

PROMOTION OF ACCESS TO INFORMATION ACT

A PRACTICAL GUIDE FOR SOCIAL JUSTICE
ACTIVISTS AND ORGANISATIONS



PROMOTION OF ACCESS TO INFORMATION ACT

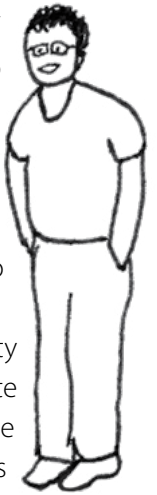
A practical guide for social justice activists and organisations



FOREWORD BY ZACKIE ACHMAT

Access to information, as a right, is indispensable to personhood, to one's dignity, to democracy and to the exercise of our other rights. Under apartheid, the restriction of access to information was a fundamental part of the system – books, papers, films, and magazines were banned. The reason for this is that information is closely associated to knowledge, and with knowledge, marginalised people can challenge and change systems based on evidence. This is why access to information is so important to all of us.

Despite all the problems we have in South Africa, the ability of citizens to claim that right shows that we can create a state that is open, responsive, and accountable. This can only be achieved through communities, individuals and organisations mobilising and struggling to advance access to information.



Acknowledgements

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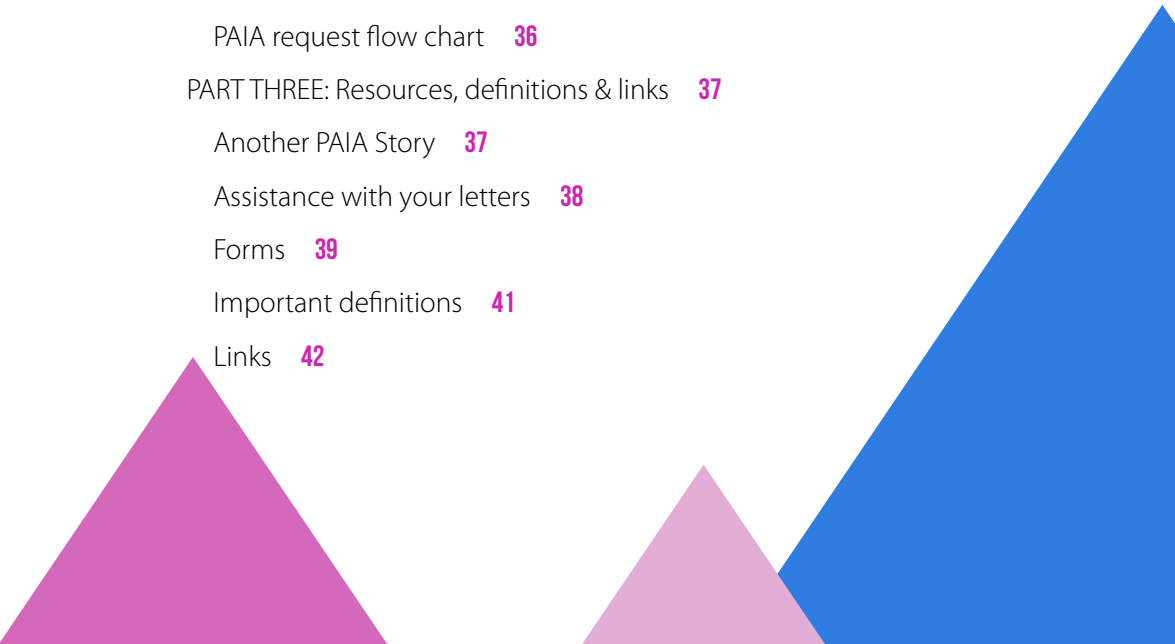
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INTRODUCTION

A PAIA REQUEST STORY

In June 2013 Ndifuna Ukwazi (NU) submitted a PAIA application for all records related to a contract the South African Police Service (SAPS) had entered into with a company called Waymark Infotech (Waymark). In terms of the contract Waymark would provide an electronic database that could be used to track and register firearms dealers and ammunition. The system is referred to as the 'Firearm Control System'. In January 2013 the Auditor-General flagged this contract as fruitless and wasteful expenditure. This contract involved both abuse of public power and a waste of public funds. As part of its mission to promote public and private accountability, NU chose to investigate further.

Between the commencement of the contract in 2004 and the Auditor-General's report, SAPS signed four further agreements with Waymark raising the cost of the contract to R416 million. Even though Waymark had failed to deliver any results, SAPS had paid a total of R342 million by the time the contract was suspended in August 2012.

Over a period of four months NU made numerous requests for these records, even approaching the National Commissioner's office. Finally, SAPS said that they would not provide the records without first receiving a PAIA application. On 3 June 2013 NU submitted a PAIA application for all the records related to the Firearm Control System.

On 24 June 2013, SAPS informed NU that Waymark had been informed of the PAIA request. Section 47 of the Promotion of Access to Information Act states that SAPS (the public body) must give Waymark (the third party) 21 days to give reasons why the records should not be given to the requester (NU). After notifying Waymark, SAPS had 30 days to let NU know whether they would grant access to the requested records, according to section 49(1) of the Act.

On 13 August 2013, 50 days after SAPS had informed Waymark of the PAIA request, NU wrote to SAPS requesting an urgent response. Following numerous back-and-forth emails between NU and SAPS, NU was finally granted partial access to the requested records on 19 August 2013. Unfortunately, so much information had been redacted that it was impossible to determine whether there had been a breach of contract, or if any laws had been broken. NU wrote to SAPS requesting the full record, but the request was refused.

On 13 September 2013 NU filed an "appeal against partial refusal of access to the requested records". The appeal was escalated to the Minister of Police, and on 27 December the Minister's office responded and granted access to all records related to the Firearm Control System, except

for the invoices. The Minister granted the appeal because SAPS did not respond to NU's PAIA application within the 30 days required by the Act.

SAPS still refused to grant access to all the records requested by NU until 180 days had passed. When SAPS made this decision they were relying on section 77 of the Act, which would allow Waymark (the third party) 30 days to lodge an application with the court "against the decision on internal appeal". Referring to the Constitutional Court judgment of *Brümmer v Minister for Social Development and Others*, SAPS legal team insisted that a period of 30 days was unconstitutional and Waymark should be given 180 days to lodge an application with the court. Waymark did not go to court to stop NU getting the Firearm Control System contracts.

In July 2014 NU finally received all the records requested in its original PAIA application, except the invoices. All these records, including NU's PAIA application, are now available to the public and can be accessed via this [link](#).

