith could reasonably be expected to defeat the purpose, or prejudice the use, for which the information is being collected.

### **Retention, accuracy and disposal of personal information by governmental bodies**

62.(1) *Personal information* which has been used by a *governmental body* to make a decision which affects an individual's right, or determines its content, must be retained by the *head* of that governmental body for such period after it was so used as *prescribed* to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information.

(2) The *head* of a *governmental body* must take all reasonable steps to ensure that *personal information* which is used by the body to make a decision which affects an individual's right, or determines its content, is as accurate, up-to-date and complete as possible and that--

(a) the confidentiality of such information is protected; and

(b) such information is secured against unauthorised access.

(3) The *head* of a *governmental body* must dispose of *personal information* contained in a *record* of the body as *prescribed*.

## PART 5

### PROTECTION OF WHISTLE-BLOWERS

#### **Exclusion of liability if disclosing contravention of law, corruption or maladministration**

63.(1) Despite any other legislation, whether that legislation came into effect before or after the commencement of this section, no person is civilly or criminally liable or may be subjected to disciplinary action in any court of law or administrative or other tribunal on account of having disclosed any information, if--

(a) the person in good faith and reasonably believed at the time of the disclosure that he or she was disclosing evidence of a *contravention* of the law, corruption, dishonesty or serious maladministration in a *governmental body* or on the part of an *official* of the body (in this Part referred to as an "impropriety"); and

(b) the disclosure was made in accordance with subsection (3).

(2) Without limiting the generality of subsection (1)(a) "impropriety" includes--

(a) an abuse of power by a *governmental body* or an *official* of the body;

(b) an improper or unauthorised use of the funds or other assets of the State or a *governmental body*;

(c) negligent administration resulting or likely to result in a substantial--

(i) waste of public resources; or

(ii) danger to the health or safety of an individual or the public; or

(d) an offence referred to in section 1 of the Corruption Act, 1992 (Act No. 94 of 1992).

(3) Subsection (1) applies only if the person concerned--

(a) disclosed the information in question to a Parliamentary committee, a committee of a provincial legislature, the Public Protector, the Human Rights Commission, the Auditor-General or an Attorney-General or to more than one of such bodies or persons; or

(b) disclosed the information in question to one or more news medium and on clear and convincing grounds (of which he or she bears the burden of proof) believed at the time of the disclosure--

(i) that disclosure was necessary to avert an imminent and serious threat to the safety or health of an individual or the public, to ensure that the impropriety in question was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or

(ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; or

(c) disclosed the information in question substantially in accordance with any applicable external or internal procedure (other than the procedures contemplated in paragraph (a) or (b)) for reporting or otherwise remedying the impropriety in question.

(4) Subsection (1) applies whether or not the person disclosing the information in question has used or exhausted any other applicable procedure for reporting or otherwise remedying the impropriety concerned.

### **Exclusion of liability if disclosing information after publication**

**64.** Despite any other legislation, whether that legislation came into effect before or after the commencement of this section, no person is civilly or criminally liable or may be subjected to disciplinary action in any court of law or administrative or other tribunal on account of having disclosed any information if, before the time of the disclosure of the information, it had become publicly available, whether in the Republic or elsewhere.

### **Protection against reprisals**

**65.(1)** No person may--

(a) be dismissed from any employment, profession or office;

(b) be suspended, demoted, harassed, intimidated, have a term or condition of employment or retirement altered or kept unaltered to the person's disadvantage, be transferred against his or her will, be refused transfer or promotion or be otherwise detrimentally affected in respect of such employment, profession or office, including employment opportunities or work security;

(c) be denied appointment or election to any employment, profession or office; or

(d) be threatened with an action referred to in paragraph (a), (b) or (c),

as a result, or partly as a result, of making, or indicating an intention to make, a disclosure contemplated in section 63, or refusing to participate in the conduct of an impropriety.

(2) If, in any criminal or civil proceedings or disciplinary action before a court of law or administrative or other tribunal with respect to an alleged *contravention* or threatened *contravention* of subsection (1), it is proved that an action contemplated in subsection (1)(a), (b), (c) or (d) took place within two years after a disclosure, indication of an intention to disclose or refusal contemplated in subsection (1), it must be presumed, unless the contrary is proved, that such action took place as a result, or partly as a result, of that disclosure, indication of an intention to disclose or refusal.

