

PAIA Workshop Guide

A guide to requesting information in terms of the
Promotion of Access to Information Act 2 of 2000 (PAIA)



ACKNOWLEDGEMENTS

The material in this PAIA Workshop Guide was developed by the South African History Archive (SAHA) through its *Freedom of Information Project: Capacity Building in the Community-based Sector*.

SAHA's *Freedom of Information Project: Capacity Building in the Community-based Sector* is part of a long-term strategy aimed at building the capacity of individuals and organisations to understand and utilise the Promotion of Access to Information Act 2 of 2000 (PAIA) as a strategic advocacy tool.

The PAIA Workshop Guide was developed with the financial support of the Ford Foundation. SAHA thanks the Ford Foundation for its support as the key donor for the *Freedom of Information Project: Capacity Building in the Community-based Sector*.

SAHA gives permission for the PAIA Workshop Guide to be used and reproduced, with acknowledgement, by all those seeking to better understand and utilise PAIA.

A special thanks to the materials development team:

- Writer and creator – Charlotte Young and Gabriella Razzano
- Adult education and literacy consultant – Dr Patricia Watson
- Design and layout – Rizelle Hartmeier
- Illustrator – Alistair Findlay
- Copy editor – Catherine Kennedy

The process of developing this PAIA Workshop Guide was informed by a consultative process involving members of the Khulumani Support Group (Khulumani), Tshwaranang Legal Advocacy Centre (TLAC) and organisations from the TLAC Paralegal Forum, Black Sash, groundWork, South Durban Community Environmental Alliance (SDCEA) and the Vaal Environmental Justice Alliance (VEJA) whose involvement and subsequent feedback from the FOIP Capacity Building Project has informed the contents of this resource.

Khulumani is a non-government organisation that empowers survivors of apartheid-era violations by building their advocacy skills and supporting their efforts to become self-reliant.

TLAC is a non-government organisation that uses the law as a tool for social change for women who are survivors of gender-based violence.

Black Sash is a non-government human rights organisation that has been working for justice and equality in South Africa for over 50 years.

groundWork is a non-government organisation focussing on issues of environmental justice and development in Southern Africa.

VEJA is an alliance of environmental organisations, groups, institutions, agencies and individuals acting in the Vaal Triangle challenging all forms of environmental degradation by local industry.

SDCEA is an environmental organisation based in the South Durban Basin organising across historical racial divisions to speak out for environmental justice.

SAHA also thanks the Human Rights Commission and the Public Protector for their expert input into the pilot workshops.

It is SAHA's intention that this PAIA Workshop Guide will stimulate and contribute to the excellent work of its partners in the National PAIA Civil Society Network.



The Freedom of Information Project: Capacity Building in the Community-based Sector commenced in April 2008. For further information please contact:

The South African History Archive's Freedom of Information Programme,
foip@saha.org.za, www.saha.org.za, Tel: 011 717 1941, Fax: 011 717 1964

CONTENTS

CHAPTER 1: INTRODUCTION TO THE FREEDOM OF INFORMATION ENVIRONMENT	
Introduction	3
The value of information	4
What PAIA says	8
Information and deputy information officers	10
Structures of government	12
The entities that monitor	14
Quiz yourself	20
CHAPTER 2: SUBMITTING A PAIA REQUEST	
How an issue can be turned into a PAIA request	22
What information must, must not and may not be given	25
Quiz yourself	29
PAIA forms	30
Dates, costs and fees	32
Final checklist	35
Consult the community	37
CHAPTER 3: RECORDS MANAGEMENT	
Creating a PAIA request number	39
Recording a PAIA request in a log book	41
Recording the PAIA request dates in a diary	41
Recording an overview of each request	42
Recording all PAIA request telephone calls	43
Creating a new record: Your final checklist!	49
The power of PAIA: A quiz	50
CHAPTER 4: RECOURSE AND REDRESS	
Revising key sections of PAIA	61
Examining third party confidentiality	63
Examining the public interest override	64
Who should you appeal to?	65
Form B and the writing of a supplement	66
Examining a deemed refusal	70
PAIA requests that have gone to court	71
APPENDICES	
Appendix A	76
Appendix B	80
Appendix C	83
Appendix D	86
Appendix E	88
Appendix F	92
Appendix G	93

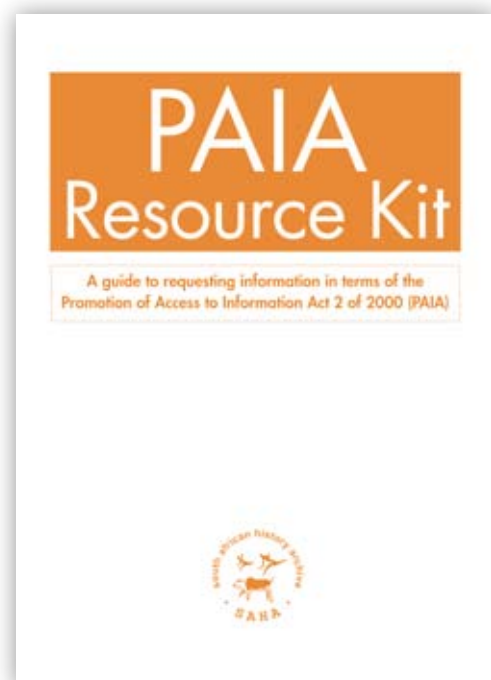
CHAPTER 4

Recourse and redress

QUESTIONS TO BE ANSWERED IN THIS CHAPTER:

- Introducing recourse and redress
- Revising key sections of PAIA
- Examining third party confidentiality
- Examining the public interest override
- When would you appeal?
- Who should you appeal to?
- How do you appeal: Form B and the writing of a supplement
- Example of a supplement supporting an internal appeal.
- Examining a deemed refusal
- A case study: How recourse and redress assisted the South African History Archive
- Court: A final step
- Examples of PAIA requests that have gone to court.
- Conclusion

You should review this section in conjunction with your PAIA Resource Kit.