All the contracts were also given to the community news network, *Groundup.org.za*. On 17 October 2014 *GroundUp* published the story entitled "R400 million firearms control system in shambles", and the next day the story was republished in the *Mail & Guardian*. NU also made a written submission to the Parliament's Portfolio Committee on Police calling for the committee to push SAPS to disclose the current state of the Firearm Control System contract. On 21 October the National Commissioner of Police confirmed to the committee that the contract with Waymark was being investigated by the Directorate for Priority Crime Investigation, otherwise known as the Hawks.

* * *

It should not have been necessary for NU to make a PAIA application. Open and accountable governance are constitutional values, and in the spirit of such governance all contracts between public departments (in this case SAPS) and private bodies (Waymark) should be made available to the public, including being uploaded to the internet.

This example illustrates that making a PAIA application is complex, and it is not always easy to get the information you want. Sometimes a government department or company might not want to give you information because it may show that they have acted improperly, or even broken the law. The guidelines in this book will not only show you how to submit a PAIA application, this book will also help ensure that, if you have to go to court to get the information you need, you will have enough evidence to support your application.

HOW TO USE THIS GUIDE

Making a request in terms of the Promotion of Access to Information Act (also known as PAIA) might appear to be a daunting task for many activists. Your expertise may not be in law or access to information, but this does not mean that information held by others is not important for your work.

The beginning of the guide is about PAIA, access to information in South Africa, and why it is important for activists to know how to make PAIA requests. The second part of the guide provides practical information to guide you through making your PAIA request. The third and final part of the guide has additional resources and readings you may need to further your understating of the process of making PAIA requests.

Icons

Throughout the guide, you will find the following icons to help you better understand the content:



Read the appropriate law/legislation.



You can find this online. All the resources and links are on page 42 at the end of this guide. If you are reading a digital version of this guide, the link will take you directly to the resource.

Here to help

Hello! I'm S'bu, and I'm Ma Noluvo, and we are here to help you through this guide.




PART ONE: YOUR RIGHT TO ACCESS INFORMATION




S'bu: We want to help you access the information you need without having to study the entire PAIA, but we think that it is a good idea to have a copy of the PAIA next to you for further information.



Ma Noluvo: PAIA and other resources are available online. Go to the links on [page 42](#) to access the Act. Lastly, don't forget to look at the important definitions on [page 41](#). 

ACCESS TO INFORMATION AND YOUR RIGHTS

“Everyone has the right to access any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights” – Section 32 of the Constitution 



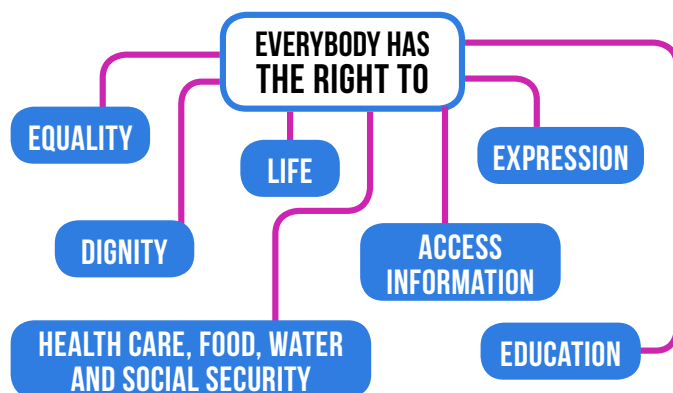
S'bu: Providing people with information is not a privilege extended by the government but a basic right.

One of the most fundamental rights we have enshrined in the Constitution of South Africa is the right to access information – whether it be about you, a company, or government. If you need to access this information, then in most instances, it must be given to you. The right to information is a functional right because it allows you to make other rights work for you.

The Bill of Rights

The Bill of Rights is one of the most important Chapters of the Constitution, which is the supreme law of South Africa. It lists the most important rights that every person is entitled to and says that the state must respect, protect, promote and fulfil all the rights listed in the Bill of Rights.

Here are a few:



Information is a right

Sometimes, people who work in government believe that government information should be kept secret and only released if it is asked for and where there is a good reason. It may be that they are worried that the information won't be accurate or complete, or that people will use the information to challenge what the government is doing. Occasionally, government officials will try to hide something.

But, the Bill of Rights says that everyone has a right to access any information held by the state, as well as any information held by another person which is required for the exercise or protection of any right. It also says that legislation needs to be enacted (concrete laws need to be passed) to give effect to the right to information.

Simply put, if you need to access this information, then in most instances it must be given to you. Providing people with information is not a privilege, it is a basic right.



S'bu: The right to information is called a functional right because it helps to fulfil other rights. For example, information may help a person to fulfil their right to equality.



Ma Noluvo: Access to information is really important so that people can participate in decisions and hold government to account.



WHAT IS PAIA?

Although the Constitution provides for the right to access information, it doesn't give enough detail about how this might happen.

It is up to Parliament to enact legislation that can make it clear how people can exercise and protect their right to access to information. The legislation that was passed is called the Promotion of Access to Information Act, which we often call PAIA.

PAIA provides a procedure and a set of rules that should make it easy and clear to everyone what information can be accessed and how it can be accessed.

The need for open governance and access to information is seen throughout the world, and many social movements have fought and campaigned for this right.

Many countries around the world have introduced Access to Information Laws. The USA (1966), the UK (2005), Sweden (1766), China (2008) and Jordan (2007) have laws that allow their citizens to access state-controlled and produced information.



Ma Noluvo: About 80% of the countries in the world have Access to Information laws, with 60% of these only being enacted in the last 12 years.



S'bu: During apartheid you *could* access government records but it was a very difficult and often expensive process because it had to be done through the courts and this excluded most poor and working class people from getting the information they needed.

As a founding member of the Open Government Partnership, South Africa has formally committed to becoming more transparent and open in its decision making and money spending. This is a great opportunity for civil society to put pressure on government to be more forthcoming with its information.

WHY IS PAIA IMPORTANT FOR SOCIAL JUSTICE ACTIVISTS?

PAIA is important because it can be used as a tool to make government more open and accessible. PAIA can be used to hold public and private bodies to account for decisions they make that affect you, the people of your community, or the general public.



S'bu: For example, if you notice that people in your community are constantly getting sick and your community discovers that the water the municipality is providing is not clean and that this may be the cause of the people's illness, then you can ask for information on the water quality. This might help you decide if the municipality is doing its job properly and not violating your rights to water and health.

You can use PAIA to see how government is spending your money and to demand better service delivery.



Ma Noluvo: Everyone has the right to basic sanitation but many people still don't have access to a clean toilet that works and is safe to use. Sometimes, municipalities sign contracts with companies to provide outsourced chemical toilets, but these are often not looked after and are dirty and broken. You could use PAIA to ask the municipality how much money is being spent and then challenge them to stop wasting money by improving the service with a different contractor.

PAIA is a useful oversight tool and can be used to keep a check on government and ensure that it is serving the people and it can also be used to stop corruption.