(3) Subsection (1) applies whether or not the person disclosing the information concerned has used or exhausted any other applicable external or internal procedure for reporting or otherwise remedying the impropriety in question.

(4) A provision in a contract of employment or other agreement whereby any provision of this section is excluded, is null and void.

(5) An *official* of a *governmental body* who has made a disclosure contemplated in section 63 must, upon his or her request and if reasonably possible, be transferred from the post or position occupied by him or her at the time of the disclosure to--

(a) another post or position in the same division or another division of that governmental body; or

(b) another *governmental body*.

(6) The terms and conditions of employment of a person transferred

pursuant to subsection (5) may not, without his or her consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

## **Notice to officials of provisions of Part and other complaint procedure**

**66.** The *head* of a *governmental body* must give to every *official* of the body a copy of a *notice* prepared and provided by the Human Rights Commission, which explains--

(a) the provisions of this Part and section 85(b) and all external and internal procedures (other than the procedure contemplated in section 63) available to an *official* of that governmental body who wishes to report or otherwise remedy an impropriety or, whenever such provisions or procedure are amended, that amendment;

(b) that, if a *contravention* or threatened *contravention* of the provisions of this Part in relation to a person is alleged, that the person may lodge an *application* with a High Court for appropriate relief, and the procedure (including the period) for lodging that application.

## **PART 6**

### **APPEALS AGAINST DECISIONS**

#### **CHAPTER 1**

#### **INTERNAL APPEALS**

### **Right of internal appeal to head of governmental body**

**67.(1)** A person may lodge an internal appeal against any decision of the *information officer* of a *governmental body* in relation to that person with the *head* of the body.

(2) Subsection (1) may not be construed to limit any other right a person may have in terms of the law to remedy a matter in respect of which an *internal appeal* may be lodged.

### **Manner of internal appeal, and appeal fees**

**68. (1)** An *internal appeal*--

(a) must be lodged in the *prescribed* form--

(i) within 60 days;



(ii) if *notice* to a third party is required by section 48(1), within 30 days; or

(iii) if the internal appeal is against the granting of a *request for access* and an *urgent request application* has been granted in respect of the request, within 10 *working days*,

after *notice* is given to the appellant of the decision appealed against or, if *notice* to the appellant is not required, after the decision was taken;

(b) must be delivered or sent to the information officer of the governmental body in question at his or her address, fax number or electronic mail address;

(c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant;

(d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed;

(e) if applicable, must be accompanied by the *prescribed* appeal fee referred to in subsection (3); and

(f) must specify a postal address or fax number and, if the internal appeal includes an *urgent appeal application*, a phone number, for the appellant in the Republic.

(2) An individual who wishes to lodge an *internal appeal*, but, because of illiteracy, poor literacy or physical disability, is unable to comply with subsection (1), may request the Human Rights Commission to assist him or her to so comply.

(3)(a) If an *internal appeal* is lodged after the expiry of the period referred to in subsection (1), the *head* of the governmental body in question must, upon good cause being shown, allow the late lodging of the internal appeal.

(b) If that head disallows the late lodging of an *internal appeal*, he or she must give *notice* of that decision to the person who or which lodged the internal appeal.

(4)(a) A *commercial requester* lodging an *internal appeal* against the refusal of his or her *request for access* to a record must pay the *prescribed* appeal fee.

(b) If the *prescribed* appeal fee is payable in respect of an *internal appeal*, the decision on the internal appeal may be deferred until the fee is paid.

(5) If an *internal appeal* is delivered or sent to the *information officer* of a *governmental body* in accordance with subsection (1), the information officer must--

(a) as soon as reasonably possible, but in any event, within 10 *working days*;  
or

(b) in the case where an *urgent appeal application* has been granted, immediately,

after receipt of that internal appeal, submit to the *head* of the governmental body--

(i) the internal appeal together with his or her reasons for the decision concerned; and

(ii) if the internal appeal is against the refusal or granting of a *request for access*, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party, other than the appellant, required by section 46(1) to be notified of the request.

(6) An *internal appeal* may be lodged by a person authorised by the appellant to act on behalf of the appellant, and a reference to an appellant in any other provision relating to an *internal appeal* includes a reference to a person so authorised.