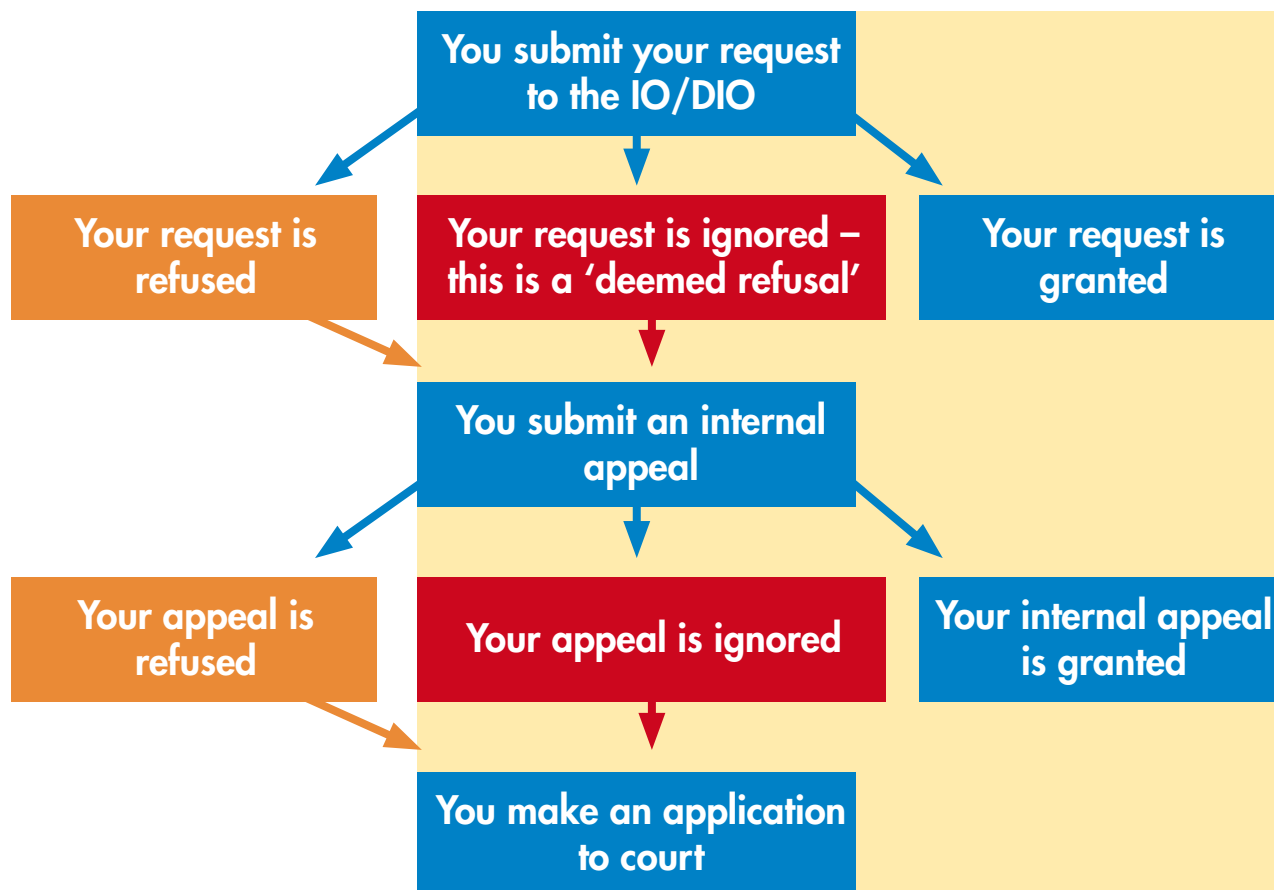
INTRODUCING RECOURSE AND REDRESS

Recourse and redress are essential parts of PAIA learning. Recourse and redress are terms that simply refer to what you can do in a situation to make it better. In our context this would mean the actions you could take when information or deputy information officers have not been fulfilling their obligations. After you have submitted your request you may be granted access and then the process will stop there. However, there is the possibility that your request may be refused or even ignored. If you are not happy with these results the process doesn't need to end there. There is the option for you to submit an internal appeal.

Recourse, n: An act or the action of resorting or turning to (also *unto*) a person or thing for help, advice, protection, etc.

Redress, n: The action of redressing; correction, reparation, or amendment *of* a situation, a grievance, etc.

This diagram shows the pathways for recourse and redress issues. In the diagram below, we are now following the orange boxes relating to an explicit refusal:



As you can see in the diagram, the Act therefore requires you to exhaust the internal remedies available to you with a public body before you can make an application to court. In other words, you have to submit an internal appeal to a public body before going to court – it is not a choice. However, it is very important to remember before moving on, that you can only submit an internal appeal to a public body. There is no such procedure in place for a private body, which is confirmed by sections 74 to 77 of the Act. Therefore, if you are unhappy about the decision on your request to a private body, you have to go straight to court – there is no provision in the Act to make an internal appeal.

