

THE PLAIN LANGUAGE VERSION OF THE PROMOTION OF ACCESS TO INFORMATION

ACT

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PART 1: INTRODUCTION

WHAT IS THE ACT TRYING TO ACHIEVE?

Module one sets out some of the goals of the Act. It outlines the importance of access to information for an open, democratic and transparent society. The Act cannot be fully understood or properly implemented without an understanding of its underlying rationale. 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)

WHO DOES THE ACT APPLY TO?

The Act applies to both public bodies and private bodies. Public bodies are generally government departments, bodies created by Constitutions such as Parliament or the Gender Commission, or institutions set up by law which perform services for the public such as universities or Telkom. Private bodies are those that have no connection with the government and which are privately owned and controlled.

But there are examples of bodies which are privately owned but which perform what we traditionally think of as a public function. An entirely private company which provides water and sanitation to a community would be an example. The Act says that where you have a private body performing a public function, some of their records will be treated as those of a public body and some as those of a private body (s 8). How this will work in practice will have to be decided by the courts.

Many of the provisions of the Act as they relate to public and private bodies are similar, but there are also important differences. For example, only information that is required for the exercise and protection of rights may be requested from private bodies. There is no such condition for information from public bodies. For this reason this document sets out the provisions of the Act as they relate to public and private bodies in separate sections. In this document we refer to the person making a request as the 'requester'.

PART 2: PROVISIONS IN THE ACT RELATING TO PUBLIC BODIES

WHAT ARE PUBLIC BODIES?

A requester can get records that belong to "public bodies". These include

- 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
- 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 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 purposes 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 the provincial legislature;

A judge of a court or the judge of a special tribunal (s 12).

WHAT STRUCTURES MUST A PUBLIC BODY HAVE IN PLACE TO IMPLEMENT THE ACT?

- (a) Public bodies must identify Information Officers and appoint Deputy Information Officers

The most senior executive officer of a public body is effectively the Information Officer of that body (s 1). However, Deputy Information Officers must also be appointed to perform the functions required by the Act. The number of Deputy Information Officers that must be appointed will depend on factors such as the size of the body and the amount of information it has. The important thing, however, is to ensure that there are enough Deputy Information Officers to make requesting information easy for the public (s 17(1)). The Information Officer still retains control and direction over the Deputy Information Officers (s 17(2)). The Information Officer may also pass on any or his or her functions or duties under the Act to a Deputy Information Officer (s 17(3)). This must be done in writing

and can be taken away or altered at any time. Even if the Information Officer passes on any of his or her functions or duties to a deputy, he or she can still exercise them at any time (s 17(6)).

In this document, we make reference to the Information Officer. This must be taken to not only include the Information Officer, but also any Deputy Information Officers appointed to perform functions under this Act.

(b) Prepare a manual

Every public body must put together a manual containing certain important information about the body concerned (s 14(1)). The manual must appear in at least three official languages and must be compiled within six months of the commencement of the Act. This is what we refer to as the 'road map' in module one. If well designed, the manual will make it easier for the public to get information. A well-designed manual will also help the public body list and organise the information it has and make it easier and quicker to respond to requests for that information from the public.

The manual must contain the information set out in s 14(1) of the Act including a description of the body, its contact details, how to obtain information from it and what records it has. It must explain what subjects the public body has records on and the categories of records on each subject. It must also tell people about the guide to the Act prepared by the South African Human Rights Commission, and how to get access to it. The manual must describe which of the body's records are automatically available to the public.

In addition, the manual must set out what services the body offers and how the

public can gain access to those services. It must also describe how a person can become involved in policy formulation or in the work of that body. The manual must also describe what a requester can do if he or she wishes to take a decision by the body further. The manual must be updated on a regular basis (s 14(2)).

It may also happen that two or more public bodies do substantially the same work. In that case, those bodies may make a request to the Minister of Justice that they compile one manual only (s 14(4)(a)). If there are security, financial or administrative reasons for a public body not to compile a manual, it may make a request to the Minister to exempt it from doing so (s 14(5)).

(c) Voluntary disclosure and automatic availability of records

Every government department or constitutional body such as Parliament must submit to the Minister of Justice a description of which of their records are automatically available to the public, without anyone having to make a request. It must also state how the public can get access to those records (s 15(1)). This description must also state what records are available automatically in terms of other laws as well as which records can be purchased and which are freely available. This must be done on a periodic basis, but at least once a year. The Minister will then publish this information, and keep it updated. The costs of this will be carried by the public body concerned. In relation to this category of information, a body need not follow the procedures under the Act (s 15(5)). This is an important provision, since it is obvious that the more records that are made automatically available, the easier and cheaper it will be for the public body to administer the law. It is advisable for a public body to make as many records as possible automatically available. In many other countries, this information can be accessed through that public body's website.

(d) Information in telephone directory

The contact details, including the fax number of the body and the email address of the Information Officer, must be published in telephone directories. This task is to be performed by and the costs borne by the national Department of Communication Services (s 16).

(e) Devise a system for implementing form of request and deciding a request

While there will be a prescribed form of request, it is advisable that public bodies set up proper procedures and mechanisms to handle requests. The Act requires the exercise of a large degree of discretion on the part of Information and Deputy Information Officers, even in the case of mandatory non-disclosure. These officers must be able to make the subtle legal distinctions required by the Act, and exercise a judgment about whether to grant access. In this regard it is imperative that there are proper systems and guidelines in place in each public body to implement the Act. Information and Deputy Information Officers must be well-informed of the provisions of the Act, its rationale and underlying objects in order to properly answer requests for access.

(f) Establish a system for internal appeals

The Act requires all government departments to have a system of internal appeals in place. This system of internal appeals only applies to government departments, and not to other types of public bodies like constitutional bodies such as parliament, or bodies set up in terms of legislation such as universities or parastatals. A person whose request for a record has been refused, or a third party who wants to appeal against the record being granted, may lodge an internal appeal with the 'relevant authority' of the public body (s 74). A requester can also appeal the amount of the fees charged, the search taking longer than it should, or the body refusing to give the requester the record in the form that he or she asked for. The 'relevant authority' can be the Minister, the MEC of a department, or the mayor or speaker of a municipality. It is not likely that these individuals will personally hear the internal appeals. The Act provides that they may, in writing, delegate or pass on this job to someone else in the department (s 1). It is important that a system be put in place in all departments at all levels of government to decide on the internal appeals structure.

(g) Establish a system of reporting to the Human Rights Commission

Every public body must submit a report to the Human Rights Commission every year setting out certain information that relates to requests under the Act (s 32). It is thus important that a system be put in place so that such information can be easily gathered for the purposes of reporting to the Commission.

WHO CAN ASK FOR RECORDS?

