



Open Democracy Advice Centre

22 Most frequently asked questions about PAIA – English:

These are questions which summarises the main issues of the PAIA.

THE 22 MOST FREQUENTLY ASKED QUESTIONS ABOUT THE PROMOTION OF ACCESS TO INFORMATION ACT 2000 (PAIA)

1. What are the aims of PAIA (What is the Act trying to achieve)?

- *It is aimed at giving effect to the rights in the Bill of Rights, and*
- *Establishing a culture of human rights and social justice.*
- *It also sets out certain limitations on the right of access to information, which are aimed at protecting people's privacy, confidential commercial information, and ensuring effective, efficient and good governance.*
- *It tries to balance the right to access to information with all the other rights in the constitution.*
- *It aims to empower and educate people to understand their rights under the Act, to understand the function and operations of public bodies and to scrutinise and participate in decision making by public bodies.*
- *In general terms it attempts to promote transparency, accountability and effective governance in the public and private spheres. (s 9)*

(When the courts decide on the meaning of this Act, they must always consider what the reason for the Act is and what its aim is (s 2(1)). Nobody can be criminally or civilly liable for anything done in good faith in terms of this Act. (s 89)

2. Who does the Act apply to?

- *Public Bodies and Private Bodies*

3. What are Public Bodies?

- *Any department or national or provincial administration or any municipality; or*
- *Any official or institution when they exercise a power or perform a duty in terms of the Constitution or a provincial constitution; or*



Open Democracy Advice Centre

- *Any official or institution when they exercise a public power or perform a public function in terms of any law (s 1)*

(If there is any confusion about whether a structure is part of another government body or independent, the Minister of Justice can make regulations which clarify things for the purposes of the Act.)

The South African Revenue Services is a public body for the purpose of this Act (s 2(3))

Public bodies can't usually ask for records from themselves in terms of this Act (s 1)

The Act does not apply to requests for records held by:

- *The Cabinet;*
- *Committees of the Cabinet;*
- *A member of parliament*
- *A member of a provincial legislature;*
- *A judge of a court or the judge of a special tribunal (s 12)*

4. What are Private Bodies?

- *A Private Body is any person who runs a business, or trade or profession, or a partnership or any juristic person like a company or a cc. It doesn't mean a person as a private individual, but only their records as they relate to their business, trade , profession etc (s 1)*

5. What structures must a Public Body have in place to implement the Act?

- *Public Bodies must identify Information Officers and appoint deputy Information Officers*
- *Prepare a manual*
- *Voluntary disclosure and automatic availability of records*
- *Information in telephone directory*
- *Devise a system for implementing form of request and deciding a request*



Open Democracy Advice Centre

- *Establish a system for internal appeals*
- *Establish a system of reporting to the Human Rights Commission*

6. What structures must a Private Body have in place to implement the act?

- *Publication of a manual*
- *Voluntary disclosure and automatic availability of records*
- *Correction of personal information*
- *Devise a system for implementing form of request and deciding a request*

7. Who can request a record?

- *Anyone can ask for records from a Public Body, for any reason*
- *Anyone, including the government can ask for records from a Private Body, but the record must be needed for the exercise or protection of a human right*
- *The requester can act on behalf of someone else in asking for a record from a Public Body or a Private Body*

8. Should a person require information or a record from a Private Body, what must the information or record be needed for?

- *It must be needed for the protection of a human right*

9. Who will make the decision as to whether the information or record will be given, in firstly Public Bodies, and secondly Private Bodies?

Public Bodies:

- *Information Officer (most senior executive)*
- *Deputy Information Officers*

Private Bodies:



Open Democracy Advice Centre

- *The “Head”, or most senior person, of the private body or someone authorised by him/her*

10. What is the role of the Information Officer?

- *Information Officers have a duty to assist people/citizens to access information, and their role is to facilitate people getting the information and records that they are entitled to see*
- *The purpose of the legislation is to promote the right to access records. This is best facilitated when documents are automatically available. The Information Officers are responsible for this. The more records that are available, the easier the Information Officer’s job*
- *However the right to privacy, the safety of individuals, the laws governing criminal proceedings and so on also have to be taken into account. Therefore the person making the decision might have to refuse access to certain records*
- *The person making the decision can decide to:*
 - *Give the requester the information that they ask for (this is ideal)*
 - *Transfer the request to the body which actually has possession of and the closest connection to the record (this applies to public bodies only)*
 - *Refuse the request*
- *The person making the decision must tell the requester about their decision in writing as soon as possible, and in the way the requester asked for on the form (e.g. phone)*
- *If the record cannot be found, the requester must be provided with an affidavit explaining all the steps that were taken to look for the record*
- *If the form is filled in incorrectly, the Information Officer of a Public Body has to help the requester to fix up whatever was wrong with the form to help the requester get the information the requester asked for*
- *If the request is made to the wrong Public Body, the Information Officer of that body has to tell the requester, and help him/her to make the request to the right body. They must do this within 14 days*



Open Democracy Advice Centre

- *Nobody can be held criminally or civilly liable for anything done in good faith in terms of the Act*

11. How can you find out as to where you can get the information/record that you require?

- *Public and Private Bodies must prepare a manual about:*
 - *What subjects the body has records about*
 - *Categories of records under each subject*
 - *What records are automatically available*
- *Public Bodies must give a copy of the manual to the Human Rights Commission*
- *If you apply to the wrong body, they have to pass the request on to the right place*

