

ACCESSING INFORMATION FOR YOUR COMMUNITY



A guide to using the Promotion of Access to Information Act to empower South African communities to promote and protect human rights.



ABOUT THE SOUTH AFRICAN HISTORY ARCHIVE

The South African History Archive (SAHA) is an independent human rights archive dedicated to documenting, supporting and promoting greater awareness of past and contemporary struggles for justice in South Africa.

Through its Freedom of Information Programme (FOIP) SAHA aims to extend the boundaries of freedom of information in South Africa by:

- creating awareness of the right to information and its power as an enabling right that can be used to protect, promote and fulfil other human rights
- empowering individuals and organisations to understand and utilise the Promotion of Access to Information Act (PAIA) as a strategic advocacy tool
- increasing compliance with, and the use of, PAIA

For more information about FOIP, please contact:

The South African History Archive
Box 31719
Braamfontein
2017

Tel: +27117171941

Fax: +27117171964

Email: foip@saha.org.za

Web: www.saha.org.za

ACKNOWLEDGEMENTS

The material in this booklet was developed by the Freedom of Information Programme at the South African History Archive (SAHA) in June 2012 as part of a community awareness-raising programme conducted in partnership with the Right2Know Campaign.

The development and printing of this guide was supported by grants from the Open Society Foundations and the Atlantic Philanthropies.

SAHA gives permission for this booklet to be used and reproduced for educational and non-commercial purposes, with acknowledgement, by all those seeking to better understand and utilise the right to information.

CREDITS:

Author – Tammy O’Connor

Design and layout – Rizelle Stander Hartmeier

Production support – Senkhu Maimane and Debora Matthews

IMAGES:

All images in this booklet are drawn either from SAHA’s organisational records or from the following SAHA archival collections:

AL2446 – The SAHA Poster Collection

Screen Training Project poster on page 14

Detail from COSATU poster on page 18

AL3274 – The Gille de Vlieg Photographic Collection

Front cover and photographs on pages 4, 6, 15 and 17

AL3290 – The Anti-Privatisation Forum (APF) Collection

Photographs on pages 9, 11 and 12

SAHA thanks Gille de Vlieg and the Anti-Privatisation Forum for permission to reproduce their photographs within this booklet.



CONTENTS

What does the right to information mean?	6
Why is having access to information important?	7
Your legal right to information	8
Examining the right to information under PAIA	9
How can access to information assist your community?	13
- Information and housing	13
- Information and water	15
- Information and education	16
- Information and unemployment	18
Case study: Rysmierbult community members demand their land	19
Exercising the right to information	21
Organisations that can help you make requests for information	22

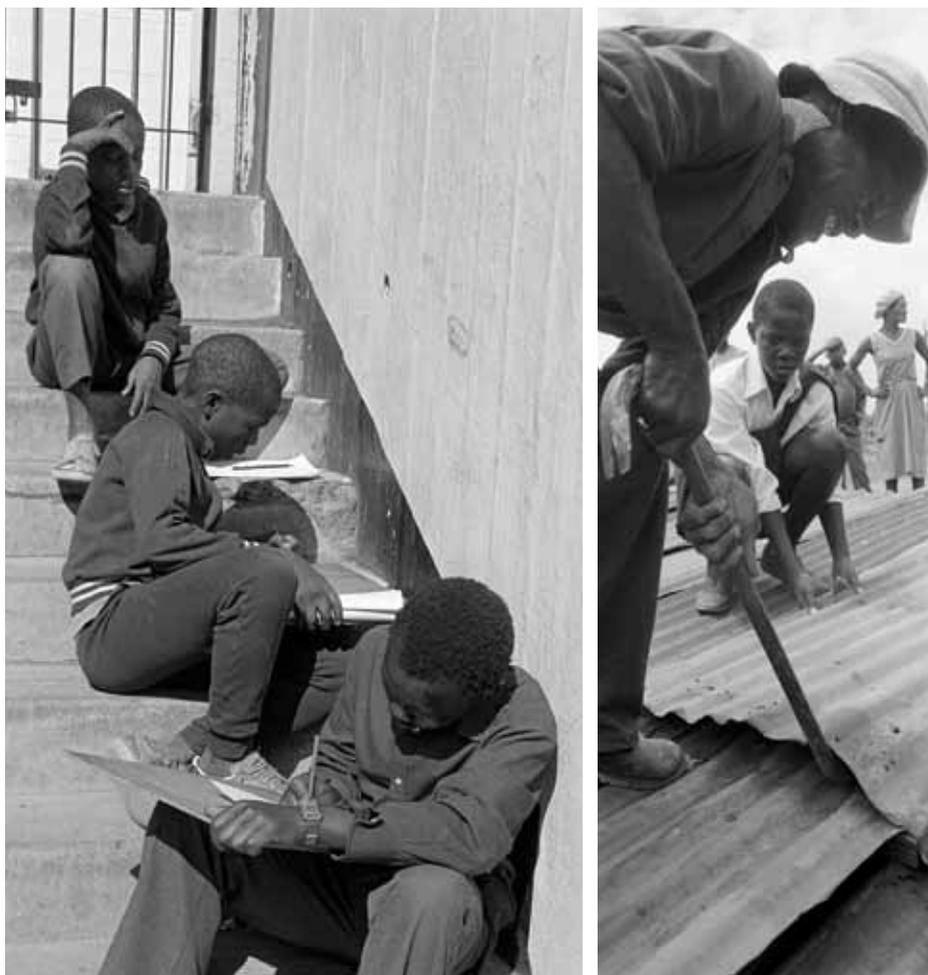
WHAT DOES THE RIGHT TO INFORMATION MEAN?