Note also that, from the day of the refusal, you have 60 days to file an internal appeal. From the day of the refusal of your internal appeal, you then have 180 days in which to make an application to court.

ACTIVITY: REVISING KEY SECTIONS OF PAIA



Before we continue with recourse and redress, let us revise some sections and key concepts from the Act

First, take out your copy of the Act, and highlight and read the following sections:

1. Sections 34 and 56 on third party confidentiality.
2. Sections 46 and 70 on the public interest override.
3. Section 1 and the definition of 'relevant authority'.
4. Sections 27 and 58 on deemed refusals.
5. Sections 78 through 82 on applications to court.

Now, to move us into our next activities, see the plain word explanations of two of these key sections:

Third party confidentiality

Third party confidentiality is just a term that is referring to the need to keep the information a body holds about someone else private from other people. For instance, if you want to see your husband's bank statements the bank will not show these to you because of third party confidentiality: they must respect the fact that they hold these documents for your husband and should not therefore be letting others see them without his permission. You can refer to sections 34 and 63 of the Act to see the exact wording.

The public interest override

This means that, no matter what the record is about, the information officer **MUST** grant your request for access if:

- (a) the disclosure of the record would reveal evidence of—
- i. a substantial contravention of, or failure to comply with, the law; or
 - ii. an imminent and serious public safety and environmental risk; and
- (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

This means an information officer should always apply their mind to a request, even if at first glance it might look like the information could be refused. You can refer to sections 46 and 70 of the Act to see the exact wording.

Relevant authority

The relevant authority is generally the political head of a body, as opposed to the administrative head that you submit your PAIA request to. So, for a national department for example, the political head would be the Minister.

Deemed refusal

A deemed refusal exists where an information officer fails to give you any answer to your request and simply 'ignores' it. The Act tells us that no answer to the request is equivalent to expressly refusing the request.

Court sections

The court sections of the Act deal with the procedural requirements for taking a request on application to court. It should be noted that the previous time to bring your application to court in 30 days, has been changed by a court case which now gives you 180 days to bring your application to court. Further, section 80 in particular gives the court a right to examine the documents you have requested so that they can themselves determine how to treat the records.

When would you appeal?

Considering when you should appeal means that you need to consider what grounds you would be appealing on. What is it about the decision of the information officer and deputy information officer that you do not agree with? This means looking carefully at the reason for which the IO/DIO refused your appeal.

ACTIVITY

EXAMPLE 1: Examining third party confidentiality

There are some requests where an IO/DIO must refuse your request, because it has to do with the personal information of a third party, in terms of section 34 of PAIA.



Let us look at three different situations where an IO/DIO might try and use third party confidentiality as a reason to refuse you documents.

Read the examples below: only one of the situations would contain a reason for a legitimate refusal on the basis of third party confidentiality - can you identify which one it is?

Example a): You are a woman who is getting divorced. You request from the bank your husband's bank statement so that you can see how much money he has.

Example b): You are asking about the number of prisoners released early on bail in 2009, but have not asked for their names or any other identifying factors.

Example c): You are the son of a man who is deceased, but you want to gain access to information on him held by the National Archives of South Africa. You submit your request for his personal information, along with an heir authority form and all necessary attachments.

Heir Authority

If you are an heir of a deceased person, you can still request that person's information if you submit along with your request:

1. A copy of your identity document;
2. An Authority Form explaining that you are the heir of the deceased; and
3. A copy of the deceased's death certificate (a body might accept a death notice if no certificate can be found, but this should be explained in the Form).

After consideration of these examples, discuss the questions below:

1. In example (b) the IO should not have refused the request on the basis of third party confidentiality – why is this?
2. In example (c) the IO should not have refused the request either – without referencing any specific section, why is this?
3. In example (a), a refusal of the request for information would be legitimate. What section of PAIA would the information officer of a public body reference here?

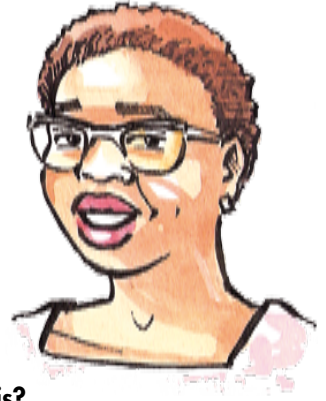
ANSWERS:
1. Because you have expressly asked for the personal information to be left out and the IO can therefore sever such information from the record if it does exist in terms of sections 28 or 59.
2. Because she is an heir requester.
3. Section 34.

TIP: Take careful note of how you word your request so that you can reduce your risk of getting a refusal on the grounds listed in PAIA. For example, if you make a note in the request that you are specifically excluding personal information from what you are asking for, then an information officer will not be able to refuse the request on the grounds that it contains a third party's confidential details.

ACTIVITY

EXAMPLE 2: Examining the public interest override

Another example of where internal appeals are useful are where the IO/DIO has refused you access to a document, but has failed to consider the public interest override.



Let us look at three different situations where the public interest override might be a necessary consideration for the IO or DIO when considering your request. Read the examples below: only one of the situations would contain a reason for a legitimate refusal even after considering the public interest override - can you identify which one it is?

Example a): You ask for details about the emissions coming from a factory owned by the Department of Trade and Industry which you believe to be causing illness in the surrounding community. Access is then refused on the ground that the factory says it would constitute the disclosure of commercial secrets in terms of section 42 of PAIA.