Anyone can ask for records from public bodies (s 11(1)), and a person can also act on behalf of someone else in asking for records (s 1). When a person asks for records from public bodies, he or she can do this as an ordinary person, or a company, a close

corporation or a trust. (s 1). It doesn't usually matter why a person says that he or she wants the records or why the officials think that person wants them (s 11(3)).

If a person asks for the record, and does it in the right way, and the officials don't have one of the reasons set out in the Act for refusing that person the record, then he or she must be given the record, including if that record contains personal information about that person (s 11).

WHAT KINDS OF RECORDS CAN A PERSON ASK FOR?

The records can be recorded in any way eg on paper, in a computer, on film etc. and a person can still ask for them. They must actually be in the possession of public bodies or one of the employees of public bodies, but it doesn't matter whether the public body created the record or not (although there can be exceptions) (s 1 and s 4). 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.

The records can also be in the possession of someone doing work under contract for public bodies (s 4). It doesn't matter when the records came into existence (s 3). It also 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).

HOW MUCH DOES THIS COST?

The public or private body can charge you what they call a request fee. This fee is only payable if you are not asking for personal information. If you are asking for information about yourself this fee is NOT payable. This fee is currently R35 for public bodies and R50 for private bodies (Govt. Notice R223, 9 March 2001.) This must be paid before the request will be processed. Then

another kind of fee is payable called an access fee. This fee relates to how long it will take to find the records you are requesting, the number of pages you are looking for, and the actual cost of reproducing the record. The first hour of searching is free. After that you must pay for search time at R15 an hour in public bodies and R30 for private bodies. Then they will charge you for making the copy of the record, as well as the cost of making the record. For example, a public body will charge you sixty cents for making a copy of a page, and they will charge you sixty cents for the actual photocopy. If the search will take a long time, the information officer can ask for a deposit of a portion of their estimate of the access fee. This can't be more than a third of the access fee(s 22).

IS THIS THE ONLY ACT THAT ALLOWS A PERSON TO ASK FOR INFORMATION?

A person can also ask for records in terms of other Acts, even though this Act exists. At the moment only the National Environmental Management Act is listed as another Act a person can also use to ask for records (s 6). The Minister is going to make a complete list of all legislation that allows a person to ask for records. Until he does, then a person can ask for records in terms of any other Act which allows for that, unless getting the record that way would be more difficult, or cost more than this Act. The Minister will put this list into law 12 months after 9 March 2001 (s 86).

WHAT HAPPENS IF A RECORD CANNOT BE FOUND?

The Information Officer must tell the requester that it is not possible to give him or her access to that record if it cannot be found even though a reasonable search has happened ("all reasonable steps have been taken") and it is reasonable to believe that the record either does not exist or is lost. The Information Officer must do so in an affidavit. The affidavit has to explain all the steps that were taken to find the record and must include all the communications with the people who looked for the record on behalf of the Information Officer. If the requester gets such an affidavit, he or she can look at it

as a refusal of the information, and use the steps in the Act to challenge that decision. If it happens that the record is found after the Information Officer has given an affidavit saying that it is lost or cannot be found, then the requester must be given access to the record unless there is a reason to refuse the record (s 23).

CAN A PERSON USE THIS ACT TO HELP ACCESS RECORDS IF COURT PROCEEDINGS ARE PLANNED OR TAKING PLACE?

A person can't use this Act to ask for records when he or she is definitely going to begin a court case or after a court case has begun. If a person wants to go to court, he or she must get any records as part of the court proceedings. If someone does try and use this Act to get records when it is known that court proceedings are to follow, then he or she won't be allowed to use those records in court unless the judge specifically allows it. The judge will only allow it if it would be detrimental to the interests of justice not to do so (s 7).

HOW MUST A PERSON ASK FOR RECORDS?

A requester must use the form which has been printed in the Government Gazette (Govt. Notice R223, 9 March 2001). The form must be sent to the Information Officer of the public body. It can be sent by ordinary post, fax or e-mail (s 18 (1)). 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)). They must also say if they want a copy of the record or if they want to just come and look at the record. If the record is not a document but, for example a video or a audio cassette, then a requester can ask to see the video or listen to the tape or get copies if the public body has access to copying facilities (29(2)). The public body can also make a written transcription of the tape. When a record is on a computer, the requester can ask for the records to be printed or ask for a copy of the record in such a way that it can be put on another computer and be read eg. stiffy disk. If

a person asks for access in a particular form then he or she should get access in the way that has been asked for. This is unless doing so would interfere unreasonably with the running of the public body concerned, or damage the record, or infringe a copyright not owned by the state. If requesters ask for access to the record in one way, and they have to be given access to the record in another way, then they must be charged for the record as if they received it in the way that they first asked for it (s 29(3) and (4)).

Requesters must also say which language they would like to get the record in, where there is a choice, and they have to give a postal address or fax number for themselves. If, in addition to a written reply to their request for the record, they want to be told about the decision in any other way, eg telephone, then they must specify this. If a requester is asking for the information on behalf of somebody else he or she must show in what capacity the request is being made (s 18).

If requesters are unable to read or write, or if they have a disability and they can't ask for the record by filling in the form, then they can make the request for the record simply by asking. The Information Officer must fill in the form for them and give them a copy (s 18).

WHAT HELP DOES THE INFORMATION OFFICER HAVE TO GIVE A REQUESTER?

The Information Officer at a public body has to give requesters the help that they need in order to fill in the form. If the requester is asking for a record or information from another public body which the Information Officer does not work for, then the Information Officer still has to help the requester fill out the form if he or she works for a public body created by legislation, like Telkom or Iscor.

If a requester fills out the form incorrectly the Information Officer cannot just refuse the request. The Information Officer has to tell the person that the request is going to be refused and the reasons why. The Information Officer must explain that he or she must

help fix whatever is wrong with the form in order to help the requester get the record. The Officer also has to give the requester a reasonable opportunity to get some help. The Information Officer also have to give the requester any information that will help him or her to make the request in the correct form and provide a reasonable opportunity to change a request in order to comply with the rules. During the time that someone is thinking about changing how they made a request, the Information Officer does not have to worry about time. It is only when the person sends in a changed request or confirms that he or she wants it to stay the same, then the clock starts ticking again for the Information Officer in terms of the deadline in which they must give the information (s19).

WHAT IF THE REQUEST HAS BEEN MADE TO THE WRONG PLACE?

When the Information Officer gets a request and he or she can see that it has been made to the wrong public body, because

- a different public body has the record, or
- the subject matter of the record is really the job of another public body, or
- the record has commercial information which really relates to another public body

then the Information Officer has to tell the requester this, and help the requester make the request to the Information Officer at the right place or actually transfer the request to the right place, whichever one will mean that the requester gets the record sooner. This must be done within 14 days. If the Information Officer has a copy of the record, it can be sent to the Information Officer at the body the request has been transferred to (s 20(1)).