### **Notice to and representations by other interested persons**

**69.**(1) If the *head* of a *governmental body* is considering an *internal appeal* against the refusal of a *request for access* to a *record* contemplated in section 30(1) or 32(1), the head must, as soon as reasonably possible, but in any event--

(a) within 30 days; or

(b) in the case where an *urgent appeal application* has been granted, within five *working days*,

after the receipt of the internal appeal, inform by the fastest means reasonably possible the third party to whom or which the record relates of the internal appeal, unless all necessary steps to locate the third party have been unsuccessful.

(2) When informing a third party in terms of subsection (1), the head concerned must--

(a) state that he or she is considering an *internal appeal* against the refusal of a *request for access* to a *record* contemplated in section 30(1) or 32(1), as the case may be, and describe the content of the record;

(b) furnish the name of the appellant;

(c) in the case of a *record* contemplated in--

(i) section 30(1), describe the provisions of section 30; or

(ii) section 32(1), describe the provisions of section 32;

(d) in any case where that head believes that the provisions of section 45(1) might apply, describe those provisions, specify which of the circumstances referred to in paragraph (a)(i) to (iv) of section 45(1) in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 45(1) might apply; and

(e) state that the third party may--

(i) within 21 days; or

(ii) if an *urgent appeal application* has been granted, within 10 *working days*,

after the third party is informed, make written representations to that head why the request for access should not be granted.

(3) If a third party is not informed in writing of an *internal appeal* in terms of subsection (1), the *head* of the governmental body in question must, on request, give a *notice* stating the matters referred to in subsection (2) to the third party.

(4) A third party that is informed of an *internal appeal* in terms of subsection (1), may--

(a) within 21 days; or

(b) if an *urgent appeal application* has been granted, within 10 *working days*,

after the third party has been informed, make written representations to the *head* of the governmental body in question why the request for access in question should not be granted.

(5) If the *head* of a *governmental body* is considering an *internal appeal*

against the granting of a *request for access*, the *head* must, as soon as reasonably possible, but in any event--

(a) within 30 days; or

(b) if an *urgent appeal application* has been granted, within five *working days*,

after the receipt of the internal appeal, give *notice* of the internal appeal to the requester in question and state in the *notice* that he or she may within 21 days after *notice* is given, make written representations to that head why that request should be granted.

(6) A *requester* to whom *notice* is given in terms of subsection (5) may within 21 days after that notice is given, make written representations to the *head* of the governmental body in question why the request for access in question should be granted.

### **Decision on internal appeal and notice thereof**

70.(1)(a) In deciding an *internal appeal* the *head* of the governmental body in question must give due consideration to--

(i) the *internal appeal* and particulars stated therein in terms of section 68(1)(c);

(ii) any reasons submitted by the *information officer* in terms of 68(5)(i); and

(iii) any representations made in terms of section 69(4) or (6),

and may at the conclusion of the internal appeal confirm the decision appealed against or substitute a new decision for it.

(b) If a third party cannot be located as contemplated in section 69(1), any decision whether to allow the internal appeal in question must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 69(4) why the internal appeal should be dismissed.

(2) The *head* of a *governmental body* must, subject to section 71--

(a) as soon as reasonably possible, but in any event, within 30 days after an *internal appeal* is received by the information officer of the body;

(b) if a third party is informed in terms of section 69(1), as soon as reasonably possible, but in any event--

(i) within 30 days; or

(ii) if an *urgent appeal application* has been granted, within 15 *working days*,

after the third party has been informed;

(c) if *notice* is given in terms of section 69(5)--

(i) within five *working days* after the requester concerned has made written representations in terms of section 69(6); or

(ii) in any other case within 30 days after *notice* is so given,

decide whether to allow the internal appeal and give *notice* of the decision to

(i) the appellant;

(ii) every third party informed as required by section 69(1); and

(iii) the requester notified as required by section 70(5),

and inform the appellant about the decision in any other manner stated in terms of section 68(1)(d) (if any), if reasonably possible.