Example b): You ask for a list of the names of South Africa's secret service agents for overseas operations from the Department of International Affairs and Cooperation, because you are interested for an article you are writing on the secret service. Access is then refused because the department says that it would prejudice the defence of the Republic and the safety of third persons in terms of sections 38 and 41 of PAIA.

Example c): You ask for a policy document from the Department of Home Affairs about whether or not citizenship has been granted to a known terrorist, in spite of the fact he does not fulfil the known requirements for citizenship. They refuse the request on the basis of section 34, because it is information about a third party.

After consideration of these examples, discuss the questions below:

1. In example (a) the IO should have considered the request in light of the public interest override – why is this?
2. What is it about the request example (b) that makes section 46 not applicable in this case?
3. In example (c), it appears clear there is a substantial contravention of law. However, there is one more thing you must show for the public interest override to apply – what is this?

ANSWERS:

1. In section 46 the public interest override expressly says a record should be disclosed if it would reveal an imminent and serious public safety or environmental risk
2. It would appear that the public safety risk does not outweigh the risk to the individual.
3. You must also show that the public interest in the disclosure outweighs the harm contemplated in the provision in question (in this case, section 34, third party confidentiality). 4. It can fall under 46(a)(i) or 46(a)(ii). However, even if it falls under one of those, it has to still also fulfil the requirement under section 46(b).

TIP: you might notice that, when trying to use the public interest override, you spend a bit of attention considering why you want the information. You should pay careful attention to the multiple requirements of sections 46 and 70.

Who should you appeal to?

Although you submit a request to an information officer or deputy information officer, this is not the person that you send an internal appeal to. Section 74 of PAIA says that we must submit our internal appeal to the 'relevant authority'. The relevant authority is described in the definitions section. This section tells us that, generally, the person to submit an internal appeal to with a national department is to that Minister, with a provincial department to that Member of the Executive Council, or with a municipality to that Mayor or Speaker. Therefore, while you originally submit your request to the administrative head of an entity, you should send your internal appeal in regard to your request to the political head. For further information, turn back to pages 12 – 13 to the diagram on structures of government to assist you.

These persons can delegate their responsibility, but it is difficult to know whether or not this has been done – rather, therefore, submit to the Minister (or other relevant person in terms of the Act) and then it will be their responsibility to send it to the correct person.

When you submit the internal appeal, you should remember to copy in the original information officer and deputy information officer to prevent delays in receiving an answer.



How do you appeal: Form B and the writing of a supplement

When you wish to submit an appeal you must list all the reasons why you do not agree with the response to your PAIA request. This list of reasons informs what we call an appeal supplement. The appeal supplement gives the relevant authority (the political head) as much information as possible. Therefore you should also include an outline of everything that has happened in the run-up to the internal appeal.

In order to make your appeal, you follow a simple process:

1. You complete a 'Form B'. Refer to Appendix B.
2. You complete an 'appeal supplement' to go along with your Form B on your own piece of paper. The **appeal supplement** gives you more room than in the form to give a full explanation as to why you are appealing. You can again refer to your PAIA Resource Kit to see how this is done. In completing this supplement you should:
 - a. Refer to specific sections of PAIA as a basis for why you are appealing; and
 - b. Cross-check the reasons for refusing your request given by the IO/DIO against the information that must be given, must not be given and may be given that was outlined earlier at pages 25 – 28.

Example of a supplement supporting an internal appeal

Using one of the examples we looked at above, here is what an internal supplement could look like in the situation where you were refused access to records about emissions from a Department of Trade and Industry owned factory which were refused, but you think the public interest override should apply.

GROUNDS FOR INTERNAL APPEAL

1. The appellants are the South African History Archive (SAHA) and Khulumani Support Group (KSG).
2. This internal appeal is directed to the Minister of Trade and Industry. The Minister is the relevant authority in terms of section 74 of the Promotion of Access to Information Act (PAIA) to decide an internal appeal against the information officer of the Department of Trade and Industry.
3. On 3 September the appellants made a formal request in terms of PAIA to the Department of Trade and Industry. The request was for "records relating to the amount of emissions of dangerous gasses, or environment-harming emissions, being released from the factory on ERF 73642 which resides alongside Alexandria, Johannesburg, as well as policy documents outlining the steps being taken to protect the surrounding communities from health hazards". A copy of this request is attached to this appeal and marked as appendix A.
4. In a letter dated 9 September the Department of Trade and Industries information officer, wrote to the appellants to inform them that the request had been received. A copy of this letter is annexed to the appeal and marked appendix B.
5. In a letter dated 6 October, the appellants wrote to the department to inform them that thirty days had passed since the request had been submitted, but no notice had yet been received as to whether or not access had been granted. A copy of this letter is annexed to the appeal and marked appendix C.
6. In a letter dated 15 October, wrote to the appellants to advise that its request had been refused in terms of section 42 of PAIA (this sections concerns the discretionary power of an information officer to refuse records on the grounds that they contain information about the economic interests and financial welfare of the Republic, or the commercial activities of public bodies). A copy of this letter is annexed to this appeal and marked as appendix D.
7. The appellant refutes this ground for refusal and submits the appeal to the Minister.