The Information Officer has to tell the requester immediately that the request is transferred, why this has happened, and how long the Information Officer has to deal with the request (s 20(5)).

If the Information Officer doesn't have the record and doesn't know who to transfer the request to, and the record isn't about what that public body does, and the Information

Officer can't see what other public body would deal with it, then he or she must transfer the request to the public body that the record was actually created for or where it was first received (s 20(2)). This must be done in 14 days.

Whoever gets the transferred request must prioritise the request as though it was received on the date it was originally given to the first Information Officer. However, the second Information Officer has the full 90 or 60 or 30 days to look for the information and make a decision about that record (s 20(3) and (4)).

HOW QUICKLY DOES THE INFORMATION OFFICER HAVE TO DECIDE? HOW IS A REQUESTER INFORMED OF A DECISION?

During the twelve months from the 9th March 2001 to the 9th March 2002 the Information Officer has a maximum of ninety days to decide whether or not to grant a request, once the request is made or transferred to that Information Officer. In the second year from 9th March 2002 to 9th March 2003 the Information Officer has a maximum of sixty days in which to decide whether or not to grant a request. A requester must, however, be given the information as soon as possible. The information officer can't get any extensions on this time. After 2003, the Information Officer has only thirty days in which to decide whether or not to grant a request and tell the person about the decision. They can get extensions but only in certain cases (more below). Within a year and a half of 9 March 2001 Parliament must review how these time periods are working.

After 2003, the Information Officer can get an extension for another thirty days. They can do this if the request is for a large number of records or if it means searching through a large number of records, and to find the record in thirty days would interfere with the activities of the public body. They can get an extension if the request requires a search of

records or collecting records from an office which is in another town or city and because that search can't be completed in the original time period. If the body needs to consult internally or with another body in order to decide on the request and this can't be completed in the original thirty days, they can also get an extension. The requester can also agree in writing to such an extension.

If the Information Officer wants such an extension then he or she has to send the requester a letter within 30 days of getting the request telling him or her about the extension, the period of the extension and the reasons for the extension. The Information Officer must also explain to the requester in the letter that he or she can lodge an internal appeal or an application with the court against the extension, and explain to the requester how to make the application to the court (s 26).

The Information Officer has to tell the requester about the decision in writing as soon as possible, and also in whatever other way that the requester asked to be informed eg telephone. The notice must also tell the requester what access fee must be paid and how the requester will be given access to the record. The Information Officer must explain in writing that a requester can appeal that decision about fees and also appeal to a more senior person in the public body, or a court. It must also be explained how long a person has to do that (s 25).

WHAT HAPPENS IF THE INFORMATION OFFICER REFUSES TO GIVE ACCESS TO THE RECORD OR DOESN'T REPLY? CAN GIVING THE RECORD BE DELAYED?

If the request for the record is refused then the Information Officer has to give the requester reasons for the refusal, including what section of the Act has been used, and explain that the requester can appeal the refusal, either to a more senior person in the public body, or a court, and how long he or she has to do that. The Information Officer

must do this within the periods of time laid down in the Act (s 25).

If the Information Officer does not give a requester a decision within the time periods as set out, the Information Officer will be regarded as having refused the request for information (s 27).

If a person is asking for a record:

- that is going to be published within ninety days after handing in the request; or
 - within a period that is reasonably necessary for translating and printing the document; or
 - where there is a law saying that the information has to be published but it has not yet been published; or
 - which has been prepared for submission to somebody but has not been submitted yet,
- then the Information Officer can delay giving a requester the record for a “reasonable period”.

If the Information Officer decides to do this he or she has to tell the requester how long it will be before the record will be released. The requester can make representations as to why the record is needed before it is going to be published or submitted. The requester must do this within 30 days of getting notice that his or her request is being deferred. If the requester decides to make representations, then the Information Officer must look at those representations. The requester must only be given access to the documents if the Information Officer has reasonable grounds to believe that the requester will suffer substantial prejudice if there is a delay in him or her getting the record (s 24).

CAN A RECORD BE DESTROYED AFTER IT HAS BEEN REQUESTED?

No. In fact, the Information Officer has to take steps to preserve the record, and must do so until the requester has had an opportunity to appeal both in the public body and to court, and all the court appeals have finally been heard as well (s 21). If a record is destroyed, or concealed or changed in order to deny access in terms of this Act, then the

person who does that can be fined or jailed for up to two years (s 90).

WHEN CAN A PERSON BE REFUSED A RECORD?

In this part we look at the various instances in which access to a record could be refused.

There are some instances in which a request for a record **must** be refused, and some instances where a request **may** be refused. We highlight these below. This is a very important part of the Act, since it will be mainly in terms of these grounds that a decision to grant access will be made. This part of the Act will also require the exercise of a discretion by Information Officers. It is this crucial that Information Officers have a thorough understanding of this section.

It must also be noted that all the grounds for refusal listed below do not apply if the disclosure of the information would reveal evidence of a substantial contravention of the law, or an imminent and serious public safety or environmental risk and the public interest in the disclosure of the record outweighs the harm considered in the section.

This is referred to as the 'public interest override' and means that if information could potentially show that there is a serious violation of the law or a threat to public safety or the environment, then it cannot be refused, **even if it falls within one of the categories listed here.**

Protection of the privacy of a third party who is a natural person, and not a company or a closed corporation. (s 34)

If a requester asks for information that would unreasonably disclose personal information about a third party, the request **must** be refused. The Act lists some examples of what may be 'personal information' in s 1, like medical records. This section is intended to protect the privacy rights of other people and to make sure that these rights are not infringed upon by requests under the Act.

There are certain exceptions to this rule. For example, if the person whose privacy is affected consents, or if the information has been made publicly available, then it may be disclosed. The information may also be disclosed if it is about the physical or mental health of a person under the age of 18, and who is incapable of understanding the nature of the request. In this case however, the third party must be under the care of the requester and access to the information must be in his or her best interests. The information will be disclosed if the person to whom it relates is dead and the request is made by his or her next of kin. The last exception is that one can get information about an official of a public body which relates to the official functions or position of that person. This includes his or her title, contact details and responsibilities.

Protection of records at the South African Revenue Service (s 35)

The Information Officer of the South African Revenue Service **must** refuse a general request for access to records if they contain information, which the Revenue Service got for enforcing the collection of taxes. However, they cannot refuse information about the requester.

Protection of commercial information of third parties (s 36)

If a requester asks for information that would disclose certain commercial information about a third party, the request **must** be refused. Commercial information includes trade secrets, financial, technical or scientific information. It also includes information which has been supplied in confidence by the third party and which may place them at a disadvantage in negotiations or commercial competition.