S'bu: For example, you might notice that your neighbour, who is the local councillor's sister, decides to start a construction company. The very next month she gets a very big contract to build a community centre. You can use PAIA to ask for the tender documents and contract to see if she really was the best person for the job.

WHO CAN MAKE A PAIA REQUEST?

Any person can make a PAIA request. If you are a South African citizen, you will need a valid ID document (your ID number must be included in the request). If you are not a South African citizen, you can still make a request, as long as you have a valid passport and include your passport number when you make your application.



S'bu: You don't have to work for or belong to an organisation. The purpose of PAIA is to help anybody with getting the information that they need to help them protect their rights.

WHO CAN YOU ASK FOR INFORMATION?


PAIA says that you can request information from a **private** body or a **public** body. Generally, private bodies are companies (e.g. insurance companies) or individuals (e.g. doctors), and public bodies are government bodies (e.g. City of Cape Town or the Department of Justice) or parastatals (e.g. Eskom).

Sometimes companies do work for government and they hold information that the government would have if it had done the work itself. So, whether a body is considered public or private depends on the function of the work. If a private company is contracted by government to provide a public service, then anything to do with that service can (and must) be requested as if it were a public body.



Ma Noluvo: Think about it this way – you walk into your local police station to report that your phone has been stolen. You wait a long time and you notice that the station only has one computer and it is not working. Then you meet someone who tells you that she works for a company that made

a lot of money on a contract to upgrade police computers. You think to yourself – if they had done the job properly then your station should have working computers. You then decide to make a PAIA request to the company to find out how much money was paid to the company and what computer equipment they were supposed to provide to your station.

There is a list of Government departments at the end of this booklet that you can use to make further enquiries about your request. 


HOW DO I KNOW WHAT INFORMATION TO REQUEST?



S'bu: I have to walk my sister to school every day because gangs wait on the streets in the mornings to steal from her. I want to find out from the Education Department how much money they are spending on school safety programmes and which areas get this money, but I don't know what to ask for.



Ma Noluvo: It would not make sense to make a PAIA request just to find out what records exist so that you can make your real PAIA request.

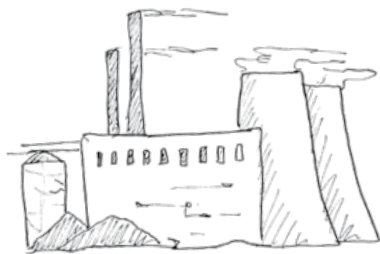
Every public body is obliged to produce clear and readily accessible information about what types of records are produced or they hold. These need to be made available proactively at their offices and on their website (see section 14 of PAIA). 



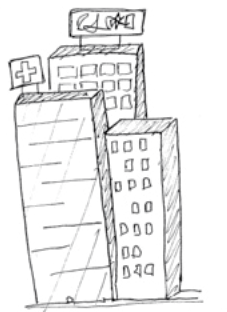
Ma Noluvo: When government makes information available without you having to ask for it, we call this proactive disclosure. In this case you can probably find this information on their website, at their offices or they can choose send it to you if you write to them.



S'bu: I went to an internet cafe and I had a look at the Education Department's website. It was a bit hard to find but there is a list of records. I found two that might be helpful: policies and plans and budgetary information.



PUBLIC




PRIVATE

In addition to this, both public and private bodies (depending on their size) are required to prepare a PAIA manual and submit it to the South African Human Rights Commission (SAHRC). PAIA manuals should include:

- **Contact info;**
- **Process guidelines;**
- **Categories and lists of records they hold; and**
- **A list of records that are available without making a PAIA request.**



An example of a PAIA manual can be downloaded from the [City of Johannesburg's website](#). 

All public bodies should have an online PAIA manual that will give you all the information needed to request information from them. If they do not have one available they are breaking the law and you can report them to the South African Human Rights Commission. Private bodies may not have a PAIA manual but many large companies are required to have their manuals. If they don't, you can call and speak to the head of that private company who is responsible for PAIA requests.

WHO IS THE INFORMATION OFFICER?



S'bu: When you make a PAIA request to a public body, you have to write to someone whose job it is to deal with PAIA requests. That person is called the Information Officer.

The Information Officer is usually the person who is in charge of a government department, municipality or another public body. For a national or provincial government department, this would be the Director-General, executive director or the equivalent official of that department. For a municipality, it is the municipal manager and in the case of most private bodies it is the chief executive officer (CEO).

The Information Officer of a public body sometimes delegates his/her duties to a Deputy Information Officer to ensure that requests for information made to that government structure will be dealt with in an effective and efficient manner.



Ma Noluvo: Before you send your request, get the correct contact details of the Information Officer by sending an email or calling their office. This way, you can make sure that you have the correct address and that the Information Officer knows to expect a PAIA request from you.

In the case of private bodies, PAIA requests must be made to the head of that organisation, company or other private body.

RECORDS THAT MUST BE GIVEN AND CANNOT BE GIVEN TO YOU

1 Certain records must be given

You can ask for any record through PAIA, however, the following records must be given to you:

- **Mandatory disclosure in the public interest:** if a record from a public or private body would reveal evidence of seriously breaking the law or a serious public safety or environmental risk and it is in the public's interest to disclose this information (see sections 46 and 70 of PAIA).
- Public body records that would reveal defence, security or international relations information or any information used by public bodies in the process of making laws and policy if those records came into existence more than 20 years ago (see sections 41 and 44 of PAIA).
- Certain information from public bodies that is already publicly available (see sections 34, 36, 37, and 42 of PAIA).

2 Certain records cannot be given to you

While most information should be made available upon request, there are certain records that cannot be released for very serious reasons:

- Certain information from a public or private body about someone else (called a third party) that would involve unreasonable disclosure of personal information such as medical records or their salary. This would violate their right to privacy (see sections 34 and 63 of PAIA).
- Certain records of the South African Revenue Service (SARS) cannot be given (see section 35 of PAIA).
- Trade secrets of a third party or the commercial, financial, scientific or technical information of a third party held by both public and private bodies (see sections 36 and 64 of PAIA).
- Information about research carried out on behalf of a third

party, public body or private party if the disclosure would cause serious disadvantage to the research and researcher (see sections 43 and 69 of PAIA).

- The disclosure of confidential information if this would be in breach of a duty of confidence owed to a third party in terms of an agreement (see sections 37 and 65 of PAIA).
- Police dockets in bail proceedings, and protection of law enforcement or legal proceedings must not be given by public bodies (see section 39 of PAIA).
- Information held by public and private bodies that could endanger the safety or life of a person (see sections 38 and 66 of PAIA).
- Certain privileged legal records also cannot be given by both public and private bodies unless the person to whom the records relate to gives their permission (see sections 40 and 67 of PAIA).