8. The appellant contends that section 42 of PAIA is not a valid basis for refusing its requests, because the section cannot stand in the face of the public interest override contained in section 46.
9. Section 46 states that an information officer must disclose information when the disclosure would reveal evidence of an imminent and serious public safety or environmental risk.
10. The appellant contends that the emissions from the factory are very clearly linked to increased health risks which the surrounding community are experiencing. In support of this the appellant consulted a Dr Fred Godo, who works in the area, and whose professional opinion is that the increased diagnoses of asthma and lung-related illnesses he has seen in the area over the past two years, is directly related to increased air pollution. In support of this, see a copy of his sworn affidavit attached to this appeal as appendix E.
11. The appellant contends that this refusal to provide access to information is in direct contrast to the spirit of openness and transparency which should underscore all the responsibilities of governmental departments. So too, the refusal directly violates the communities constitutional rights to health and environment which are deserving of protection and consideration by the Department of Trade and Industry.
12. In short, the decision by the information officer of the Department of Trade and Industry to refuse the appellant's request for access to records in terms of PAIA is inconsistent with the objects of the Act.
13. The Minister should accordingly order that SAHA and the Khulumani Support Group be given access to the information requested pursuant to section 77(2) of PAIA, which empowers the Minister to substitute the information officer's decision with a new decision inconsideration of our appeal.

ACTIVITY



Let us carefully consider the letter above and then answer the following questions:

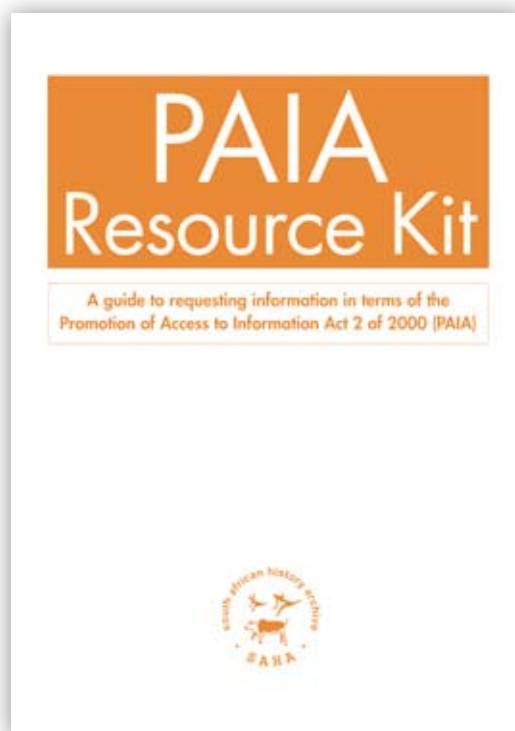
- i. What website could you go to to find the contact details of the Minister as seen in paragraph 2?
- ii. What reasons can you think of for attaching the request as an appendix, as seen in paragraph 3?
- iii. What other section, beyond section 46, also contains a public interest override, but for private requests?

Appendix, meaning: An addition that is added at the end of a large document. For example, in this guide, blank forms etc, have been added to the end as appendices.



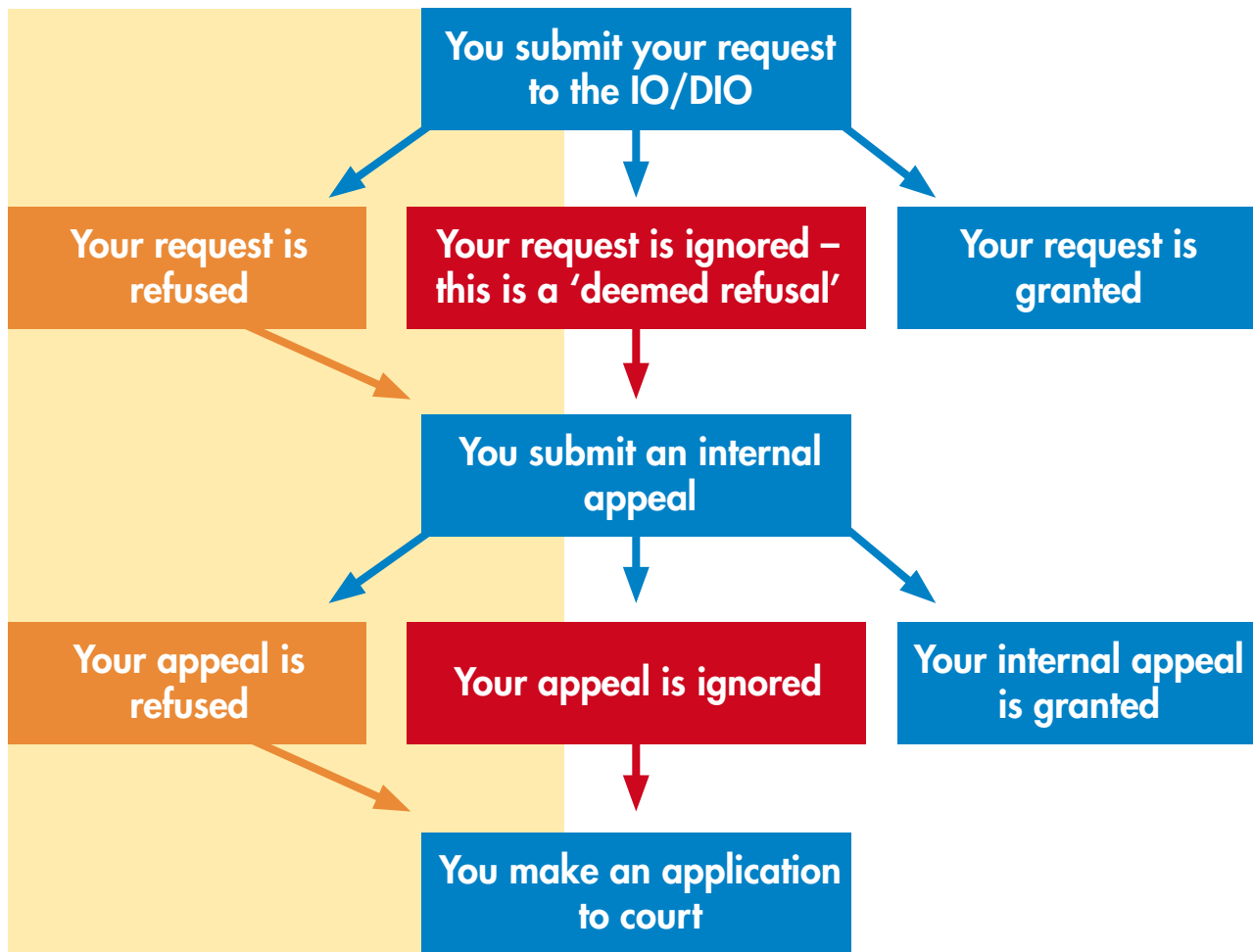
ANSWERS:
i. The Government Communications and Information Systems website at www.gcis.gov.za in their contact directory (except also the website for the relevant department).
ii. The Appendices help give a clear picture of what happened before, when the relevant authority was not yet involved, so that they can make a proper decision on the basis of all the relevant information.
iii. Section 70.