There are certain exceptions to this rule. For example if the third party consents, or if the information has been made publicly available, then it may not be refused. It may also not

be refused if it contains information about tests or investigations that would reveal a public safety or environmental risk.

Protection of certain confidential information (s 37)

This section protects certain types of confidential information. If disclosing information would breach the duty of confidentiality towards a third party in an agreement, the request **must** be refused. This is to make sure that confidentiality agreements are upheld. These need not have been in writing. There are certain exceptions to this rule. If the third party consents, or if the information has been made publicly available, then it may be disclosed.

If someone asks for information that was supplied in confidence by a third party, the request **may** be refused if it would prejudice the further supply of such information and it is in the public interest that such information continues to be supplied.

There are certain exceptions to this rule. If the third party consents, or if the information has been made publicly available, then it may not be refused.

Protection of safety of individuals and protection of property (s 38)

A public body **must** refuse a request for information if disclosing it could threaten the life or physical safety of other people. Information **may** be refused if disclosing it would threaten the safety and security of buildings, equipment or any other property. It **may** also be refused if its disclosure would prejudice or impair a system or plan for the protection of individuals, the public or property.

Protection of police dockets in bail proceedings, and the protection of law enforcement and legal proceedings (s 39)

A public body **must** refuse to give a person records if the criminal procedure laws of the country state that a person can't get the records.

A public body **may** refuse to give a person records if the records have information in them about the methods that are used to prevent crime, and the disclosure of that record would help criminals. They **may** refuse to give a person a record if they are going to prosecute someone and disclosure of that record would make things more difficult for the prosecution. They **may** refuse to give a person a record where the release of the record could prejudice the outcome of a criminal investigation; if it might reveal the details of informers, or if the disclosure could result in the threatening of the safety of someone who would be a witness in a criminal court case. They **may** refuse to give a person a record if it would help someone break the law, or make someone's trial unfair. However, general information about prisoners may not be refused.

Sometimes refusing to give the requester the record could actually cause harm, because doing so would confirm that such a record exists, and therefore prove the existence of something that everyone is trying to keep secret. In this case the officials can say they don't know whether the record exists or not. However, then they have to give as much of the reasoning as they can, identify what part of the law they are using to deny access, and explain that the requester can lodge an appeal or go to court.

Protection of records privileged from production in legal proceedings (s 40)

A request for a record that can't normally be used as evidence in a court case because it is privileged must be refused. An example of this would a letter written by a lawyer to the public body during a court case, discussing a settlement of the case. If the person to whom the record relates says that they can be used as evidence in the court case, the information officer can give a person the records.

Defence, security and international relations of the Republic (s 41)

The disclosure of records which could reasonably be expected to cause prejudice to the defence, security or international relations of the republic **may** be refused. However, if the record is older than 20 years then a person can't refuse on the basis that it will cause prejudice to the international Relations of the republic. A record **may** also be refused if it would reveal:

- information supplied in confidence by or on behalf of another state or international organisation; or
- information supplied by the Republic to another state or international organisation in terms of an arrangement or international agreement; or
- information required to be held confidential in terms of international law in terms of s 231 or 232 of the Constitution.

This includes records:

- relating to military tactics or exercises or operations;
- relating to weapons;
- relating to the abilities of military personnel or people responsible for detecting;
- preventing, suppressing, curtailing subversive or hostile activities (hostile activities are aggression against the Republic, sabotage or terrorism, activity aimed at changing the constitutional order of the country by force, or a foreign or hostile intelligence operation);
- held for the purpose of intelligence relating to the defence of the Republic;
- relating to stopping subversive or hostile activities;
- about another country or international organisation which the Republic uses as part of our thinking about the conduct of international affairs;
- spying techniques;
- the identification of confidential sources;
- information about positions the Republic is going to take around international

negotiations;

- records that deal with diplomatic correspondence.

Sometimes refusing to give the requester the record could actually cause harm, because doing so would confirm that such a record exists, and therefore prove the existence of something that should be kept secret. In this case the officials can say they don't know whether the record exists or not. However, then they have to give as much of the reasoning as they can, identify what part of the law they are using to deny access, and explain that the requester can lodge an appeal or go to court.

Economic interest and financial welfare of Republic and commercial activities and public bodies (s 42)

Information Officers **may** refuse a request for access to a record of the body if its disclosure would be likely to put at risk the economic interest or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively.

This includes records with information about

- policies affecting money;
- changes in interest rates, taxes, regulation of banks, government borrowing or the regulation of the prices of goods or services or other things; or
- the sale/ purchase of property (including shares in a public body) or international trade agreements.

Secondly, the Information Officer **may** refuse request for access to a record if a record has trade secrets in it or if its disclosure would cause harm to commercial financial interest of the state or public body. Also, disclosure can be refused if it would put the public body at a disadvantage in contractual negotiations or in commercial competition.

If the record is a computer programme owned by the state or a public body a person may refuse to give anyone the programme, except where the programme is needed to give

access to a record to which a person can get in terms of this Act.

However, the record cannot be refused if

- it is already publicly available;
- another public body has consented in writing to the disclosure of the information; or
- it is about the results of any product or environmental testing or other investigation by a public body and its disclosure would reveal a serious public safety or environmental risk.

If the Information Officer gives access to information about testing he or she has to provide the requester with a written explanation of the methods used in conducting the testing or other investigation. The information Officer doesn't have to give preliminary results or give results when a method of testing of testing is still being developed.

Protection of research information (s 43)

Section 43 protects research information of a third party and the public body.

A request for a record which contains information about research being done by a third party **must** be refused if disclosing it would expose a third person or the subject matter of the research to serious disadvantage. Records which contain information about research being done by a public body **may** be refused if disclosing it would expose the public body or the subject matter of the research to serious disadvantage.

Operations of public bodies (s 44)

A request for a record which is just an opinion, advice or a report, or which is prepared only for discussions or consultations to help formulate a policy or take a decision **may** be refused. A record **may** also be refused if disclosing it would frustrate the deliberations of public bodies, in that it would prevent them from candidly discussing it or if it would prevent the success of the policy. A record **may** also be refused under this section if disclosing it would jeopardise the effectiveness of testing, or if is evaluative material that

should be kept in confidence, or if it is just a preliminary or working draft.

Access to health and other records

If a requester wants to see records that relate to his or her own health and the Information Officer thinks that showing the record might actually cause serious harm to the requester's physical or mental health, what must be done? Before the Information Officer gives access to the record to the requester, he or she must speak to a doctor who has been nominated by the requester. If the requester is under sixteen years of age the person who chooses the doctor is the parent of the child. If the requester is not capable of running his or her own affairs, a person whose been appointed by the court to look after that person has to choose which doctor gets consulted. If the doctor thinks that the disclosure of the record would cause serious harm to the requester's physical or mental health or well-being, then the Information Officer can't give access to that record to that person until the requester has proved to the satisfaction of the Information Officer that he or she has made arrangements for counselling or other arrangements in order to avoid the harm. Before access to the record is then given the person responsible for counselling must be given access to the records (s 30).