(3) The notice in terms of subsection (2) must state--

(a) the findings on all material questions of fact, referring to the material on which those findings were based;

(b) the reasons for the decision (including the provision of this Act relied upon to justify the decision) in such manner as to enable the appellant, third party or requester (as the case may be) to understand the justification for the decision and make an informed decision about whether to lodge an *application* with a High Court or to utilise any other remedy in law available to him or her, with respect to the decision on *internal appeal*; and

(c) that the appellant, third party or requester (as the case may be) may lodge an *application* with a High Court against the decision on *internal appeal*--

(i) within 60 days;

(ii) if *notice* to a third party is required by subsection (2), within 30 days; or

(iii) if that application is against the granting of a *request for access*

on *internal appeal* and an *urgent appeal application* has been granted in respect of the *internal appeal*, within 10 *working days*,

after notice is given, and the procedure for lodging the application; and

(d) where the *head* of the governmental body in question decides on *internal appeal* to grant a *request for access* and *notice* to a third party--

(i) is not required by subsection (2), that access to the *record* will forthwith be given; or

(ii) is so required, that access to the *record* will be given after the expiry of the applicable period for lodging an *application* with a High Court against the decision on *internal appeal* referred to in paragraph (c), unless that application is lodged before the end of that applicable period.

(4) If the *head* of a *governmental body* decides on *internal appeal* to grant a *request for access* and notice to a third party is--

(a) not required by subsection (2), the information officer of the body must forthwith give the requester in question access to the record in question; or

(b) is so required, the information officer must, after the expiry of

(i) 30 days; or

(ii) if an *urgent appeal application* has been granted in respect of the *internal appeal*, 10 *working days*,

after the notice is given to every third party concerned, give the requester access to the record in question, unless an *application* with a High Court is lodged against the decision on *internal appeal* before the end of the applicable period referred to in subsection (3)(c) for lodging that application.

(5) If the *head* of a *governmental body* fails to decide on an *internal appeal* within the period contemplated in subsection (2), that head is, for the purposes of *this Act*, deemed to have dismissed the internal appeal.

### **Urgent internal appeals**

71.(1) A *requester* who wishes--

(a) his or her *internal appeal* against the refusal of a *request for access* to be decided urgently must include an application to that effect in the internal appeal; or

(b) an *internal appeal* against the granting of his or her *request for access* to be decided urgently must lodge an application to that effect with the information officer concerned,

and in that application give reasons for the urgency.

(2) If an *urgent appeal application* is included in an *internal appeal* or is lodged with an *information officer* of a *governmental body*, the *head* of that body must, subject to section 69

(a) immediately; or

(b) if that is not reasonably possible, as soon as reasonably possible, but in any event, within five *working days*,

after the receipt of that urgent appeal application, decide on the internal appeal and give *notice* of the decision as required by section 70(2), unless there are reasonable grounds for believing that--

(i) the nature of the reasons for the urgency furnished by the applicant is such that the applicant will suffer no prejudice if the internal appeal is decided upon within the period contemplated in section 70(2); or

(ii) it is impractical to decide on the internal appeal within five *working days* after that urgent appeal application has been received.

(3) If the *head* of a *governmental body* refuses an *urgent appeal application* on the grounds referred to in subsection (2)(i) or (ii), the head must--

(a) immediately; or

(b) if that is not reasonably possible, as soon as reasonably possible, but in any event, within five *working days*,

after that urgent appeal application has been received, give *notice* of the refusal and state in the *notice*--

(i) the findings on all material questions of fact, referring to the material on which those findings were based;

(ii) the reasons for the refusal (including the provision of this Act relied upon to justify the refusal) in such manner as to enable the applicant to understand the justification for the refusal and make an informed decision about whether to lodge an *application* with a High Court or to utilise any other remedy in law available to the applicant, with respect to the refusal; and



(iii) that the applicant may lodge an *application* with a High Court against the refusal of the urgent appeal application, and the procedure (including the period) for lodging that application with a High Court.

(4) If the notice required by subsection (2) or (3) is not given by fax, the requester in question must be informed by phone of the decision in question.

## CHAPTER 2

### APPLICATIONS TO HIGH COURT

#### Non-exclusion of other remedies

72. This Chapter may not be construed to exclude or limit any other right a person may have in terms of the law to remedy a matter in respect of which an application may be lodged with a High Court in terms of this Chapter.