The right to information refers to the right of all people to have access to information held by the government or private bodies that may affect them or their communities.

Bad governments and private bodies thrive on secrecy as it allows for waste, corruption and human rights abuses to remain hidden.

Good governments and private bodies rely on openness to keep people informed and to allow people to participate in making decisions that will affect them.

Information is not a privilege, it is a right!



WHY IS HAVING ACCESS TO INFORMATION IMPORTANT?

Having access to information allows you to participate in the government of South Africa, which is your democratic right and responsibility.

You can participate in your democracy by using your right to information to ask government for records about:

- the way they spend your money
- their plans to improve service delivery
- their plans to reduce unemployment
- how you can participate in government policy making
- how they are working to reduce corruption

The right to information also allows you to monitor private bodies whose activities, actions or policies have an impact on the rights of you and your community. For example, you can ask private bodies questions about:

- the impact their activity has on your environment
- their labour practices that affect members of your community who are employed by them
- any file they hold on you, such as your medical file

Having this information will allow you to hold public and private bodies accountable for the decisions they make that impact your life and the lives of your community members.

The more we know as citizens, the more we can do to better our lives by helping to make change happen.

You can use your right to information to get evidence to support campaigns to bring about change for your community. Campaigns to demand improved service delivery, end corruption and improve opportunities for people in your community will all be improved by having access to information.

We must demand our right to live in a society where government is accountable to all the people it serves and private bodies respect our human rights!

YOUR LEGAL RIGHT TO INFORMATION

The right to information in South Africa is enshrined in the Constitution. It states:

- 32 (1) Everyone has the right of access to –
- any information held by the state; and
 - any information that is held by another person that is required for the exercise or protection of any rights.

The Constitution also requires the government to pass legislation to give practical effect to the right to information. To comply with its obligation, the government passed the Promotion of Access to Information Act (PAIA) in 2000.

PAIA sets out a process for exercising your right to information. It includes forms for making a request, timelines in which information holders must respond to requests, and types of information that must, may or must not be released and fees for requesting information.



EXAMINING THE RIGHT TO INFORMATION UNDER PAIA

Who can request information under PAIA?

Any individual can request information under PAIA; they do not need to be a South African citizen.

Any juristic person can also request information under PAIA. A juristic person is not a natural person but is a legal entity, such as a company or association.

What entities can you request information from?

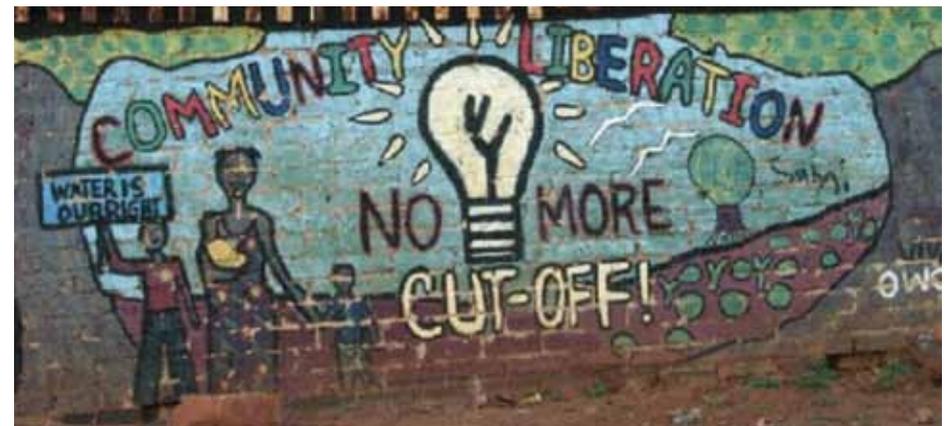
PAIA allows you to request information from public and private bodies.