WHAT IF THE RECORDS HAVE SOME INFORMATION THAT CAN BE DISCLOSED AND SOME THAT CAN'T?

If a requester asks for a record of a public body and it contains information which must be refused, he or she can still be given the record without those sections containing the information that cannot be disclosed, or which can reasonably be divided out from the parts that they must not disclose. If the request for access to some of the record is allowed and a part of the record is refused then the requester pays the access fee only for that section. Reasons must be given for the refusal of the other section and those reasons must be full reasons. They must also explain that the requester can lodge an

application with the court against the refusal of the request, and how to lodge an application with the court (s 28).

WHAT HAPPENS IF A THIRD PARTY IS AFFECTED BY A REQUEST?

When considering a request for access to certain records which affects a third party, a public body must take all reasonable steps to inform the third party of the request (s 47(1)). This must be done as soon as reasonably possible, but at least within 21 days after the request has been received and by the fastest means possible (s 47(2)). The third party must be informed in writing of what sort of request has been made, the content of the record and the name of the person making the request. In some circumstances, even where a third party is affected, the Act makes provision that the record must be disclosed in the public interest, if the disclosure would reveal evidence of a substantial contravention of the law or an imminent and serious public safety or an environmental risk. In other words, where the information falls into this category, it must be disclosed even though it may affect the rights of third parties. If the Information Officer thinks that the requested record falls in this category, then the third party must also be informed of this and the reasons why the officer is of this opinion. The third party must also be told that they may make representations within 21 days about whether or not access to the record should be granted (s 47(3)).

The third party may then make representations within 21 days about whether or not to grant the record (s 48(1)). If the third party could not be contacted and finds out about the request in some other way, they are still allowed to make representations (s 48(2)).

The Information Officer must then consider any representations made by third parties and make a decision about whether to grant the request. This must be done within 30 days of the third party being informed of the request. The third party must then be informed of the decision (s 49(1)). If all reasonable steps to find the third party have

failed, then the Information Officer must take this factor into account when he or she is making a decision (s 49(2)).

If the request is granted, the third party must be given adequate reasons for the decision, including which provisions in the Act were relied upon. The third party must also be told that they could lodge an internal appeal or court application within 30 days, as well as the procedure for the internal appeal or court application. The third party must also be told that the requester will be given access to the record after the period for him or her to lodge the internal appeal or court application has expired (s 49(3)). The requester will then be given access to the record after this time period has expired, unless the third party has lodged an internal appeal or court application against the decision (s 49(4)).

WHAT HAPPENS IF THE INFORMATION IS REFUSED AND THE REQUESTER STILL WANTS IT?

If an Information Officer refuses a request for a record, then the requester can lodge an internal appeal against that decision (s 74(1)(a)). He or she may not go to court before following this route (s 78(1)). A person can only lodge an internal appeal against a decision made by a state department. Note that a person can also lodge an internal appeal against a decision requiring the payment of a fee before the request is dealt with. The internal appeal procedure can also be used to appeal against a decision by an Information Officer to extend the period of time to deal with the request. Finally, if the record is not given in the form that the requester asked for it, he or she may also use the system of internal appeals (s 74(1)(b)).

WHAT FORM MUST THE APPEAL TAKE?

There is a prescribed form which must be filled in and sent to the Information Officer within 60 days (s 75(1)(a-b)). This must also contain information on what decision is being appealed, why the person is appealing, and any other information that is known to him or

her (s 75(1)©). A person can also ask to be informed of the outcome of the appeal in any manner other than a written reply, for example through email or telephone (s 75(1)(d)).

The person appealing must supply their contact details and pay any required appeal fee.

If the fee is not paid, the decision on the internal appeal may be postponed until the person pays the fee (s 75(3)(b)). A late appeal may be allowed if the person lodging it can show a good reason as to why it is late (s 75(2)(a)).

The Information Officer must then, within 10 working days after getting the notice of appeal, submit the appeal to the 'relevant authority', together with his or her reasons for refusing the appeal as well as the details of any third parties who may be affected by the appeal (s 75(4)). The Act refers to the person or body that is hearing the appeal as the 'relevant authority.' The relevant authority can be the Minister, the MEC of a department, or the mayor or speaker of a municipality. It is not likely that these individuals will personally hear the internal appeals. The Act provides that they may, in writing, delegate or pass on this job to someone else in the department (s 1). 'Relevant authority' here refers to the person/ body which will hear the internal appeal in a particular department.

WHAT IF ANOTHER PARTY IS AFFECTED BY THE OUTCOME OF THE APPEAL?

The functions and responsibilities are now on the 'relevant authority' described above, and not on the Information Officer. If another party could be affected by the outcome of the appeal, for example if the requested record contains personal, commercial or confidential information about them, then they must be informed of the internal appeal, unless all reasonable steps to contact them have been unsuccessful (s 76(1)). The party affected by the request, or third party, must be informed within 30 days and by the fastest possible means, that an internal appeal is going to be heard (s 76(2)). The third party must be told what sort of appeal is being heard, the content of the record and the name of the person making the appeal. The third party must also be informed that they may make written representations within 21 days why the request should not be granted (s

76(3)). In some circumstances, even where a third party is affected, the Act makes provision for mandatory disclosure in the public interest if the disclosure would reveal evidence of a substantial contravention of the law or an imminent and serious public safety or an environmental risk. In other words, where the information falls into this category, it must be disclosed even though it may affect the rights of third parties. If the relevant authority thinks that the requested record falls in this category, then the third party must also be informed of this and the reasons why the relevant authority is of this opinion (s 76(3)).

The third party may then make written representations within 21 days why the request should not be granted (s 76(5)). If the third party could not be contacted and finds out about the internal appeal in some other way, they are still allowed to make representations (s 76(6)).

WHAT IF THE REQUEST IS GRANTED AND A THIRD PARTY OBJECTS?

A third party may also lodge an internal appeal against a decision of an Information Officer to grant a request for a record (s 74(2)). An internal appeal can only be lodged against a decision made by a state department. The appeal must take the same form as outlined above. In the case of an appeal lodged by a third party against a decision to grant a request, the relevant authority must inform the original requester of the appeal within 30 days after receiving it. The notice must also inform the original requester that he or she has 21 days after notice has been given to make written representations to the relevant authority why the request should be granted (s 76(8)).

WHAT HAPPENS DURING THE INTERNAL APPEAL?