#### Manner of applications to High Court

73.(1) An application in terms of this Chapter must be lodged--

(a) with a High Court having jurisdiction in terms of section 76; and

(b) subject to this Chapter, in accordance with the rules regarding an urgent application by way of notice on motion applicable to that High Court.

(2) For the purposes of those rules of that High Court, all *applications* are deemed to be urgent without any supporting documents required to set out the reasons for the urgency and why the applicant could not be afforded substantial redress at a hearing in due course.

(3) If the interests of justice so require, a High Court having jurisdiction may extend the period within which an *application* may be lodged.

#### Applications regarding decisions of information officers or heads of governmental bodies

74.(1)(a) A person--

(i) who or which has been unsuccessful in an *urgent request application*, an *internal appeal* to the *head* of a *governmental body* or an *urgent appeal application*; or

(ii) aggrieved by a decision of the *head* of a *governmental body* to disallow the late lodging of an *internal appeal* in terms of section 68(3),

may appeal against the decision by way of an application.

(b) If an application referred to in paragraph (a) is against the granting of a *request for access on internal appeal*, that application must be lodged within 30 days or, if an *urgent appeal application* has been granted in respect of the internal appeal, within 10 *working days*, after the third party concerned has been notified of the decision to grant the request on internal appeal.

(2) The Human Rights Commission may appeal by way of an application against a decision of--

(a) the *information officer* of a *governmental body*; or

(b) the head of a *governmental body* on *internal appeal*.

(3) A third party *notified* of a decision of the *head* of a *governmental body* to disclose information regarding a serious *public safety or environmental risk* in terms of section 9(5)(a), may appeal by way of an *application* against the decision within a period of 10 *working days* after the third party concerned has been *notified* of the decision.

### **Applications regarding contraventions of Part 5**

75. If a *contravention* or threatened *contravention* of a provision of Part 5 is alleged in relation to a person, that person may lodge an application for appropriate relief.

### **Jurisdiction of High Court**

76. A High Court has jurisdiction in respect of--

(a) a decision of the information officer or head of a governmental body referred to in section 74 which has its office or, if the body has more than one office, its main office;

(b) a person who or which lodges an application in terms of section 74(1) or (3) or 75 and resides, carries on a business or is employed;

(c) an alleged contravention referred to in section 75 which has occurred or is about to occur,

in the area of jurisdiction of the High Court.

### **Assistance of Human Rights Commission**

77.(1) An individual who wishes to lodge an *application*, but, because of illiteracy, poor literacy or a physical disability, is unable to comply with this Chapter, may request the Human Rights Commission to assist him or her to

so comply.

(2) If the Human Rights Commission is of the opinion that an important matter of principle is involved, the Commission may appear before a High Court as a party to an *application*.

(3) The Human Rights Commission may, on request, appoint a person to represent an individual who has lodged an application in terms of section 74(1) or 75.

### **Production of records of governmental bodies to High Court**

78.(1) Despite any other provisions of *this Act* or any other legislation whether that legislation came into effect before or after the commencement of this section, any court hearing an *application* or an appeal against a decision on an *application* may examine any *record* of a *governmental body* to which this Act applies, and no such *record* may be withheld from that court on any grounds.

(2) Such court may, subject to subsection (3), not disclose to any person, including the parties to the proceedings in question--

(a) any *record* of a *governmental body* which is required or permitted by this Act to be withheld from disclosure;

(b) if the *information officer* of a *governmental body*, or the *head* of that body on *internal appeal*, in refusing to grant access to a *record* in terms of section 35(2) or 37(2), refuses to confirm or deny the existence or non-existence of the record, any information whether the record exists.

(3) If such court considers it in the interest of justice, it may order the disclosure of such record or such information to any party to the proceedings concerned, and may, if it considers it necessary, order such party not to disclose such record or such information to another person.

### **Burden of proof**

79. In any proceedings brought pursuant to this Chapter the burden of establishing that--

(a) the refusal of a *request for access*;

(b) any decision taken in terms of section 18(2), 19(1), 21, 22(1), 26(3), 53(9)(d), 65(5) or 71,

is justified in terms of this Act is on the party claiming that it is so justified.

## Decision on application

**80.**(1) After due consideration of all written and oral evidence received by a High Court given in respect of an *application*, the Court may make any order or other decision which it considers just.