12. What kinds of information/records can you ask for?

- *A person can request records that have been recorded in any way on paper, in a computer, on film etc.*
- *The record must actually be in the possession of the Public or Private Body or one of the employees of the Public or Private Body*
- *It doesn't matter whether the Public or Private Body created the record or not (although there can be exceptions) (s 1 and s 4)*
- *It doesn't matter when the records came into existence (s 3)*
- *It doesn't matter if it wasn't a Public Body which created that record (s 1)*
- *Even if there is another law that says a person can't have the record, this Act overrides that, if that other law is "materially inconsistent" (which means very different) from this (s 5)*

(If the requester is disabled and needs the record made available in a special form, then the Information Officer must take reasonable steps to ensure that this happens)



Open Democracy Advice Centre

13. How must a record be requested?

For Public Bodies:

- *The requester must use the form printed in the Government Gazette no 22125 of 9 March 2001*
- *The form must be sent to the Information Officer of the Public Body*
- *The form can be faxed, posted or e-mailed*
- *A requester must give enough detail in the form so that the official knows what record the requester wants and who he or she is (s 18(2)(a))*
- *The requester has to say if they want an actual copy of the record, or if they just want to come in and look at it*
- *If the record is on computer, the requester can ask for it to be printed out or given to them on a computer disc*
- *The requester can say what language they want to see the record in, if there is a choice*
- *If the person cannot read or write they can go to the Information Officer and ask him/her to fill the form in for them*
- *(see further: s 18 and s 29)*

For Private Bodies:

- *The requester must use the form that has been printed in the Government Gazette*
- *The form must be sent to the head of the Private Body and can be sent by ordinary post, fax or e-mail (s 53(1)).*
- *There must be enough detail in the form so that it is clear what records are wanted and who the requester is (s 53(2)(a))*
- *The form must explain how the requester wants to get access to the record*
- *The requester must also identify the right that he or she wishes to exercise or protect and explain why the record is needed for the exercise or protection of that right*
- *(see further: s 53 and s 60)*

14. Which people and institutions are exempted from POATIA (i.e. they may keep their records secret)?

- *Cabinet and Committees of the Cabinet*
- *A Member of Parliament*
- *A Member of the Provincial Legislature*
- *A Judge of a Court or Special Tribunal*

15. What is the difference between a “mandatory exemption” and a “non-mandatory exemption”?

- *With a “mandatory exemption” you must be refused access to the record, whereas with a “non-mandatory exemption” you can be refused access to it.*

16. What information must be given to you?

- *Private information about yourself*
- *Information about any environmental safety hazard or serious violation of the law*
- *Details about the official functions of a public official or public body*
- *Any record that is already publicly available*

17. What information must not be given to you?

- *Private information about someone else (unless they agree)*
- *Certain records of SARS*
- *Commercial information about someone*
- *Information that was given in confidence*
- *Police dockets in bail proceedings*
- *Privileged legal records*
- *Information about someone else’s research*

18. What information may/might be given to you?

- *Information about Defense, security and international relations*
- *Law enforcement and legal proceedings*
- *Information about the commercial and financial interests of Public Bodies*
- *Research information about Public Bodies*
- *Information about Operations of Public Bodies*

19. How long might such a process take (i.e. what are the time limits for granting requests)?

- *Up until March 2002, the Information Officer has a maximum of 90 days to decide whether or not to grant the request. From March 2002 – March 2003 this will be 60 days, and thereafter they must give the info within 30 days*
- *Private Bodies must decide within 30 days*
- *Until March 2003, Public Bodies cannot get any extensions of time to make a decision, but Private Bodies can get an extension for another 30 days on certain conditions*

20. What can you do if an official refuses to give you a record or information that you are entitled to?

- *If a government department refuses to give access to a record, there is first an internal appeal process. After this, the requester can take the matter to court*
- *If a Private Body or any other Public Bodies (e.g. parliament, universities, parastatals) refuses a request, the requester can take the matter straight to court*
- *If a request is refused the person making the decision has to give reasons and tell the requester which part of the Act allows them to refuse*
- *The requester can lodge an appeal about:*
 - *A decision not to grant access to a record*



Open Democracy Advice Centre

- *The fee charged*
- *A decision to extend the time period to deal with the request*
- *The form in which the record is made available*
- *Appeals must be made on the prescribed form within 60 days. There is a fee*
- *The person making the decision has to inform any third party affected by the request within 21 days. The third party then has 21 days to make representations on whether the request should be granted*
- *The requester can appeal against a record being provided to someone else by a government department*
- *Any third party affected by an appeal must be informed that the appeal has been made*
- *The third party can appeal within 30 days. If an appeal is not lodged the requester will be given access to the record*
- *If the record is going to be published within 90 days of the request, or about to be submitted then the Information Officer of a Public Body can delay giving the requester the record*
- *If the record is destroyed, concealed or changed in order to deny the requester access, the person who does that can be fined or jailed for up to 2 years*

21. What does it cost to get a record?

- *The Government Gazette no 22125 of 9 March 2001, sets out all the fees that can be charged for access to information*
- *The cost of simply making a request (called a request fee) is R35 from a Public Body and R50 from a Private Body*
- *There are additional costs (called access fees) for finding and searching for records as well as for copying them. These depend on the nature of the request*
- *The prescribed fees for getting records from a Private Body are higher than the fees for getting records from a Public Body*



Open Democracy Advice Centre

- *If the requester is requesting a record for him/herself, he/she does not have to pay the request fee or even a deposit until the request has been processed. Other requesters have to pay the fee before the request is processed, as well as a deposit of 1/3 of the access fees*

22. What are your impressions of PAIA, do you think that it could make life better for the ordinary citizens of South Africa? Why do you think so?

- *Discuss (Does access to information promote human rights?)*