A public body is:

- A national or provincial department or a municipality – for example the Department of Housing.
- A body performing a public function, such as providing electricity or water to the public – for example, Eskom.

A private body is:

- A juristic person that is performing a private function. This includes all registered companies, corporations, NGOs and associations – for example, Anglo Gold, ABSA and SAHA.
- An individual or partnership carrying on a trade, business or profession. This includes private bodies that are not registered as juristic persons but still trade or operate a business or offer professional services – for example, a small business such as your local fruit and vegetable shop or a professional such as your doctor.



What information can you ask for?

PAIA applies to records. A record is any recorded information that is in the possession or control of the public or private body you are requesting information from. The recorded information may be in any form. For example, a report, a photograph, a film and a database are all records under PAIA.

The right to request access to records of public bodies is unrestricted; you can request any record you like from a public body and do not have to provide a reason for the request.

The right to request access to records of private bodies is restricted to instances where you need the record to exercise or protect another right, such as your right to fair labour practices. When you request records from a private body you must state which right you are exercising or protecting and why the record you are requesting is required to exercise or protect that right.

How do you request information?

A person requesting access to information must fill in a form.

The forms are available on the Department of Justice and Constitutional Development website or can be collected in person from any public or private body.

If you need help completing the form an information or deputy information officer of a public body must assist you.

Once you have completed the form you must send or deliver it to the relevant public or private body.

Most people are also required to pay a request fee (R35 when requesting information from a public body and R50 when requesting information from a private body).

If you are granted access to the information you may also be required to pay an access fee. This fee relates to the cost of the body searching for and preparing the records and copying and posting them to you.

You do not have to pay the request fee if you are requesting information about yourself (personal information).

You do not have to pay the request fee or access fee if you earn less than R14,712 per year (if you are single) or R27,192 per year (if you are married or have a life partner).



How long does the public or private body have to respond to you?

Generally, public and private bodies must respond to your request for information within 30 days. In some cases the body may request an additional 30 days to respond to your request.

Does the public or private body have to give you access to information?

The public or private body must give you access to the record(s) you request, unless one of the reasons (grounds) for refusing access under PAIA applies.

The grounds for refusing access to a record are listed in sections 34 to 46 (for public bodies) and sections 64 to 70 (for private bodies) of PAIA. For example, a public body may refuse to provide you with access to:

- someone else's personal information (such as their ID document), unless the person agrees;
- records that would prevent the police from being able to capture and prosecute criminals;
- information about another person or business that the body has promised that they will keep confidential;
- records relating to the internal workings of government, such as opinions and recommendations related to a draft policy, before the policy is completed.

What if you do not agree with the public or private body's decision?

If you do not agree with the decision of a public body to refuse you access to information you can submit an internal appeal. The internal appeal must be decided by the political head of the body (e.g. the minister of a national government department or the mayor of your municipality). If you are still not satisfied with the decision of the political head, you can take the matter to court.

If you do not agree with the decision of a private body to refuse you access to information you can take them to court. There are no procedures for lodging an internal appeal with a private body.

You can also make a complaint to the South African Human Rights Commission or the Public Protector about the decision or the conduct of a public or private body you have requested information from.



HOW CAN ACCESS TO INFORMATION ASSIST YOUR COMMUNITY?

Information and housing

Access to adequate housing is a huge problem in many South African communities. Many people that have been waiting for a government Reconstruction and Development Programme (RDP) house for years have no information about when they will be given a house. In many instances houses are given to people that have only been waiting a short time or already have a house. Furthermore, in many communities where houses have been built, the quality of the buildings is very poor.

PAIA can assist you and your community to access the plans for providing houses in your community and to hold government accountable for the allocation and quality of the houses it provides.