(2) An order or other decision in terms of subsection (1) includes, but is not limited to, an order or other decision--

(a) confirming, amending or setting aside the decision which is the subject of the application in question;

(b) requiring the *information officer* or *head* of a *governmental body* to take such action as the relevant High Court considers necessary within a period specified in the order;

(c) in respect of the refusal of an *urgent request application* or *urgent appeal application*, on the *request* for access to a *record* in respect of which that application was made;

(d) granting an interdict, interim or specific relief, a declaratory order or compensation.

(3) In deciding under subsection (1) which order or other decision is just, the High Court in question must have due regard to the desirability of a speedy and inexpensive resolution of the application in question.

## Costs

**81.**(1) Subject to subsections (2) and (3), each party to an *application* bears its own costs.

(2) If--

(a) the *information officer* or *head* of a *governmental body*, or

(b) a third party being the only party who opposes the disclosure of a *record* of a *governmental body*,

is unsuccessful (in whole or substantial part) in an *application*, the costs of the opposite party must be paid--

(i) in the case of paragraph (a), by the governmental body concerned; or

(ii) in the case of paragraph (b), by the third party concerned.

(3) If an applicant is unsuccessful (in whole or substantial part) in

an *application* opposed by any *governmental body*, the High Court concerned may order any one or more of such opposing parties to pay the costs of the applicant, if in the Court's opinion the adjudication of that application has--

(a) raised an important new principle in relation to *this Act*; or

(b) promoted the transparency or accountability of any *governmental body*.

(4) If a High Court is of the opinion that an *application* before the Court is manifestly frivolous or vexatious, the Court may order the applicant to pay the costs of the opposite party or parties to that application.

## PART 7

### MISCELLANEOUS PROVISIONS

#### **Additional functions of Human Rights Commission**

82.(1) The Human Rights Commission must--

(a) annually review *this Act* and other legislation and the common law having a bearing on the accountability, responsiveness and openness of *governmental bodies* as well as non-*governmental bodies* which exercise substantial influence over the nature of the South African society;

(b) make recommendations for--

(i) the development, improvement, modernisation, reform or amendment of *this Act* or other legislation or common law contemplated in paragraph (a);

(ii) the compliance with any constitutional requirements about access to information;

(iii) procedures in terms of which *governmental bodies* make information electronically available;

(c) monitor the administration of *this Act*;

(d) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of *this Act* and of how to exercise the rights contemplated in *this Act*;

(e) encourage *governmental bodies* as well as non-*governmental bodies* to participate in the development and conduct of programmes referred to in paragraph (d) and to undertake such programmes themselves;

(f) promote timely and effective dissemination of accurate information

by *governmental bodies* about their activities;

(g) publish and distribute a guide on how to use *this Act* as required by sections 5 and 7;

(h) on request, assist any individual who wishes to exercise his or her rights contemplated in *this Act*;

(i) for the purposes of section 44, determine whether the manner in which access may be obtained and the fee payable in terms of legislation contemplated in section 44 is more onerous than the manner in which access may be obtained to a *record* and the fee payable for access in terms of *this Act*;

(j) prepare and provide a *notice* as required by section 66; and

(k) submit reports to the National Assembly in accordance with section 83.

(2) The Human Rights Commission has all such powers as are reasonably necessary or expedient to enable it to discharge its duties referred to in subsection (1), including, but not limited to, the power to--

(a) recommend to a *governmental or private body* that that body make such changes in the manner in which it administers *this Act* as the Commission considers advisable;

(b) train *information officers of governmental bodies*;

(c) consult with and receive reports from *governmental and private bodies* on the problems encountered in complying with *this Act*;

(d) obtain advice from, consult with, or receive and consider proposals or recommendations from, any *governmental body, non-governmental body, official or member of the public* in connection with the Commission's functions in terms of *this Act*;

(e) receive money from any government, *international organisation, governmental or private institution, individual or any other source* to perform its functions in terms of *this Act*;

(f) make donations to any *non-governmental body* participating in the development or conduct of, or undertaking, educational programmes as contemplated in subsection (1)(e);

(g) for the purposes of section 83(c)(xii), request the Public Protector to submit to the Commission information with respect to--

- (i) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by *this Act*;
- (ii) the nature and outcome of those complaints;
- (h) generally, inquire into any matter, including any legislation, the common law and any practice and procedure, connected with the *objects of this Act*.