This example demonstrates that you should include as much relevant information as possible. You can also, by referring to the PAIA Resource Kit from pages 31-35, see a nice step-by-step example which clearly explains the type of wording you can use in your internal appeal as well.



EXAMINING A DEEMED REFUSAL

In the diagram below, we are now following the red boxes relating to a deemed refusal:



It would be suitable to submit an internal appeal also in the situation of a deemed refusal. Sections 27 and 58 of PAIA tell us that if the relevant IO fails to give the decision on a request for access to the requester concerned within the period contemplated by the Act, the IO is regarded as having refused the request. So, in this situation you have asked for information, but simply received no response at all. An internal appeal is allowed as a response to no answer to a request, as the deemed refusal is seen as being equivalent to an unjustifiable refusal of your request.

A CASE STUDY:

How Recourse and Redress assisted the South African History Archive

Exhausting the internal remedies of a public body does sometimes result in release of the records without having to revert to court applications, which is why it is so essential to do it properly. SAHA has worked for many years on transitional justice issues, particularly trying to maximise truth recovery from information uncovered during the Truth and Reconciliation Commission (TRC). When the TRC completed its work, all of its records were transferred to the Department of Justice and Constitutional Development (DOJ). SAHA had discovered that, within the DOJ's possession was a comprehensive database of the names of all the persons who had been victims of apartheid crimes, with significant details about how and when such violations had occurred. SAHA, on the advice of many of its partners in the PAIA Civil Society Network, decided that this kind of information would be significant in future advocacy work concerning victim support.

On 30 March 2009 SAHA submitted a request to the DOJ for an electronic copy of the TRC Victims Database. SAHA expressly acknowledged that details of victim's personal names should be obscured so as not to violate the Act provisions on third party confidentiality.

On 04 May 2009 the DOJ took a 30 day extension. However, on 10 June 2009 SAHA received an express refusal of the request for information as the DOJ stated any release would result in a breach of third party confidentiality. This was in spite of the fact that SAHA had consulted with the designer of the database who had expressly told SAHA that the database could be released with personal information removed.

On 29 June 2009 SAHA submitted an internal appeal to the Minister of the DOJ against the refusal. However, it had to be resubmitted on 23 July 2009 when the DOJ stated they had not yet received it.

After a consistent and organised utilisation of the PAIA request process, SAHA was rewarded on 28 August 2009 when the Minister overturned the deputy information officer's decision and released the documents in full. It is hoped these documents will serve to better aid advocacy around the rights of victims of apartheid, many of whom have still seen no betterment of their circumstances since 1994.

Court: The final step

Sections 78 to 82 of PAIA make allowances for you to go to court as a final resort, if you cannot resolve your request through the internal appeal process. This is, however, a costly and slow process and you will be required to seek legal assistance. In such circumstances, it would be best to approach one of the civil society organisations mentioned in chapter 1 for more help.

You must make your application to court within **180 days** after the decision is made which you are contesting. You can go to Court to challenge if you disagree with the fact your request has been denied (even if only in part):

- challenge the fact they have given you the documentation in the wrong format;
- challenge possible fees; or
- challenge the decision of an IO or DIO to not permit your late lodging of your appeal.

EXAMPLES OF PAIA REQUESTS THAT HAVE GONE TO COURT

Mittalsteel South Africa Limited v Hlatshwayo [2007]1 All SA1(SCA)

Hlatshwayo was a student who was researching about factory regimes in the sixties and seventies for his thesis. He therefore attempted in 2002 to get from Mittalsteel a number of documents which would help him in uncovering how Iscor (the largest steel producer in South Africa) had been conducting their labour relations during that time. Mittalsteel refused him this information, claiming that they were not a public body and therefore the proper procedures had not been followed to get the information.