To monitor the provision of housing in your community, you could submit a PAIA request to the Department of Human Settlements requesting:

- any plans for building RDP housing in your community
- any reports on the implementation of that plan
- the budget allocated for building RDP houses in your community
- the budget allocated to building RDP houses in your community in the last 3 financial years
- the amount of money actually spent on building RDP houses in your community in the last 3 financial years
- the number of RDP houses built in the last 3 financial years in your community

Having access to this information would allow you to find out whether the government was building houses at the planned rate in your community and whether funding allocated to building houses was actually being spent for that purpose. It would also allow you to monitor the future implementation of the housing plan in your area.

To monitor the allocation of housing in your community, you could submit a PAIA request to the Department of Human Settlements for:

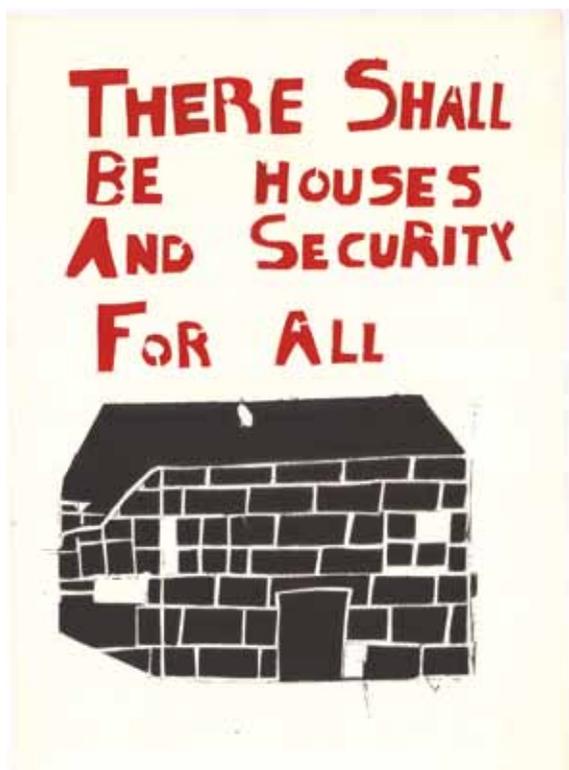
- the criteria for allocating RDP houses. For example, is housing allocated based on who has been waiting the longest for a house or the income level of people waiting for a house?
- the process for allocating RDP houses. For example, who makes the decision about who is allocated a house, how is a person notified they have been given a house and what steps are taken to make sure the person actually receives the house?

Having access to this information would allow you to decide whether previous allocations of housing in your community were consistent with government requirements and monitor future allocations. If allocations were inconsistent with the processes you could use the information to challenge the government's actions.

To monitor the quality of housing in your community, you could make a PAIA request to the Department of Human Settlements for:

- the specifications for RDP housing
- any tender processes conducted for building RDP houses in your community
- any contracts awarded for building RDP houses in your community
- details of any monitoring of performance of the contracts for building RDP houses in your community

Having access to this information would allow you to measure what the government requires and what contractors were paid to build against what was actually built. If contractors were not building to the required standard you could use the information to challenge government to hold the contractors accountable.



Information and water

Many South African communities do not have water in their homes and rely on communal taps. Often these taps are shared between large numbers of community members and people must walk long distances to use the taps.

PAIA can assist your community in its fight for water.



For example, you could submit a PAIA request to the Department of Water Affairs, the Department of Cooperative Governance and Traditional Affairs and your local municipality for:

- any plans for the provision of water in your community
- any reports on the implementation of that plan
- details of the budget allocated to provide water in your community
- details of the national budget for the provision of water to communities in South Africa
- the budget allocated to the provision of water in your community in the last 3 financial years
- the funds spent on the provision of water in your community in the last 3 financial years

Having access to this information would allow you to find out whether the budget previously allocated for water provision was actually spent in the way it was intended and whether your community is getting a fair share of the national budget for water provision. It would also allow you to monitor the provision of water to your community in the future to see whether it is consistent with the commitments made.

In communities where access to water has been provided directly into people's homes, government is increasingly requiring residents to pay in advance for the water they use. This means that often water is not available when it is needed.

PAIA can assist your community in its struggle against pre-paid water metres.

For example, you could submit a PAIA request to Johannesburg Water (or the body responsible for water metres in your area) requesting:

- any plans for the installation of pre-paid water metres in your community
- the projected costs of installing pre-paid water metres in your community
- any tender processes and contracts awarded for installing pre-paid water metres in your community
- any reports or studies relating to the installation of pre-paid water metres

Having access to this information would allow you to assess the government's reasons for installing pre-paid water metres and the money that government is spending on the installation. It would also allow you to plan action against any plans to install pre-paid metres in your community.