3 The disclosure of certain records can be decided by the Information Officer/head of a private body

The following records may be withheld under certain conditions, and whether or not these records can be disclosed must be decided by the Information Officer or head of a private body:

- Defence, security, and international relations information of South Africa may be refused if disclosure could cause prejudice to South Africa's defence, security or international law relations or would reveal confidential information (see section 41 of PAIA).
- Information given to a public body in confidence by a third party, if releasing this information could prejudice the supply of future information by that third party and it is in the public's interest to continue the supply of that information (see section 37 of PAIA).
- If the information given to public or private bodies would impair or prejudice the safety of property

or methods and plans to keep individuals, the public and property safe (see sections 38 and 66 of PAIA).

→ Methods of law enforcement where disclosure could prejudice the effectiveness of those methods or prejudice investigation or law enforcement activities (see section 39 of PAIA).

→ Information held by a public body that was provided by or to another country's government or international organisation, where that information should be kept private in terms of an international agreement, obligation or law (see section 41 of PAIA).


→ Records held by a public body that may jeopardise South Africa's economic or financial interests, or the ability of the government to manage the economy effectively and in the best interest of South Africa (see section 42 of PAIA).

→ Records containing trade secrets and other information of a private body, including information that could put that body at a disadvantage in contractual or other negotiations or prejudice the body in other commercial competition (see section 68 of PAIA).

→ Records about the operation of public bodies when they contain advice, an opinion, report, or recommendation or an account of a consultation, discussion, or deliberation for the purposes of making a decision or policy (see section 44 of PAIA).

→ Frivolous or vexatious requests may be refused. These are senseless requests or those made to simply harass a body. A request may also be refused by a public body if the work involved in processing that request would unreasonably use up the resources of that public body (see section 45 of PAIA).

The Public Interest Clause

As seen above, there are "grounds for refusal" preventing you from getting certain information; but every decision has to be made thinking about whether releasing the information is in the best interests of the public. This is called the "Public Interest Clause" or "public interest override". What this means is that a body must provide any information that: 

"a) would reveal evidence of:

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

b) the public interest in the disclosure of the record clearly out-weighs the harm contemplated in the provision in question."

This provision makes it very important for the Information Officer or head of a private body to think through their decision to give or refuse access to a record.



Ma Noluvo: Remember that if you are not sure if you are requesting information that cannot be disclosed, continue with your request because it is the job of the Information Officer or the head of the private body to provide you with a reason for refusing access to the information that you are looking for.

CHECK LIST: ARE YOU READY TO MAKE A PAIA REQUEST?

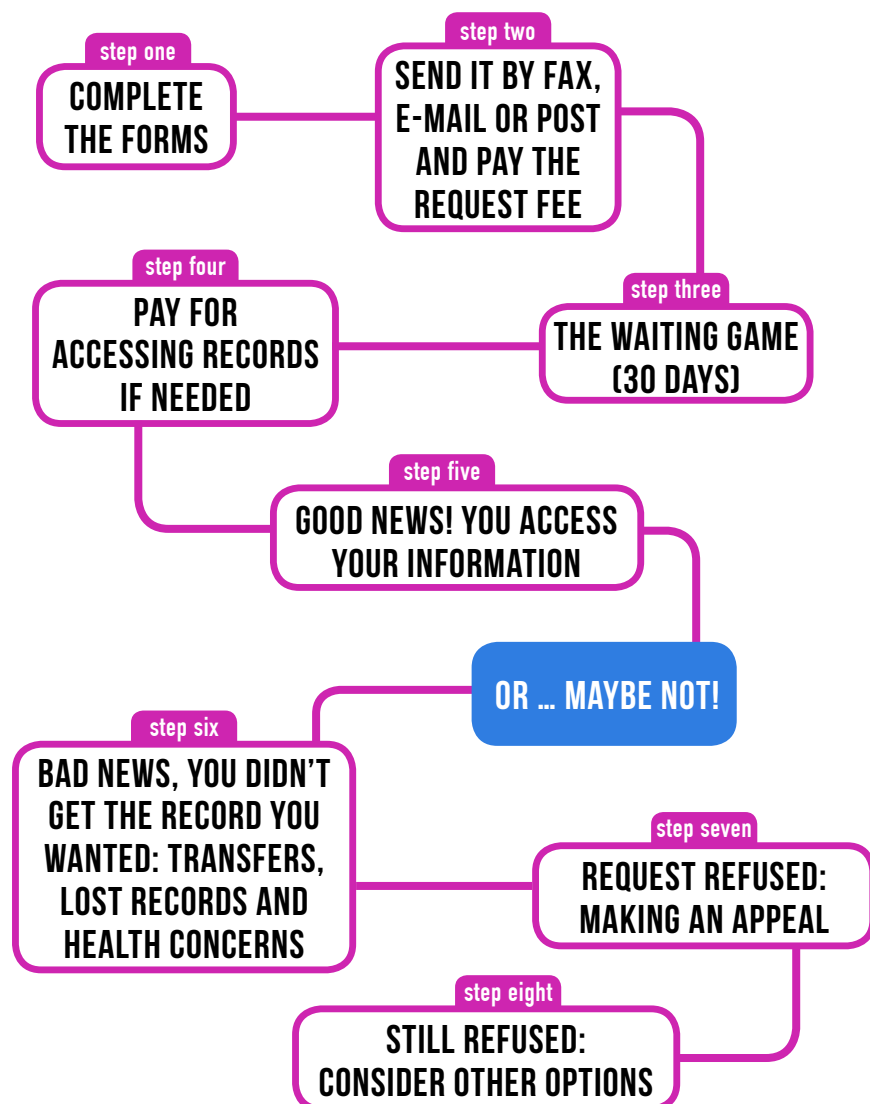
Ask yourself the following questions in order to make sure that you are ready to make your request:

- ☐ Have you thought about the issue that you are trying to address?
- ☐ Have you thought about what information will help you address this issue?
- ☐ Is the information publicly available? Have you tried asking for the information?
- ☐ Will PAIA help you access the information you need?
- ☐ Can the Information Officer or head of the private body disclose this information?
- ☐ Do you know what record will contain the information? Can you describe it thoroughly?
- ☐ Which public or private bodies have (or may have) the information you need?
- ☐ Who is the Information Officer, Deputy Information Officer or head of the private body for each body from which you require information?
- ☐ Do you have their contact details?
- ☐ Do you have money to pay for the request if required?

PART TWO: HOW TO MAKE A PAIA REQUEST

HOW TO MAKE A PAIA REQUEST

There are eight basic steps to making a PAIA request:



STEP 1: COMPLETE THE FORMS

You have to use the correct form to make a PAIA request. Luckily, all PAIA requests use the same set of forms, so if you do it once, you will easily be able to do it again.