This case was finally decided in the Supreme Court of Appeal. The court held that 'public body' should be given a broad meaning. A 'public body' will therefore be said to exist where the body in question performs a public function. The release of the information meant that Hlatshwayo was able to give a more detailed historical scope for his thesis.

Earthlife Africa v Eskom Holdings Ltd [2006] 2 All SA632(W)

This case, heard in the Gauteng High Court, concerned an environmental organisation called Earthlife, and its attempt to use PAIA to access information about the electricity provider's Pebble Bed Modular Reactor and its possible effects on the environment. Eskom had been considering using this form of reactor as a method for generating more power.

Eskom refused the information on the basis that the records constituted a 'protected disclosure' as per PAIA. However, Earthlife lost the case when the court decided in 2006 that the requested information did constitute a protected disclosure, even though these exemptions should be interpreted narrowly by a court. This proved detrimental to Earthlife's advocacy on the issue, as they had been hoping to show with the information that government had not done the necessary amount of research into the Pebble Bed Modular Reactor, in spite of pumping large amount of public money into its development.

Transnet Ltd and Another v SA Metal & Machinery Co(PTY)Ltd 2006 (6) SA285 CSCA

This case was finally heard in the Supreme Court of Appeal. The SA Metal & Machinery Co. had applied for a tender with a subsidiary of Transnet in 2001, which was awarded to another company. SA Metal then requested the other company's tender documents, which was refused because Transnet claimed that such information contained information comprising trade secrets or financial, commercial, scientific or technical information belonging to Inter Waste and could therefore not be released under PAIA.

The court held expressly that tender information could be accessed through PAIA and that information relating prices did not constitute information that would prejudice a third party's commercial interest, largely because the nature of this kind of transaction which should remain transparent in the public interest. The release of the information then meant that SA Metal could adjust the tender offers to be more competitive in the future.

Trustees, Biowatch Trust v Registrar: Genetic Resources & Others 2005 (4) SA 111 (T)

This case was heard in the Gauteng High Court and concerned an environmental organisation's attempts to use access to information laws to uncover information relating to the use of genetically-modified organisms in South Africa. They were concerned about the possible health risks for citizens.

The requests were filed in 2000, and were essentially ignored by Monsanto (who were the body that held the documents). Although there were some technical discussions about the retrospectivity of the Act, the court ordered Monsanto to release the majority of the documents. However, in an interesting twist to the case, although they were largely successful the court ordered a hefty cost order against Biowatch that would have essentially meant Biowatch would have had to shut its doors – this cost order (and only the cost order) was appealed to the Constitutional Court and was overturned.

Public Service Accountability Monitor and Another v Director-General, Office of the Premier, Eastern Cape Provincial Government and Another (6047/07) [2008] ZAECHC 20 (19 May 2008)

This case was heard in the Eastern Cape High Court and concerned a PAIA request by a nongovernmental organisation called the Public Service Accountability Monitor (PSAM) to gain access to documents from the Eastern Cape Provincial Government for the 2006 Rapid Assessment Survey of 12 200 households which collated residents' perceptions of government performance and service delivery.

The information was refused as the Eastern Cape Provincial Government considered it an internal planning document. However, the court held that the release of documents would in no way interfere with government's deliberative process. The documents were therefore released to PSAM, who have been able to use it to further their work in monitoring government service delivery.

CONCLUSION

Information is the “oxygen of a democracy”. The right to access information held by public and private bodies is an essential right for South African citizens in and of itself, but also as a way of making all your other fundamental human rights a reality. The Promotion of Access to Information Act 2 of 2000 (PAIA) entrenches the right to access information in South Africa and outlines all that we need to know about how to exercise our right. The Act is there to protect our right to access to information. The Act also tells us that, if we wish to use this right, we must use the correct procedure – which means using the right forms. Because it is a largely a paper process, you need to develop the skills of organising and monitoring large amounts of information. Good records management is therefore an essential element of learning about PAIA, but is easily mastered. Even if you are not successful in your first attempt, the Act provides you with recourse and redress mechanisms that try to ensure that your request is always properly considered. The Act is an essential tool for most advocacy goals, and it is hoped that FOIP’s experiences will serve to assist other individuals and organisations to explore the boundaries of this vital piece of law.

APPENDIX A

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(section 18 (1) of the Promotion of Access to Information Act, 2000

(Act No. 2 of 2000)

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number: _____

Request received by: _____

(state rank, name and surname of information officer/deputy information officer)

on _____ (date) at _____ (place).

Request fee (if any): R _____

Deposit fee (if any): R _____

Access fee: R _____

SIGNATURE OF INFORMATION
OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The information officer/deputy information officer: _____

B. Particulars of person requesting access to the record

(a) The particulars of the person who requests access to the record must be recorded below.

(b) Furnish an address and/or fax number in the Republic to which information must be sent.

(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: _____

Identity/passport number: _____

Postal address: _____

Fax number: _____

Telephone number: _____

E-mail address: _____

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: _____

Identity/passport number: _____

D. Particulars of record

*(a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
(b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios (pages).***

1. Description of record or relevant part of the record: _____

2. Reference number, if available: _____

3. Any further particulars of record: _____

E. Fees

*(a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
(b) You will be notified of the amount required to be paid as the request fee.
(c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
(d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.*

Reason for exemption from payment of fees: _____

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

FORM A (PAGE 3 OF 4)

Disability: _____ _____	Form in which record is required: _____ _____
----------------------------	--

Mark the appropriate box with an "X".

