

Regulations Relating to PAIA 2021

DEVELOPMENT



On 27 August 2021, the Minister of Justice and Correctional Services published under section 92 of Promotion of Access of Information Act, 2000 (“PAIA”) the new PAIA Regulations repealing and replacing the previous regulations that were issued in terms of PAIA.

HERE’S WHY



The Information Regulator was established in terms of section 39 of Protection of Personal Information Act, 2013 (“POPIA”). This precipitated the need for the new PAIA Regulation so as to align the previous PAIA Regulations with POPIA.

As of 1 July 2021, the Information Regulator took over the administration and enforcement of PAIA from the South African Human Rights Commission (“SAHRC”), making it the custodian of PAIA and POPIA.

MEANING THAT

The Information Regulator amongst others, is empowered to monitor and enforce compliance with the provisions of PAIA and POPIA by both public and private bodies.

HIGH LEVEL OVERVIEW OF THE NEW REGULATION



CHAPTER 2

Availability of the Guide

- This chapter deals with the obligations of the Information Regulator and Information Officer in respect of the availability of the guide.
- The Information Regulator must make available the existing guide in each of the official languages by publication, onsite inspection, placement on its website and to the Director – General of the Department of Government Communication and Information Systems.
- The Information Regulator must make available a copy or copies of the guide upon written request.
- An information officer must have a copy of the guide in at least two of the official languages at their registered head office for public inspection during office hours.
- The Information Regulator and Information Officer may not charge a fee for a copy of the guide or inspection thereof.



CHAPTER 3

Access to Information

- This chapter makes provision for the availability of and the processes for accessing certain records of public and private bodies and political parties.
- The Information Officer of a public body must compile and keep a description of the categories of records that are automatically available and such description must be made available to the Information Regulator, on the website of the public body and for inspection at its head office during normal working hours.



CHAPTER 3

Access to Information *cont.*

- The head of a private body must compile and keep a description of the categories of records that are voluntarily disclosed or automatically available and such description must be made available to the Information Regulator, on the website of the private body and for inspection at its head office during normal working hours.
- If there is an amendment to the description of the categories of records such description must be updated as soon as practically possible.
- A request for access to a record contemplated in section 18(1) (public body) or 53(1) (private body) of PAIA must be made on a form that corresponds substantially with Form 2 of Annexure A of the PAIA Regulations.
- Information Officers must render assistance to requesters of information and in instances where record is requested orally on account of illiteracy or disability to complete the form.
- The information officer must inform the requester of his or her decision to either grant or refuse the requester access to a record and the fees payable as per Annexure B to the Regulations.
- An internal appeal lies against the decision of an Information Officer of a public body.
- Records of a political party must be available for inspection during working hours at the physical address of the political party and electronically if the political party has a website.



CHAPTER 4

Complaints to Information Regulator

- This chapter outlines the process for lodging complaints to the Information Regulator, investigating and handling of such complaints and recording the outcome.
- Complaints to the Information Officer in terms of section 77A of PAIA must be lodged in writing on a form that substantially corresponds with Form 5 of Annexure A to the Regulations.
- Provision is also made for settlement and conciliation of a matter.
- If it appears to the Information Regulator that the complaint is capable of being settled, the Information Regulator may confer with the parties to try and obtain a settlement. The Information Regulators' powers in the settlement proceedings will be the same as those in his role as a conciliator. If settlement is successful, the Information Regulator will issue a settlement certificate, failing settlement the Information Regulator must proceed with the complaint in accordance with section 77C of PAIA.
- In a conciliation process where it similarly appears to the Information Regulator that certain aspects of the complaint can be settled or resolved, the Information Regulator must convene a conciliation proceeding and act as a conciliator. If conciliation is successful, the Information Regulator will issue a conciliation certificate, failing conciliation the Information Regulator must proceed with the complaint in accordance with section 77C of PAIA.
- An information officer can request the Information Regulator or the Information Regulator can on its own initiative conduct a PAIA compliance assessment in terms of section 77H of PAIA on whether a public or private body generally complies with PAIA with regard to their policies and implementation procedures.



CHAPTER 5

Miscellaneous

- This chapter deals with electronic communication, offences and penalties.
- The provisions of the Electronic Communications and Transactions Act, 2002 (“ECTA”) are applicable to all forms, records, documents or any information communicated electronically and includes the definitions of “in writing” and “signature” as provided in the ECTA.
- An Information Officer who wilfully or in a grossly negligent manner charges a fee other than those prescribed in the Regulations is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

PRESCRIBED FEES

A schedule of fees as set out in Annexure B of the PAIA Regulations that itemises the prescribed fees that can be charged by public and private bodies respectively when facilitating requests for access to information.

NEW AND VARIOUS PRESCRIBED FORMS, INCLUDING BUT NOT LIMITED TO:

- Request for a copy of the guide;
- Request for access to record;
- Outcome of request and fees payable; and
- Lodging of a complaint.

PAIA

On 3 September 2021 the Information Regulator published templates for compiling a PAIA Manual. The published templates can be accessed here:

<https://www.justice.gov.za/infoereg/docs.html>

ALERT 1 JANUARY 2022 DEADLINE

As of 31 December 2021 the exemption applicable to smaller private bodies that were exempted from publishing Manuals in terms of PAIA, will expire.

WHAT DOES THIS MEAN?

The Manuals will become mandatory. All private bodies will have to compile a Manual containing certain information and will have to do so before 1 January 2022, failing which the head of a private body will be liable to a fine or imprisonment. The Manuals should be available at the private bodies principal place of business and website.

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