(3) An *official of a governmental body* must afford the Human Rights Commission reasonable assistance for the effective performance of its functions in terms of this Act.

### **Report to National Assembly by Human Rights Commission**

**83.** The Human Rights Commission must include in its annual report to the National Assembly referred to in section 181(5) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)--

(a) any recommendation in terms of section 82(1)(b);

(b) a statement of all money received from any source referred to in section 82(2)(e);

(c) in relation to each *governmental body*, particulars of

(i) the number of *requests for access* received;

(ii) the number of *requests for access* granted in full;

(iii) the number of *requests for access* granted pursuant to section 45;

(iv) the number of *requests for access* refused in full and refused partially, and the number of times each provision of this Act relied on to refuse access was invoked to justify refusal in full and partial refusal;

(v) the number of *requests for correction* and the number of cases in which some or all of the *personal information* was corrected;

(vi) the number of cases in which an extension of the period of time stipulated in section 20(1) or 53(5) was made in terms of section 22(1) or that section, read with section 53(4), respectively;

(vii) the number of *urgent request applications* and *urgent appeal applications*, and the number of cases in which the application was granted;

(viii) the number of *internal appeals* lodged with the *head* of the body and the number of cases in which, as a result of an *internal appeal*, access was



given to a *record* or a part thereof and a correction of *inaccurate personal information* was made;

(ix) the number of *internal appeals* which were lodged on the ground that a *request for access* or *for correction* was deemed to have been refused in terms of section 23;

(x) the number of *applications* made to every High Court and the outcome thereof and the number of decisions of every High Court appealed against and the outcome thereof;

(xi) the number of *applications* to every High Court which were lodged on the ground that an *internal appeal* was deemed to have been dismissed in terms of section 70(5);

(xii) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by *this Act* and the outcome thereof;

(xiii) such other matters as may be *prescribed*.

### **Expenditure of Human Rights Commission under Act**

**84.** Any expenditure in connection with the performance of the Human Rights Commission's functions in terms of *this Act* must be defrayed subject to--

(a) requests being received with the changes required by the context in the form prescribed for the budgetary processes of departments of State; and

(b) the Exchequer Act, 1975, and the regulations and instructions thereunder, and the Auditor-General Act, 1995 (Act No. 12 of 1995).

### **Offences**

**85.** A person who--

(a) wilfully fails to comply with an undertaking contemplated in section 57(1)(g)(ii); or

(b) discloses information about an impropriety contemplated in section 63(1)(a) knowing it to be false or not knowing or believing the information to be true; or

(c) discloses a *record* of a *governmental body*, which record is classified in terms of the regulations made under section 86(1)(c) and has been unlawfully obtained,

commits an offence and is liable on conviction to a fine or to imprisonment

for a period not exceeding 12 months.

## **Regulations**

**86.(1)** The Minister of Justice, after consultation with the Human Rights Commission, may, subject to subsection (2), by notice in the *Gazette* make regulations regarding--

(a) any matter which is required or permitted by this Act to be prescribed;

(b) any *notice* required by this Act;

(c) the classification of *records of governmental bodies*;

(d) any administrative or procedural matter that is necessary or expedient for the proper and effective administration of this Act.

(2) Before the publication of any regulation in the *Gazette* in terms of subsection (1), it must be approved by Parliament.

## **Short title and commencement**

**87.(1)** This is the Open Democracy Act, 1997, and takes effect on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be so determined in respect of different provisions of this Act.

## **MEMORANDUM ON THE OBJECTS OF THE DRAFT OPEN DEMOCRACY BILL, 1997**

### ***Constitutional right of access to information***

1.1 Section 32(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 - "the Constitution"), provides as follows:

"(1) Everyone has the right of access to -

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights."

1.2 Section 32(2) of the Constitution, read with item 23(1) of Schedule 6 thereto, requires the enactment of national legislation to give effect to this right within three years of the commencement of the Constitution (4 February 1997). Item 23(2) of Schedule 6 to the Constitution provides that

until such legislation is enacted section 32(1) must be regarded to read as follows (which is similar to the corresponding right in terms of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993)):

"(1) Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights."