Information and education

Access to education in South Africa remains unequal. Schools in historically disadvantaged communities are usually under-resourced and often lack basic infrastructure, such as classrooms and toilets.

PAIA can assist you to hold the government accountable for the education children in your community are receiving.

For example, you could submit a PAIA request to the Department of Basic Education requesting:

- plans to improve infrastructure in schools in your community
- any reports regarding the implementation of that plan
- the budget for improving infrastructure in schools in your community

Having access to this information would allow you to determine whether there are plans in place to improve the schools in your community. If not, you could lobby government or take government to court to put in place the necessary plans and allocate sufficient budget. If there are plans in place, having access to the information would allow you to monitor the implementation of those plans, including spending.

Higher education is expensive and many South Africans cannot afford to attend university or college unless they receive financial assistance. Despite this, knowledge in most communities about the availability of bursaries is very low.

PAIA can assist you to realise your higher education goals by making sure you are aware of bursary opportunities.

For example, you could submit a PAIA request to the Department of Higher Education requesting:

- a list of all bursaries available and the amount of those bursaries
- the criteria for applying for each of the bursaries
- the process for advertising the bursaries

Having access to this information would ensure that you can plan bursary applications in advance and maximise your opportunity to receive assistance to attend university or college.



Information and unemployment

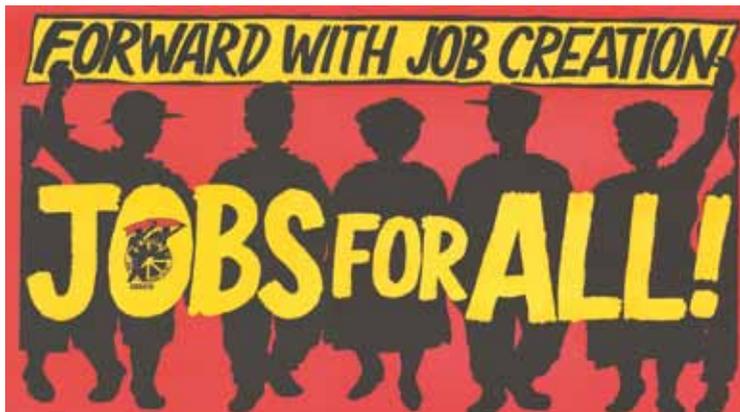
Unemployment levels in South Africa are very high. In the first quarter of 2012 the official unemployment rate, according to Statistics South Africa, was 25.2 per cent. Despite high levels of unemployment and the substantial impact it has on all aspects of family and community life, most communities have little or no information about government plans to address the problem.

PAIA can assist you to get informed about strategies to fight unemployment within your community.

For example, you could submit a PAIA request to the Department of Labour and your local municipality requesting:

- plans for job creation in your community, including the number of unskilled, low skilled and high skilled jobs that are expected to be created
- any reports regarding the implementation of that plan
- the budget allocated to job creation in your community
- details of any partnerships with private companies to create jobs in your community, including:
 - any money paid or subsidy offered to the private company
 - the expected number of unskilled, low skilled and high skilled jobs to be created through the partnership

Having access to this information would allow you to determine whether there are plans in place to fight unemployment in your community. If not, you could lobby government to put in place the necessary plans and allocate sufficient budget. If there are plans in place, having access to the information would allow you to assess whether the plans are appropriate and to monitor the implementation of those plans, including spending.



CASE STUDY: RYSMIERBULT COMMUNITY MEMBERS DEMAND THEIR LAND



The community of Rysmierbult, in the North West Province, is typical of many of South Africa's historically disadvantaged communities.

Rurally located, the residents of the area were subsistence farmers from the time their forefathers first came into possession of the land in 1866. Under apartheid, the land was taken by the Department of Native Affairs and people's houses were bulldozed and they were forcibly removed from the land. The farms were then given to white farmers, who shot at any former black residents who tried to come back to the land. The blacks who had previously owned the land were left destitute, without housing or enough food.

When South Africa became a democracy in 1994 the government introduced the Restitution of Land Rights Act, which allows members of communities whose land was taken from them under apartheid to apply to the government to have their land given back to them.

In October 1998 the Rysmierbult community submitted a claim for the return of their land. The claim was successful and in 2006 the land was returned to the community and placed in the hands of the Bangwaketse Borra Motingoe Trust.