When deciding on an internal appeal, the relevant authority must take into account the reasons given by the person lodging the appeal, the Information Officer and third parties

who have made representations. If a third party who was affected by an appeal could not be contacted, the relevant authority must take this into account (s 77(1)).

The relevant authority must then make a decision as soon as is reasonably possible. The time frames that have been set out for a decision on an internal appeal to be made is as follows: In cases where a person lodges an appeal against a refusal to grant access and third parties are not affected, a decision must be made within 30 days of the Information Officer having received the appeal. In cases where third parties are affected, a decision must be made within 30 days of notifying the third party. In cases where a third party lodges an appeal against a decision to grant the request, a decision must be made within 30 days after notice is given to the original requester or within five working days after the original requester has made written representations (s 77(3)). Note that if the relevant authority fails to make a decision within these time periods, the appeal must be considered as having been dismissed (s 77(7)).

Once a decision has been made, the person who has lodged the appeal, any affected third party and the original requester must be notified (s 77(4)). The notice must contain adequate reasons for the decision, including the provision/s of the Act relied upon. It must not contain any reference to the content of the record. The notice must also indicate that the person who has lodged the appeal, any affected third party and the original requester may go to court to challenge the outcome of the internal appeal within a certain period of time, and the procedure for this court application (s 75(5)).

If the appeal for granting the request is successful and no third party has been involved, then the person must be given access to the information immediately. But if a third party is affected, they may want to take the matter further and lodge an application for review of the decision to a court. For this reason where third parties are affected, a person can only be given access to the record after 30 days, which is the time period within which a third party may lodge an application with a court. If the third party has lodged the court application, then the record may not be released until the court has decided the matter (s

77(6)).

CAN THE OUTCOME OF THE INTERNAL APPEAL BE TAKEN FURTHER?

A person who has been unsuccessful in an internal appeal to the relevant authority of a public body may go to court to review that decision (s 78(2)(a)). A person can also go to court to challenge a decision of the relevant authority not to allow the late lodging of an internal appeal (s 78(2)(b)). A third party who has been unsuccessful in an internal appeal may also go to court to challenge a decision of the relevant authority (s 78(3)(a)). New rules will be made for applications to court by 9 March 2002. Until then applications can only be made to the High Court (s 79).

Remember that internal appeals are only possible in the case of requests for information from state departments. With regard to the decisions of other public bodies, such as parliament, universities or a parastatal, a person or a third party can go directly to court to challenge decisions that have been made by the Information Officers or Deputy Information Officers of that body (s 78(2)(c) and 78(3)(b)).

If an application to court against a decision is lodged the record may not be withheld from the court on any grounds (s 80).

PART 3: THE PROVISIONS OF THE ACT RELATING TO PRIVATE BODIES

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 a their business, trade, profession etc (s 1).

WHAT STRUCTURES MUST A PUBLIC BODY HAVE IN PLACE TO IMPLEMENT THE ACT?

(a) Publication of manual

Every private body must publish a manual within six months after commencement of the Act. The manual must contain the information set out in s 51(1) of the Act including a description of the body, its contact details, how to obtain information from it and what records it has. It must also tell people about the guide to the Act prepared by the Human Rights Commission, and how to get access to it. The manual must describe which of the body's records are automatically available to the public. It must be updated on a regular basis (s 51 (2)). If there are security, financial or administrative reasons for a private body not to compile a manual, it may make a request to the Minister to exempt it from doing so (s 51(4)).

(b) Voluntary disclosure and automatic availability of records

A private body may on a voluntary and periodic basis submit to the Minister of Justice a description of what records are automatically available without a person having to request them under the Act, and how to obtain access to them (s 52). This description must also state what records are available automatically in terms of other laws as well as which records can be purchased and which are freely available. In relation to this category of information, a body need not follow the procedures under the Act (s 52(5)). In relation to this category of information, a private body need not follow the procedures under the Act. While this is not a mandatory requirement, it may be advisable for private bodies to compile this list of automatically available records and thus alleviate some of the administrative burdens imposed on them by the Act.

(c) Correction of personal information

Pending the enactment of legislation to deal with this matter, private companies must take 'reasonable steps to establish adequate and appropriate internal measures' providing for the correction of personal information held by it (s 88). This requirement is

particularly applicable to companies which hold information on the financial status of individuals for example banks and credit bureaux.

(d) Devise a system for implementing form of request and deciding a request

While there will be a prescribed form of request, it is advisable that private bodies set up proper procedures and mechanisms to handle requests. The responsibilities in terms of this Act are on the head of a private body. However, the head of the private body may also appoint someone else to exercise the functions under this Act.

The Act requires the exercise of a large degree of discretion on the part of the head of a private body or a person authorised by him or her, even in the case of mandatory non-disclosure. These persons must be able to make the subtle legal distinctions required by the Act, and exercise a judgement about whether to grant access. It has to be decided, for example, whether the information is in fact required for the exercise and protection of rights, and whether there are justified grounds for refusal under the Act. In this regard it is imperative that the head of a private company, or the person duly authorised to perform the functions under this Act, are well-informed of its provisions, rationale and underlying objects in order to properly answer requests for access. Thus proper systems and guidelines should be in place in private bodies to implement the Act.

In this document we refer to the head of the private body, but this must be taken to also include the person, if any, to whom responsibility to perform functions under this Act has been delegated by the head of the private body.

WHO CAN ASK FOR RECORDS?

Anyone can ask for records from a private body, but the record must be needed for the exercise or protection of a right (s 50). This is not true when asking for records from public bodies. In other words, one can only access records from private bodies on a need-to-know basis, when information is needed for the exercise and protection of rights. A requester has

to comply with the procedural requirements of the Act, eg, filling in the right forms and paying the right search and access fees (s 50). A person can also act on behalf of someone else in asking for records (s 1).

When a person asks for records from a private body, he or she can do this as an ordinary person, or it can be done through a company, a close corporation or a trust (s 1). Importantly, the government can also ask for records from private bodies itself in terms of this Act (s 1). The Cabinet, its committees, Members of Parliament and of the provincial legislature can use this Act to ask for information that they may need from a private body (s 2). However, the public body must be acting in the public interest. It doesn't matter when the records came into existence.

WHAT KINDS OF RECORDS CAN A PERSON ASK FOR?

The records can be recorded in any way eg on paper, in a computer, on film etc. and a person can still ask for them. They must actually be in the possession of the private body or one of the employees of public body, but it doesn't matter whether the private body created the record or not (although there can be exceptions) (s 1).

It doesn't matter when the records came into existence (s 3).

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).

WHAT HAPPENS IF A RECORD CANNOT BE FOUND?