Download the forms

You can download the PAIA forms on the internet from the links page at the back of this booklet. 



Ma Noluvo: If you want a record from government, then use Form A for public bodies. If it is from a company or another private organisation, then use Form C for private bodies. Remember, that if the company is performing a state function, then you should use Form A.

Fill out the forms

Sometimes filling out the forms can be tricky. There are many guides that can help you to do this quickly and accurately.



S'bu: If you need help you can download the [South African History Archives PAIA Resource Kit](#). 

Create a reference number

When you make a request, the first thing you want to do is give it a reference number, like an ID tag or name. This allows you and the person responsible for your PAIA request to know exactly which request you are referring to. Information Officers can get many requests, so a request reference number is an important organisational tool. It can also help your records if you make many requests.

Each new request you make should have its own request number. An example of a request number is: 0002/DEA/2009.

How the number is divided:

- First four numbers – number of the request in that year. Your first request will be 0001, the second will be 0002, your 15th will be 0015 etc.
- Second part (letters) – is an acronym for the department or private body from whom you are requesting records. If this is the Department of Basic Education you can write “DBE”.
- Last four numbers – this is the year of submission. If you make it in 2014 it will be 2014.

Your second request in 2015 to the Department of Environmental Affairs will look like this:

002/DEA/2015



Ma Noluvo: Not all public and private bodies will use your reference number because they may have their own system. If they assign a different reference number to yours, you should use both when corresponding with them about your request.

Write a cover letter

It is a good idea to write a letter to attach to your form. The cover letter should be written in a formal style using a computer so that the Information Officer will take your request seriously. The cover letter should include:

- Your name and address;
- Their name and address;
- A greeting (if you know the name of the Information Officer then use that, otherwise use Dear Sir/Madam);
- A subject line or heading;
- A very short description about yourself or your organisation, what information or record you are requesting and the language in which you would like the information; and
- You can let them know why you are requesting this information, although this is not required.



S’bu: If you are asking for information on behalf of someone else who can’t make the request themselves, you will also need to provide a signed letter of authority and their ID number or passport number. This is a letter saying that they give you permission to request the information on their behalf.



STEP 2: SEND IT BY FAX, E-MAIL OR POST

Send the form

You are now ready to send your request. You have decided on the information or records that you need, and have completed the forms. Now you simply need to send the forms to the applicable Information Officer or head of the private body.

- If you are sending the forms via fax, complete a fax cover (see page 38).
- If you are sending the forms by post, remember to make copies of the originals for yourself, and keep this in a file.
- If you are sending the forms by e-mail, it's a good idea to scan the forms and other documents as a PDF file. This is easy to e-mail and nobody can change what you have written. If you don't have a scanner you can do this at a copy or print shop.



Ma Noluvo: The Information Officer or head of the private body should respond in writing confirming that your request has been received. If they don't respond, you should make contact and request this. This is very important if your request has been refused and you have to make an appeal.



S'bu: Remember to make a note of the date that the PAIA request was received because the Information Officer has to respond within 30 days.

Pay

A public body request costs R35. A private body request costs R50. This money is used to cover administration costs as well as to prevent people from sending many inappropriate requests aimed at disrupting or annoying a certain body.

Remember that some people do NOT have to pay this fee. You do not need to pay if:

- You are requesting personal information about yourself.
- You earn less than R14,712 a year, or if you and your partner earn less than R27,192 a year combined.



S'bu: Different government departments have different payment methods. It is a good idea to call and ask which method is preferred when you make your request. When requesting from a private body you should make contact and ask about the preferred payment method.

Checklist: Making your PAIA request

Go through this checklist to make sure you complete the process thoroughly:

- ☐ Have you used the correct form?
- ☐ If you are submitting the request on behalf of someone, do you have their permission and have they given you a letter of authority and their ID number or passport number?
- ☐ Did you complete a cover letter?
- ☐ If you sent it by fax, did you attach a fax cover letter?
- ☐ If you sent it by post, did you make copies for yourself?
- ☐ If you sent it by e-mail, did you scan it as a PDF?
- ☐ Do you have to pay a fee?
- ☐ Did you find out about the best way to pay the fee?
- ☐ Did you receive confirmation of receipt? If not, did you phone or write again to the Information Officer or the head of the private body to confirm that your request was received?
- ☐ Did you make a note in your diary or calendar of the day that the PAIA request was received and have you marked 30 days from that date?
- ☐ Make a note in your diary or calendar of 3 days before the 30 day period is over. If you have not yet received anything by this date, call to remind the relevant body that the 30 day period is about to expire.
- ☐ Keep all your records neat and organised in a file.



Ma Noluvo: It is important to follow the request process as accurately as possible and keep original records and copies of documents and mark the important dates. This is important to ensure that your request takes the least amount of time to be processed. This makes it easier for the body to gather and present you with the records you want, and will also assist you legally if the matter ends up in court.

STEP 3: THE WAITING GAME

From the day that the body receives your request it will have **30 days** to reply by either granting or refusing access to the records. If the relevant person or body does not reply, it is a **deemed refusal**. This means that if you have not received a response, you should treat this as though the Information Officer or head of a private body has said that you cannot have the information.

Within these 30 days, the Information Officer can ask you for another 30 day extension. If you deny the extension, they can file an internal appeal which will take another 30 days. So there is little advantage to denying extensions.

Within 60 days of your request being received, you will either receive access to the record, receive a refusal, or if nothing happens, it is another deemed refusal. If you are refused or if there is a deemed refusal, you then need to make an internal appeal which takes another 30 days.



S'bu: When counting the days, you must exclude the first day and include the last day (unless it falls on a Sunday or public holiday – then you must use the following day). Remember, you can only make an appeal to a public body.

Finally, you will either be granted access, refused access or there is a deemed refusal. If your request is refused or there is a deemed refusal you will now have 180 days to approach the courts.

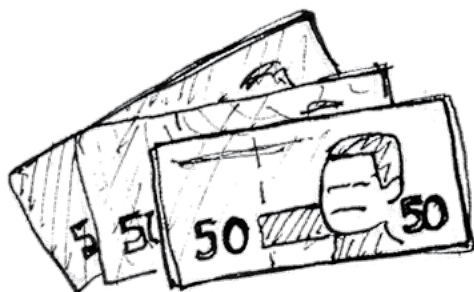
Check the flow diagram on [page 36](#) for a thorough explanation of the timeframes and important dates.

STEP 4: PAY FOR ACCESSING RECORDS

Finding, collating, and producing these records can take a lot of time and resources. In these cases, the Information Officer or head of a private body may charge the requester a fee based on the hours and costs of doing this work.