Despite the return of their land to the trust, community members have continued to struggle to receive a land allocation for housing and to receive benefits from their land.

The community wanted to complain to the trust about these issues and to understand how the trust was using the land and who was receiving the benefits. However, the community did not know who was controlling the trust (the trustees) or who was receiving the benefits from the trust (the beneficiaries).

In August 2011, community development workers, Stephen Mbeve and Velile Petrose, approached SAHA to assist the community to get information about the trust using PAIA.

SAHA made a PAIA request to the trust on behalf of the community seeking a copy of the trust deed and the names of trustees and beneficiaries of the trust, amongst other things.

In October 2011 SAHA received the information from the trust and thereafter met with members of the community to share with them the names of the trustees and beneficiaries of the trust.

The community members were shocked by the information they received. In some instances, the beneficiaries listed in the trust had no knowledge that they were registered as beneficiaries and reported that they had not received any benefits from the trust. Community members noted that other listed beneficiaries were not the rightful owners of the land. Stephen commented that:

“the rightful beneficiaries are still living in squalor whilst the families who have been entrusted with the land are ‘unlawfully’ reaping benefits from it.”

SAHA was also successful in obtaining information on behalf of the community from the Department of Rural Land and Development. Using PAIA, SAHA got details of all the land registered to the trust, so that community members could see exactly what land the trust is supposed to be managing on their behalf and could see how the land is actually being used.

After receiving the information from SAHA the community was determined to use it to reclaim their land and the benefits flowing from it.

Stephen and Velile approached the specialist crime-fighting unit, the Hawks, and provided them with the information that SAHA had obtained and asked for their help in holding the trustees accountable to the community. The Hawks agreed to assist the community and got the financial records of the trust from the bank. The Hawks are now assessing those records and are considering criminal proceedings against some of the trustees and working with the community to ensure that the rightful owners of the land will now benefit from it.

EXERCISING THE RIGHT TO INFORMATION

Resources

The forms for making a request under PAIA can be downloaded from:

http://www.justice.gov.za/forms/form_paia.htm or obtained from the office of the public or private body you are requesting information from.

SAHA has developed a number of publications that may assist you in utilising PAIA to assist your community:

RK

The *PAIA Resource Kit* provides step by step instructions on how to complete the forms required to submit a PAIA request and can be downloaded, free of charge, from the SAHA website:

http://www.saha.org.za/publications/paia_resource_kit.htm

WG

The *PAIA Workshop Guide* is a comprehensive training manual that details all relevant information to persons wanting to learn how to use PAIA. It also serves as a table top reference guide for anyone trying to practically engage with PAIA. The PAIA Workshop Guide can be downloaded, free of charge, from the SAHA website:

http://www.saha.org.za/publications/paia_workshop_guide.htm

DVD

The *PAIA Case Studies from Civil Society DVD and Guide* is an interactive training tool which outlines the key issues around PAIA. The DVD demonstrates how ordinary citizens have utilised PAIA, bringing to life the reality and possibilities of PAIA as a strategic advocacy tool. The DVD can be viewed online and the guide downloaded, free of charge, from the SAHA website:

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

ORGANISATIONS THAT CAN HELP YOU MAKE REQUESTS FOR INFORMATION

SOUTH AFRICAN HISTORY ARCHIVE

Ph: 011 717 1941 or online at www.saha.org.za

RIGHT2KNOW CAMPAIGN

Ph: 021 461 7211 or www.r2k.org.za

BLACK SASH

Ph: 021 686 6952 or online at www.blacksash.org.za

LEGAL RESOURCES CENTRE

Ph: 011 836 9831 or online at www.lrc.org.za

OPEN DEMOCRACY ADVICE CENTRE

Ph: 021 461 3096 or online at www.opendemocracy.org.za

PUBLIC PROTECTOR

Ph: 012 366 7000 or online at www.pprotect.org

PUBLIC SERVICE ACCOUNTABILITY MONITOR

Ph: 046 603 8358 or online at www.psam.org.za

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Ph: 011 877 3600 or online at www.sahrc.org.za



Accessing information is your right. You are entitled to information held by public and private bodies that may affect you or your community. This guide outlines the important role that access to information can play in the achievement of your advocacy goals and the protection of your rights. It examines the legal right to information in South Africa, using key issues that face many South African communities – such as access to housing, water, education and employment – to illustrate the ways in which access to information can help you to realise other rights.