### ***Principal objects of draft Bill***

2.1 The principal objects of the draft Bill are--

(a) to give effect to the right referred to in section 32(1)(a) of the Constitution, and to partially give effect to the right mentioned in section 32(1)(b) of the Constitution and to section 195(3), read with section 195(1)(g), of the Constitution; and

(b) generally, to promote transparency and accountability by all organs of state by--

(i) providing the public with timeous, accessible and accurate information; and

(ii) empowering the public to effectively scrutinise, and participate in, governmental decision-making that affect them.

2.2 To attain these principal objects, the draft Bill includes specific provision for--

(a) public access on request to information held by the state, subject to exemptions necessary to protect good governance, personal privacy and commercial confidentiality;

(b) the disclosure of information obtained in accordance with this Act;

(c) *governmental bodies* to make information available that will assist the public in understanding the functions of *governmental bodies*, their operation and the criteria employed in making decisions;

(d) access by individuals to information about themselves held by private persons, the correction of personal information held by the state or private persons, and the protection of individuals against abuse of their personal information by the state or other private persons;

(e) the protection of persons who make known evidence disclosing contraventions of the law, serious maladministration or corruption in governmental bodies; and

(f) enforcement mechanisms in respect of the rights contemplated in the draft Bill in the form of internal appeals as well as applications lodged with a High Court.

### ***Full effect to section 32(1)(b) of Constitution***

3. A right of access to any information held by another person and which is required for exercising or protecting any rights which is protected as a fundamental right in a constitution is a new notion in law, not only in South Africa but also elsewhere. Consequently, it is considered desirable for the Human Rights Commission to investigate and consult as widely as possible on this matter in order to make recommendations regarding legislation which would give *full* effect to this right as is required by section 32(1)(b), read with section 32(2), of the new Constitution.

### ***Existing legislation inconsistent with draft Bill***

4. No express provision is made in the draft Bill for amendments to existing legislation inconsistent with the draft Bill or the provisions of the Constitution regarding access to information. Clause 3(1) of the draft Bill contains a general override, stipulating that the provisions of the draft Bill prevail over all other legislation in case of conflict. The Constitution, being the supreme law, will in any case prevail over any conflicting legislation. The eventual amendment or repeal of these inconsistent provisions in existing legislation, although not absolutely necessary, is desirable for the sake of clarity. To this end each functionary administering legislation which is inconsistent should make proposals to the appropriate legislative authorities for the necessary adjustments.

### ***Duty of confidentiality of officials***

5. If the draft Bill becomes law, one of its significant effects on existing legislation would be the repeal of any duty of confidentiality imposed on a government official by other legislation where information is disclosed in accordance with the draft Bill.

### ***Legislative procedure***

6. Section 195(3), read with section 195(1)(f) and (g), of the Constitution provides that national legislation must ensure the promotion of--

(a)accountable public administration; and

(b)transparency by providing the public with timely, accessible and accurate information.

These principles apply to administration in every sphere of government, organs of state and public enterprises (section 195(2) of the Constitution).

Given that the draft Bill provides for legislation envisaged in section 195(3) of the Constitution, section 76(3)(d) of the Constitution requires that the draft Bill must be dealt with by Parliament in accordance with the procedure established by section 76(1) or (2) of the Constitution.

However, the provisions of the draft Bill which apply to private bodies contain *no* provision to which the procedure set out in section 76 of the Constitution applies (e.g. clauses 50, 51, 52, 54 and 56 and clauses 49, 58, 59 and 86, in so far as they apply to private bodies as well as the applicable definitions for the said clauses in clause 1). Accordingly, the provisions of the draft Bill which applies to private bodies must be dealt with by Parliament in accordance with the procedures established by section 75 of the Constitution.

### ***Consultation***

7. The following bodies/persons were consulted:

\* Ministries and Government Departments/Offices (including the Premiers of provinces, the Public Protector, Attorneys-General, South African Police Services, South African National Defence Force and National Intelligence Agency)

\* The Chief Justice of the then appellate division of the Supreme Court and Judges-President of the then provincial divisions of the Supreme Court

\* Open Democracy Advisory Forum (constituted of more than 60 organisations mainly representing civil society)

\* Various parastatals and non-governmental bodies.

### **Endnotes**

1. An italicised word or phrase in the text indicates that the word or phrase is defined in section 1(1).

2. See section 1(2).