Ma Noluvo: The Information Officer or private body must produce an invoice or breakdown of the costs, and not a single sum which can be used to discourage people from requesting information.



STEP 5: GOOD NEWS, YOU HAVE ACCESS TO YOUR RECORD!

If there is an access fee, then you must be given access to the record as soon as this fee is paid. If there is no access fee, the record must be given immediately. The record must be given in the format and language requested. If this is not possible, it must be given in the most appropriate format and language (which is usually English).

Generally, if the record is written or typed on paper, a copy will be given. If it is an image, a copy or transcript or a description of the image must be given. If it is an audio recording, then access to listening to it must be given,



S'bu: If the record contains information about a third party then the Information Officer or private body must by all means inform this person as soon as possible, but by no later than 21 days.



Ma Noluvo: The Information Officer or private body might give you a partial record with some information blanked-out or covered up. If you feel that you should see these parts, then you should make an appeal. This also seeks to prevent bodies from over charging requesters because they are required to account for all costs and expenses.



STEP 6: BAD NEWS, YOU DIDN'T GET THE RECORDS YOU WANTED. TRANSFERS, LOST RECORDS, AND HEALTH CONCERNS

Transfers

What happens if you send your request to the wrong public body?

Sometimes the record is not in the possession or under the control of the body to whom the request was sent, but rather in the possession of another public body; or the record's subject matter is more closely connected with the functions of another public body; or the record contains commercial information in which another public body has a greater commercial interest.

It is the duty of the Information Officer to transfer the request to the correct body immediately, but by no later than 14 days.



S'bu: When a request for access to information is transferred, the Information Officer making the transfer must immediately notify you that the request is being transferred, give you the reasons for the transfer and the time period within which the request must be dealt.

It cannot be found ...

If all reasonable steps have been taken to find a record, and there are reasonable grounds for believing that it is in the public body's possession but cannot be found, or does not exist, then the Information Officer of a public body must, by way of an **affidavit** or **affirmation**, notify you that it is not possible to give access to that record.



Ma Noluvo: If, after notice is given that a record cannot be found or does not exist, but then *is* found, you must be given access to the record (unless access is refused on one of the specified grounds for refusal).

Medical Records




S'bu: Sometimes, information can contain unfavourable or traumatic news. You might find out that there is something wrong with your health. PAIA gives the Information Officer the option to consult a doctor.

If the Information Officer thinks that giving the record to you might cause serious harm to your physical health, mental health, or well-being, they may consult with a doctor (chosen by you), before they give access.

If, after being given access to the record, the doctor thinks giving the record to the you would likely cause serious harm, physically or mentally, you may only be given access to the record if you prove that adequate provision has been made for counselling, to limit, alleviate or avoid harm.

Severability

Severability means that even if some parts of the record are classified or qualify for refusal, other parts may not be, and these must still be provided while those that can't be provided must be removed or "severed" (see section 28 of PAIA). 



S'bu: Ask the Information Officer about this option. The Information Officer can "sever" or remove any information that you can't see and give you the rest of the record.

STEP 7: REQUEST REFUSED – MAKING AN APPEAL



Ma Noluvo: The Information Officer might refuse to give you the information you are looking for. If this happens look back at the section in this guide that deals with what must be given and what cannot be given to you on page 16. This will give you an idea of why the request may have been refused.

So what next? There are a few different things you can do:

The appeal process

If you are unhappy with the reasons given for the refusal to access records and you believe that the Information Officer has not interpreted PAIA correctly, you can make an internal appeal. This appeal process only applies to public bodies.



Ma Noluvo: Although you sent your request to the Information Officer you do not send your appeal to the Information Officer.

You must send your appeal to the political head of this body, which is usually the Minister of a national department; a Member of the Executive Council of a provincial department; or to the Mayor or speaker of a municipality or municipal council.



S'bu: Unfortunately you can't make an appeal to a private body.

To make an internal appeal, you should complete Form B. See page 40 on how to complete this form.

STEP EIGHT: OTHER OPTIONS

Go to court


Going to court can be very expensive, so you will need to make sure that you have tried everything possible. You can only apply to a court after you have exhausted the internal appeal procedure against a decision of the Information Officer of a public body. In order to go to court, you will need to get legal advice from a lawyer – and they will be able to assist you from there.

The South African Human Rights Commission (SAHRC)

Chapter 9 of the Constitution deals with the oversight bodies of government, matters of the Constitution and complaints from people about government departments, agencies or officials. The South African Human Rights Commission is a Chapter 9 institution, which means that it has certain oversight roles defined by the Constitution. Its main aim is to promote, protect and monitor human rights in South Africa – this includes your right to information.

The SAHRC also has a specific responsibility to monitor the implementation of PAIA, making it the official Constitutional watchdog of the Act.

This means that the SAHRC is obliged to help you with making PAIA requests, processing questions, following up on complaints you take to them about refusal to access to records, and give you information and training about PAIA.

If you need assistance from the SAHRC, either visit their website or phone them on **(011) 484 8300**. Their website has more resources about access to information, human rights, and PAIA. 

Public Protector

The Public Protector is also provided for in Chapter 9 of the Constitution and is an investigator of state affairs and can investigate allegations of prejudice or improper conduct.

Specifically, chapter 9 of the Constitution gives the Public Protector the power to investigate any member of government and any person performing a public function (this includes the President).

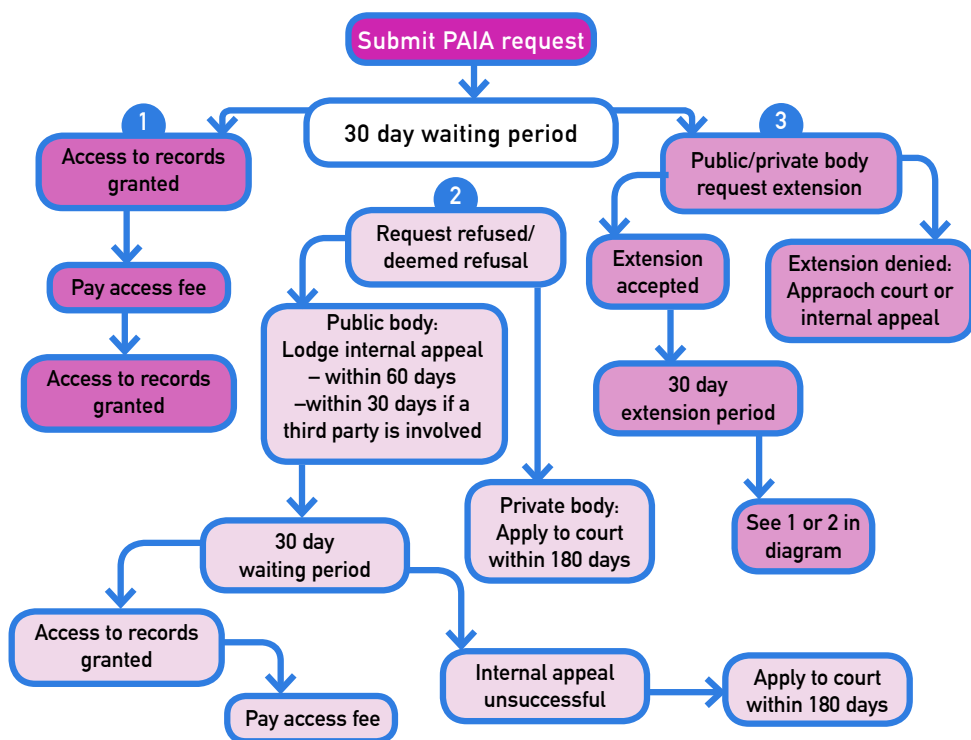
If, through the PAIA request process, you think that you have been treated unfairly or if the body has abused their powers, you can approach the Public Protector. The Public Protector will advise you as to whether your complaint can be dealt with by them, or the Public Protector can refer you to the appropriate authority.



