

Promotion of Access to Information Act 2 of 2000 (PAIA)

Topic: Access to Information

IN A CALABASH

Introduction

In terms of the Constitution, every person has a legitimate right to request access to information when such information is required for the protection of a right.

Upon receipt of a request for information, every entity, either public or private, has to ensure that it provides that information to the person who requests same, especially when the such a person has legitimately shown that it has a right to that information.

Objectives of the Act

The purpose of the Promotion of Access to Information Act (PAIA) is to give effect to a person's right to access any information held by the state or by another person, including a private entity, which is required for the exercise or protection of any rights.

Application of the Act and its implication to Tourism

The PAIA has to be complied with by every legal entity, be it public or private. Compliance by an entity can and should be delegated to a duly appointed information officer. When any person requires access to information held by a public or legal entity, such person has to comply with the provisions of the PAIA and should submit the request on the prescribed forms following the process set out under the PAIA manual of the entity from whom it is requesting the information.

Summary of the provisions of the Act

Where a person wishes to access any information held by a private or public body, that person must request access to the required document using the procedures set out under PAIA.

In turn, any entity who receives a request must consider the request and if it is of the view that the requester has shown that it has a right to the information requested, it should provide the requester with that information.

There are a number of defenses set out under the PAIA which a person may rely on when it believes that another person would be prejudiced if that information is provided to the requester.

Defenses or reasons one could give when declining any request for information include confidentiality reasons, trade secrets, contractual commitments or invasion of a protected right of privacy.

In order to manage the receipt of requests for information which an entity may receive from the public and in order to ensure that such information is legitimately provided, every entity has to develop and implement a PAIA Manual setting out the process one has to follow when requesting information and how the information will be provided.

Information officer

The entity must appoint an employee as an information officer who will ensure that the PAIA is complied with and that requests for information are correctly and timeously handled. The entity may appoint deputy information officers when it has branches situated across the country.

Reports to Human Rights Commission

The information officer of each public body must submit to the Human Rights Commission an annual report in relation to the public body stating

- the number of requests received for access to information;
- the number of requests for access to information that were granted in full;
- the number of requests for access that were granted that pertained to public interest;
- the number of requests for access to information that were refused in full or refused partially and the number of times that each provision of the PAIA was relied on to refuse access either in full or partially;
- the number of cases where response periods were extended;
- the number of internal appeals that were lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record;
- the number of internal appeals which were lodged on the grounds that a request for access to information was regarded as having been refused; and
- the number of applications which were lodged to a court on the grounds that an internal appeal was dismissed.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Criminal offence and fines

A person who intentionally denies a right of access in terms of the PAIA or who destroys, damages or alters a record, conceals a record, falsifies a record or makes a false record will be liable to criminal prosecution. A guilty conviction will lead to a fine or to imprisonment for up to two years. An information officer of a public body or information officer or head of a private body, who willfully or negligently fails to comply and implement a PAIA Manual commits a criminal offence and is liable to a fine or to imprisonment for up to two years.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

To demonstrate compliance with the PAIA, an entity must do the following:

- Appoint an Information Officer;
- Formulate a PAIA Manual;
- Implement a PAIA Policy and Procedure;
- Outline procedures on how to access or request information;
- Ensure that all employees are aware of procedures and of who the information officer is;
- Review the PAIA Manual on an annual basis;
- Submit public body reports to the Minister on an annual basis; and
- Keep records and retain them for at least seven years.

FURTHER INFORMATION

Regulators

Department of Justice and Constitutional Development
South African Human Rights Commission

Websites

www.justice.gov.za
www.sahrc.org.za