If the record cannot be found even though a reasonable search has happened ("all reasonable steps have been taken") and it is reasonable to believe that the record either does not exist or is lost, the head of the private body must explain this in an affidavit to the requester. The affidavit has to explain all the steps that were taken to find the record and must include all the communications with the people who looked for the record on

behalf of the head of the private body. If the requester gets such an affidavit, he or she can look at it as a refusal of the information, and use the steps in the Act to challenge that decision. If it happens that the record is found after the head of the private body has given an affidavit saying that it is lost or cannot be found then the requester must be given access to the record unless there is a reason to refuse the record (s 55).

CAN A PERSON USE THIS ACT TO HELP ACCESS RECORDS IF COURT PROCEEDINGS ARE PLANNED OR TAKING PLACE?

No (s 7). This is the same as is the case with information from public bodies.

HOW MUST A PERSON ASK FOR RECORDS?

A requester must use the form that has been printed in the Government Gazette. This form must be sent to the head of the public 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 form must give a postal address or fax number for the requester. If, in addition to a written reply to the request for the record, the requester wishes to be told in some other way, eg by telephone, this must be specified. The requester must 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. If the requester is asking for the information on behalf of somebody else, he or she must show in what capacity the request is being made (s 53).

The access must be given in the way the requester asks. If the information is not asked for in a specific form then the head of the private body can decide (s 60).

HOW QUICKLY DOES THE HEAD OF THE PRIVATE BODY HAVE TO GIVE THE RECORD TO

A REQUESTER? HOW IS A REQUESTER INFORMED OF WHAT HAS BEEN DECIDED?

The head of the private body must tell the requester about his or her decision in writing, as soon as reasonably possible, but within 30 days, and also in whatever other way the requester asked to be informed eg telephone. The requester must also be told what access fee must be paid, and how he or she will be given access. The notice must also explain that a requester can appeal the decision about fees and access to a court, and how long he or she has to do that (s 56).

WHAT HAPPENS IF THE HEAD OF THE PRIVATE BODY REFUSES TO GIVE ACCESS TO THE RECORD OR DOESN'T REPLY? CAN HE OR SHE DELAY GIVING THE RECORD?

The head of a private body can get an extension for another thirty days. He or she can do this if the request is for a large number of records or if it means searching through a large number of records, and to find the record in thirty days would interfere with the activities of the private body. The private body can get an extension if the request requires a search of records or collecting records from an office which is in another town or city and the search can't be completed in the original time. If the private body needs to consult internally or with another private body in order to decide on the request and this can't be completed in the original thirty days they can also get an extension. There can also be a combination of these circumstances which would allow for an extension. The requester can also agree in writing to such an extension.

If the head of the private body wants such an extension then he or she has to send the requester a letter telling him or her about the extension, the period of the extension and the reasons for the extension. It must also be explained to the requester in the letter that he or she can lodge an application with the court against the extension, and how to make the application to the court (s 57).

If the head of a private body does not give a person a decision within the first thirty day period then the requester can presume that the request is refused (s 58).

WHEN CAN A REQUEST BE REFUSED?

In this part we look at the various instances in which access to a record could be refused. There are some instances in which a request for a record must be refused, and some instances where a request may be refused. We try to highlight these below. This is a very important part of the Act, since it will be mainly in terms of these grounds that a decision to grant access will be made. This part of the Act will also require the exercise of a discretion by the head of the private body or the person nominated to perform the functions under the Act. It is thus crucial that these persons have an understanding of this section.

It must also be noted that all the grounds for refusal listed below do not apply if the disclosure of the information would reveal evidence of a substantial contravention of the law, or an imminent and serious public safety or environmental risk and the public interest in the disclosure of the record outweighs the harm considered in the section. This is referred to as the 'public interest override' and means that if information could potentially show that there is a serious violation of the law or a threat to public safety or the environment, then it cannot be refused.

Protection of the privacy of third parties (s 63)

If a requester asks for information that would disclose personal information about a third party, the request **must** be refused. The Act lists some examples of what may be 'personal information' in s 1. This section is intended to protect the privacy rights of other people and to make sure that these rights are not infringed upon by requests under the Act.

There are certain exceptions to this rule. For example, if the third party whose privacy is affected consents, or if the information has been made publicly available, then it may be disclosed. The information may also be disclosed if it is about the physical or mental health of a person under the age of 18, or who is incapable of understanding the nature of the request. In this case however, the third party must be under the care of the requester and access to the information must be in his or her best interests. The information will be disclosed if the person to whom it relates is dead and the request is made by his or her next of kin. The last exception is that one can get information about an official of a private body which relates to the official functions or position of that person. This includes his or her title, contact details and job responsibilities.

Protection of commercial information of a third party (s 64)

If someone asks for information that would disclose certain commercial information about a third party, the request **must** be refused. Commercial information includes trade secrets, financial, technical or scientific information. It also includes information which has been supplied in confidence by the third party and which may place them at a disadvantage in negotiations or commercial competition.

There are certain exceptions to this rule. For example if the third party consents, or if the information has been made publicly available, then it may be disclosed. It may also be disclosed if it contains information about tests or investigations that would reveal a public safety or environmental risk.

Protection of confidential information of third parties (s 65)

Section 65 protects confidential information supplied in terms of an agreement by a third party. If disclosing information would breach the duty of confidentiality towards a third party in an agreement, the request **must** be refused.

Protection of safety of individuals and protection of property (s 66)

A private body **must** refuse a request for information if disclosing it could threaten the life or physical safety of other people. Information **may** be refused if disclosing it would threaten the safety and security of buildings, equipment or any other property. It **may** also be refused if its disclosure would prejudice or impair a system or plan for the protection of individuals, the public or property.

Protection of records privileged from production in legal proceedings (s 67)

A request for a record that can't normally be used as evidence in a court case because it is privileged must be refused. An example of this would a letter written by a lawyer to the private body during a court case, discussing a settlement of the case. If the person to whom the record relates says that they can be used as evidence in the court case, then the private body can give a person the records.

Protection of commercial information of a private body (s 68)

If someone asks a private body for information that would disclose certain commercial information about that body, the request **may** be refused. Commercial information includes trade secrets, financial, technical or scientific information, which, if disclosed, could harm that body's financial interests. It also includes information which, if disclosed, could place the private body at a disadvantage in negotiations or commercial competition. Access to a computer programme owned by the company under copyright law may also be refused under this section.

The exception to this rule is that the record may be disclosed if it contains information about tests or investigations that show reveal a public safety or environmental risk.

Protection of research information of a third party (s 69)

A request for a record which contains information about research being done by a third

party **must** be refused if disclosing it would expose a third person or subject matter of the research to serious disadvantage. Records which contain information about research being done by the private body **may** be refused if disclosing it would expose the private body or subject matter of the research to serious disadvantage.