Ma Noluvo: Contact the Public Protector via the [website](#) or call on 0800 11 20 40. Note that the Public Protector service is free. 

PAIA REQUEST FLOW CHART

Most PAIA requests will follow the time lines and processes in this flow chart:



Conclusion

In conclusion, it may be wise to go through this guide again before you make your first PAIA request. Go through the extra readings, follow the links provided and study specific sections of the PAIA before making your first request and throughout the application process.

PART THREE: RESOURCES, DEFINITIONS & LINKS

ANOTHER PAIA STORY: STANDARD PROCEDURES FOR PLACING CHILDREN IN FOSTER CARE – TSHAWARANANG LEGAL ADVOCACY CENTRE (TLAC)

After hearing disturbing complaints from women about their children being taken from them in 2008, TLAC decided to submit a PAIA request (with help from SAHA) to the Gauteng Department of Social Development (GSD).

Their aim was to see if the department was being responsible when placing children into foster care. They made a request for access to the department's Standard Procedures in relation to removing children from their parents and placing them with foster parents. This included details about the process of monitoring new foster parents.

The request was submitted on 20 February 2009, but by 15 May 2009 the TLAC had still not received any correspondence from the department. The TLAC then emailed the GSD informing the department that 30 days had passed and that they had assumed the department required a 30 day extension, which by then, had also passed.

The department eventually replied on 19 May 2009 saying that the request had been lost and a copy had to be re-submitted. On 27 May 2009 the departments stated that it had sent the information attached to the letter, but in reality nothing was attached. As late as 20 July 2009, no records had been provided, and after many attempts to communicate with the department, the TLAC had still not received any official response.

After more pressure and persistence, the TLAC eventually accessed the requested records on 06 August 2009. The information has allowed them to give the appropriate legal advice to mothers and has been useful for the purposes of identifying gaps in the foster care system which needed to be rectified.

This example demonstrates that in reality the process can take much longer than the Act says it should. Eventually with enough hard work, you should get the information you request, and it could be extremely powerful information. It also highlights how important it is to be organised and follow up with government officials or private bodies as soon as you make a request and before the first 30 days is up.

For some great PAIA case studies, have a look at the [links page](#) at the back of this booklet. 

ASSISTANCE WITH YOUR LETTERS

Fax Cover

A fax cover is a separate page that gives basic information about your request. If you are sending your request via fax, it is good to include a fax cover. The fax cover will let the receiver of the fax know exactly what it is, to whom it must go, and who the requester is.



Ma Noluvo: Don't forget to put your reference number on the fax cover or cover letter.

Use the [PAIA Resource Kit](#) to guide you through an example of a Fax Cover.

Cover Letter

Although a cover letter is not an official PAIA form, it is an important part of the request process. This page is a formal introduction of correspondence between yourself and the Information Officer or head of a private body. It can also be used to explain in more detail what information you are trying to obtain, as well as alerting the Information Officer of any additional information you may need to complete the request.

Use the [PAIA Resource Kit](#) to guide you through an example of a cover letter.

Letter of Authority

This document is only needed if you are making the request on behalf of someone else. A letter of authority is also not an official PAIA form. This letter must be written and signed by the original party requesting the information and must be attached to your PAIA request form. If someone or and

organisation wants you to make a request on their behalf, they will write the letter of authority, sign it and then give it you to send with the PAIA request form.

Use the [PAIA Resource Kit](#) to guide you through an example of an authorisation letter.

FORMS

Form A

Once you have completed **Form A**, you need to send it to the Information Officer or Deputy Information Officer at the relevant **public body**. The contact information for this person should be available on the body's website. Use the contact list on page 44 to find the contact details of the appropriate national, provincial, or local government department. If you don't have internet access then you may have to go to the office of the public body to get the details of the Information Officer. Remember to call the Information Officer or the Deputy Information Officer to make sure that the email or fax details you have are correct – again this can speed up the process.


Use the [PAIA Resource Kit](#) to guide you through completing a PAIA request Form A, which can be found [here](#).

Form C

Once you have completed **Form C**, you need to send it to the head of the relevant **private body**. The person responsible for PAIA requests to private bodies is always the most senior person or head of the body (usually the CEO, director or directing manager). The contact information for this person should be available on the body's website.

Often the head of this body will not know that PAIA requests are their responsibility, so it is vital that you mention this information in your request


and refer to section 50 of PAIA (which sets out your right of access to records held by private bodies) and explain details about your request in your cover letter. **You must state which rights you are seeking to protect or exercise** when requesting from a private body.

Use the [PAIA Resource Kit](#) to guide you through completing a PAIA request Form C for private bodies, which can be found [here](#). 

Form B

Form B is used to make an internal appeal, which can only be done when you are refused access from a public body. No internal appeal can be made to a private body, as there is no one higher than that body's Information Officer (you will have to go directly to court).


You must submit this form together with the document entitled "Grounds for Appeal" (explained below). You have 60 days after you are refused to lodge an internal appeal. You *can* submit an appeal after the 60 day period but you must have a valid reason for doing so.

Use the [PAIA Resource Kit](#) to guide you through completing a PAIA request Form B, which can be found [here](#). 

Grounds for Appeal

This document is not an official PAIA form, and so the format can vary, but the basics remain the same. You must submit this document with Form B (internal appeal) and refer to this document in Section E of Form B by stating: Grounds for Internal Appeal Attached.

This document outlines why you are appealing the Information Officer's decision. You must reference specific sections of PAIA to give grounds for your appeal and why you think the refusal is unfair. Remember to refer to your grounds for appeal in your new cover letter.

Use the [PAIA Resource Kit](#) to guide you through creating a Grounds for Appeal document. 

DEFINITIONS

Affidavit – A written statement confirmed by oath or affirmation, for use as evidence in court.

Affirmation – The action or process of affirming (saying yes to) something.

Body/Bodies – Is the person or organisation to whom your request is sent. Bodies can be public or private. An example of a public body is a government department, or municipality; a private body is a person (like your doctor) or a company (like MTN).

Deemed refusal of a request –

If an Information Officer fails to tell you the outcome of your request for information within the 30 day period contemplated in section 25 (1), the Information Officer is regarded as having refused the request.

Deputy Information Officer (DIO) – The person responsible for assisting the Information Officer (see above).

Disclosure – The action of making new or secret information known.

Frivolous or Vexatious – Frivolous action is one that is groundless with little prospect of success; often brought to embarrass or annoy the defendant; whereas vexatious has both a subjective and objective element; subjectively the government must have acted maliciously or with an intent to harass the Defendant.

In confidence – Trusting that something said will not be told to anyone else.

Information Officer – The individual at a body (see above) who is responsible for PAIA requests.

Jeopardise – Put (someone or something) into a situation in which there is a danger of loss, harm, or failure.

Letter of Authority – If someone (or an organisation) wants you to make a PAIA request on their behalf, that person must give you a letter stating that they give you permission to make the PAIA request on their behalf.

Oversight – The action of overseeing something.

PAIA Resource Kit – The SAHA PAIA Resource Kit is a booklet that gives examples of the different documents needed to make a request. The resource kit can be used together with this guide and its templates are useful for speeding up the request process.

PAIA Workshop Guide – The SAHA PAIA Workshop Guide is like a longer version of this guide, used for giving workshops on PAIA and the PAIA request process. It can be used in conjunction with this guide.

Parastatal – A legal entity created by a government to undertake commercial activities on behalf of an owner government. Examples: Eskom and Telkom.

Prejudice – A preconceived opinion that is not based on reason or actual experience.

Redact – Remove text or images from an original document.

Third Party – Relating to a person or group besides the two people or organisations primarily involved in a situation.

Trade Secrets – A secret device or technique used by a company in manufacturing its products.

Transcript – A written or printed version of material originally presented in another medium like a movie or audio recording.

LINKS

PAIA Guide Resources:

<http://nu.org.za/paia-guide>

Promotion of Access to Information Act:

<http://nu.org.za/wp-content/uploads/2014/10/PAIA-Act.pdf>

City of Johannesburg PAIA Manual:

<http://nu.org.za/wp-content/uploads/2014/10/COJ-PAIA-Manual-English.pdf>

Find the right department for your problem:

<http://nu.org.za/wp-content/uploads/2014/12/Find-the-right-department-for-your-problem.pdf>

Government Department list:

<http://www.gov.za/about-government/government-system/national-departments/>

Form A – Public Body Request Form:

<http://nu.org.za/wp-content/uploads/2014/10/Paia-Form-A.doc>

Form B – Internal Appeal Form:

<http://nu.org.za/wp-content/uploads/2014/10/FORM-B.doc>

Form C – Private Body Request Form:

<http://nu.org.za/wp-content/uploads/2014/10/Form-C.doc-August-2013.doc>

SAHA Resource Kit:

http://nu.org.za/wp-content/uploads/2014/10/PAIA_Resource_Kit.pdf

SAHA Workshop Guide:

<http://nu.org.za/paia-guide>

PAIA Case Studies:

http://saha.org.za/publications/paia_case_studies_from_civil_society_dvd.htm


Waymark Contracts case study:

<http://nu.org.za/SAPS-Waymark-Contracts>

Public Protector

<http://www.pprotect.org>

DEPARTMENT	PHONE	WEBSITE
Agriculture, Forestry & Fisheries	(0)12 319 7319	http://www.daff.gov.za/
Arts & Culture	(0)12 441 3000	http://www.dac.gov.za/
Basic Education	(0)12 357 3000	http://www.education.gov.za/
Police	(0)12 393 2800	http://www.saps.gov.za/
Communications	(0)12 473 0000	http://www.doc.gov.za/
Cooperative Governance & Traditional Affairs	(0)12 334 0705	http://www.cogta.gov.za/
Justice & Correctional Services	(0)12 406 4669	http://www.dcs.gov.za/
Defence & Military Veterans	(0)12 355 6101	http://www.dod.mil.za/
Economic Development	(0)12 394 1006	http://www.economic.gov.za/
Energy	(0)12 406 8000	http://www.energy.gov.za/
Environmental Affairs	(0)12 310 3537	http://www.environment.gov.za/
Health	(0)12 395 8086	http://www.doh.gov.za/
Higher Education & Training	(0)12 312 5555	http://www.dhet.gov.za/
Home Affairs	(0)12 432 6648	http://www.home-affairs.gov.za/
Human Settlements	(0)12 421 1310	http://www.dhs.gov.za/
International Relations & Cooperation	(0)12 351 1000	http://www.dirco.gov.za/
Labour	(0)12 392 9620	http://www.labour.gov.za/DOL/
Mineral Resources	(0)12 444 3999	http://www.dmr.gov.za/



Public Service & Administration	(0)12 336 1700	http://www.dpsa.gov.za/
Finance	(0)12 323 8911	http://www.treasury.gov.za/
Performance Monitoring and Evaluation	(0)12 300 5200	http://www.thepresidency-dpme.gov.za/
Public Enterprises	(0)12 431 1000	http://www.dpe.gov.za/
Public Works	(0)12 406 21978	http://www.publicworks.gov.za/
Rural Development & Land Reform	(0)12 312 9300	http://www.ruraldevelopment.gov.za/
Science & Technology	(0)12 843 6300	http://www.dst.gov.za/
Social Development	(0)12 312 7479	http://www.dsd.gov.za/
Small Business Development	(0)12 394 1006	
State Security	(0)12 367 0700	http://www.ssa.gov.za/
Sport & Recreation	(0)12 304 5000	http://www.srsa.gov.za/
Telecommunications and Postal Services	(0)12 427 8000	http://www.dtps.gov.za/
Tourism	(0)12 444 6780	http://www.tourism.gov.za/
Trade & Industry	(0)86 184 3384	http://www.thedti.gov.za/
Cooperative Governance & Traditional Affairs	(0)12 334 0705	http://www.dta.gov.za/
Transport	(0)12 309 3131	http://www.transport.gov.za/
Water and Sanitation	(0)12 336 8733	http://www.dwa.gov.za/
Ministry in the Presidency responsible for Women	(0)12 359 0011	http://www.women.gov.za/
The Presidency	(0)12 300 5200	http://www.thepresidency.gov.za/