Access to health and other records

If a requester wants to see records that relate to his or her own health and the head of the private body thinks that showing the record might actually cause serious harm to the requester's physical or mental health, what must be done? Before the head of the private body gives access to the record to the requester, he or she must speak to a doctor who has been nominated by the requester. If the requester is under sixteen years of age the person who chooses the doctor is the parent of the child. If the requester is not capable of running his or her own affairs, a person whose been appointed by the court to look after that person has to choose which doctor gets consulted. If the doctor thinks that the disclosure of the record would cause serious harm to the requester's physical or mental health or well-being, then the head of the private body can't give access to that record to that person until the requester has proved to the satisfaction of the head of the private body that he or she has made arrangements for counselling or other arrangements in order to avoid the harm. Before access to the record is then given the person responsible for counselling must be given access to the records (s 61).

WHAT IF THE RECORDS HAVE SOME INFORMATION THAT CAN BE DISCLOSED AND SOME THAT CAN'T?

If a requester asks for a record of a public body and it contains information which must be refused, he or she can still be given the record without those sections containing the information that cannot be disclosed, or which can reasonably be divided out from the parts that they must not disclose. If the request for access to some of the record is

allowed and a part of the record is refused then the requester pays the access fee only for that section. Reasons must be given for the refusal of the other section and those reasons must be full reasons. They must also explain that the requester can lodge an application with the court against the refusal of the request, and how to lodge an application with the court (s 59).

WHAT HAPPENS IF A THIRD PARTY IS AFFECTED BY A REQUEST?

When considering a request for access to certain records which affects a third party, the private body must take all reasonable steps to inform the third party of the request. This must be done within 21 days after the request has been received and by the fastest means possible. The procedures and requirements are very similar to that set out in the case of public bodies above.

The third party must be informed in writing of certain details set out in s 71(3) of the Act, and must be given the opportunity to make representations for the refusal of the request, or consent to the disclosure of the record. The third party must be notified of the decision once it has been made. If access to the record has been granted, the notice to the third party must contain certain details set out in s 73(3) of the Act. The third party has 30 days to lodge an application with a court against a decision granting access to the record, and the requester may only be given access to the record after the expiration of this period (s 73(4)).

WHAT HAPPENS IF THE INFORMATION IS REFUSED AND THE REQUESTER STILL WANTS IT?

If a private body makes a decision to refuse a request, the requester may go to court to challenge this decision. The application to court must be made within 30 days of being informed of the decision. There is no system of internal appeal with respect to the decisions of private bodies. A person can also go to court to challenge how much is

being charged, or a decision requiring the payment of a fee before the request is dealt with, where it is a personal request. A person may go to court to review a decision by the private body to extend the period of time to deal with the request. Finally, if the record is not given in the form that the requester asked for it, he or she may also go to court (s 78(2)(d)).

WHAT IF THE REQUEST IS GRANTED AND A THIRD PARTY OBJECTS?

A third party may go to court if they wish to challenge a decision of a private body to grant a request. They must do so within 30 days. (s 78(3)(c)).

PART 4: THE ROLE OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The South African Human Rights Commission must compile an easy-to-read guide containing the information that someone would need who wants to use this Act. The guide must:

- have a description of what the Act is for; including the postal and street address, phone and fax number and, if available, e mail address of the information officers (and their deputies) of every public body;
- have some information about private bodies;
- explain how to get the record from a public or a private body;
- explain what help a person can get from the information officer of a public body;
- explain what help is available from the Human Rights Commission;
- explain everything a person can do in terms of the law to have their rights in this Act made real, including how to make an internal appeal; and how to make an application to a court against a decision by the information officer of a public body, a decision on internal appeal or a decision of the head of a private body.

The guide must also tell a person about

- the parts of this law that say that government and private bodies have to write manuals and how to get hold of them;
- the parts of the law providing for the voluntary making public of categories of records by a public body and private body;
- how much a person has to pay to get records; and
- the rules and forms that a person must use.

The Human Rights Commission must, if necessary, update and publish the guide every two years and it must be made available in all of the official languages. It must first be made available 18 months after section 10 starts working (s 10 and s 83(1) (a)).

The Human Rights Commission must also receive reports from Information Officers stating

- how many requests for access they have received;
- how many they have granted in full, how many they have granted because of the public interest override;
- how many they have refused in full and refused partially;
- how many times each provision of the Act was relied on to refuse access;
- the number of cases in which the time periods laid down in the Act were extended;
- the number of internal appeals lodged and number of cases where because of an internal appeal people got access to records;
- the number of internal appeals that were requested because the Information Officer simply did not give a decision on a request during the period;
- the number of applications to court, what happened, and how many decisions of the court were appealed, and what happened there and
- the number of applications to a court that were lodged on the ground that the internal appeal was regarded as being dismissed because the authority failed to give notice of the decision on an internal appeal to an appellant (s 32).

The Human Rights Commission submits reports annually to the National Assembly.

They have to include in their report to the National Assembly any recommendations that they have for the improvement of the Act or any other Act or law which makes a difference to access to information. They should also make recommendations in terms of procedures by which bodies make information electronically available. They also need to report on the number of complaints lodged with the Public Protector regarding anything in the Act and what happened to that matter.

They must also include all of the information that has been reported to them by Information Officers (s 84).

The Human Rights Commission must conduct education programmes to advance the understanding of the public about this Act, encourage people to participate in the development of educational programmes and promote the distribution of accurate information by public bodies about their activities. They must do this to the extent that financial and other resources are available (s 83(2)).

The Human Rights Commission must also monitor the implementation of the Act and help people exercise their rights in this Act. They have to recommend changes to both public and private bodies in the way that they deal with this Act. They must train Information Officers of public bodies. They must also consult with them, get reports from people in public and private bodies on the problems that they have had in trying to do the things this Act says that they must. They must consider the things that people say to them about the Commission's own functions in terms of this Act (s 83(3)(b-g)).

The Human Rights Commission must ask about the number of complaints lodged with the Public Protector and what happened to these complaints. The Commission must also generally look into anything involving the objects of this Act. For the purpose of the annual

report the head of the private body should give the Commission information about requests that they have had for information. If it is appropriate and the money is available, officials of public bodies must help the Human Rights Commission in order to do their job in terms of this Act.

Any monies that the Human Rights Commission needs for doing this work must be paid out of money given to the Commission by Parliament for doing this work.

PART 5: PROCEDURE IN COURT

When any application or appeal dealing with this Act is heard by a court the court must be allowed to see the record. However, the judge may not disclose the record to anyone if the record shouldn't be disclosed. Courts can have closed hearings, and other such measures to prevent this from happening. The proceedings are civil, and the civil law rules of evidence apply. Courts can make a range of decisions in terms of this Act, including telling people to do things, stop doing things, confirm decisions etc (s 80,81,82).

Nobody can be criminally or civilly liable for anything done in good faith in terms of this Act.