NOTES:

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
- (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in printed form:

Copy of record*	Inspection of record
-----------------	----------------------

2. If record consists of visual images:

(This includes photographs, slides, video recordings, computer-generated images, sketches, etc.).

View the images	Copy of the images*	Transcription of the images*
-----------------	---------------------	------------------------------

3. If record consists of recorded words or information which can be reproduced in sound:

Listen to the soundtrack (audio cassette)	Transcription of the soundtrack* (written or printed document)
--	---

4. If record is held on computer or in an electronic or machine-readable form:

Printed copy of the record*	Printed copy derived from the record*	Copy in computer readable form* (stiffy or compact disc)
--------------------------------	--	--

* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES

NO

A postal fee is payable.

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record?

FORM A (PAGE 4 OF 4)

How would you prefer to be informed of the decision regarding your request for access to the record? _____

Signed at _____ this _____ day of _____ .

SIGNATURE OF REQUESTER

APPENDIX B

FORM B

NOTICE OF INTERNAL APPEAL

(Section 75 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 8]

Reference number(s): _____

A. Particulars of public body

The information officer/deputy information officer: _____

B. Particulars of requester/third party who lodges the Internal Appeal

- (a) The particulars of the person who lodge the Internal Appeal must be given below.*
(b) Proof of the capacity in which appeal is lodged, if applicable, must be attached.
(c) If the appellant is a third person and not the person who originally requested the information, the particulars of the requester must be given at C below.

Full names and surname: _____

Identity/passport number: _____

Postal address: _____

Fax number: _____

Telephone number: _____

E-mail address: _____

Capacity in which an Internal Appeal on behalf of another person is lodged: _____

C. Particulars of requester

This section must be completed ONLY if a third party (other than the requester) lodges the Internal Appeal.

Full names and surname: _____

Identity/passport number: _____

D. The decision against which the Internal Appeal is lodged

Mark the decision against which the Internal Appeal is lodged with an X in the appropriate box:

	Refusal of request for access
	Decision regarding fees prescribed in terms of section 22 of the Act
	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
	Decision to grant request for access

E. Grounds for appeal

If the provided space is inadequate, please continue on a separate folio (page) and attach it to this form. You must sign all the additional folios (pages).

State the grounds on which the Internal Appeal is based:

GROUND FOR INTERNAL APPEAL ATTACHED

F. Notice of decision on appeal

You will be notified in writing of the decision of your Internal Appeal. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

State the manner: _____

Particulars of manner: _____

Signed at _____ this _____ day of _____ .

SIGNATURE OF APPELLANT

FOR DEPARTMENTAL USE

OFFICIAL RECORD OF INTERNAL APPEAL:

Appeal received on _____ (date) by _____
(state rank, name and surname of information officer/deputy information officer). Appeal accompanied by the reasons for the information officer's/deputy information officer's decision and, where applicable, the particulars of any third party to whom or which the record relates, submitted by the information officer/deputy information officer on _____ (date) to the relevant authority.

OUTCOME OF APPEAL:

DECISION OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER CONFIRMED/
NEW DECISION SUBSTITUTED

RELEVANT AUTHORITY

RELEVANT AUTHORITY

RECEIVED BY THE INFORMATION OFFICER/DEPUTY INFORMATION OFFICER FROM THE
RELEVANT AUTHORITY ON _____ (date)

APPENDIX C

FORM C

REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

(Section 53 (1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

[Regulation 10]

A. Particulars of private body

The Head: _____

B. Particulars of person requesting access to the record

- (a) The particulars of the person who requests access to the record must be recorded below.
(b) Furnish an address and/or fax number in the Republic to which information must be sent.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: _____

Identity/passport number: _____

Postal address: _____

Fax number: _____

Telephone number: _____

E-mail address: _____

Capacity in which request is made, when made on behalf of another person: _____

C. Particulars of person on whose behalf request is made

This section must be completed only if a request for information is made on behalf of another person.

Full names and surname: _____

Identity/passport number: _____

D. Particulars of record

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
(b) If the provided space is inadequate please continue on a separate folio (page) and attach it to this form. **The requester must sign all the additional folios.**

1. Description of record or relevant part of the record: _____

2. Reference number, if available: _____

3. Any further particulars of record: _____

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.

FORM C (PAGE 2 OF 3)

- (b) You will be notified of the amount required to be paid as the request fee.
 (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
 (d) If you qualify for exemption of the payment of any fee, please state the reason thereof.

Reason for exemption from payment of fees: _____

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability:

Form in which record is required:

Mark the appropriate box with an "X".

NOTES:

- (a) Your indication as to the required form of access depends on the form in which the record is available.
 (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
 (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

1. If the record is in written or printed form:

	Copy of record*		Inspection of record
--	-----------------	--	----------------------

2. If record consists of visual images:

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc).

	View the images		Copy of the images*		Transcription of the images*
--	-----------------	--	---------------------	--	------------------------------

3. If record consists of recorded words or information which can be reproduced in sound:

	Listen to the soundtrack (audio cassette)		Transcription of the soundtrack* (written or printed document)
--	--	--	---

4. If record is held on computer or in an electronic or machine – readable form:

	Printed copy of the record*		Printed copy of derived from the record*		Copy in computer readable form* (stiffy or compact disc)
--	-----------------------------	--	--	--	--

* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES NO

A postal fee is payable.

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available

In which language would you prefer the record?

G. Particulars of right to be exercised or protected

*If the space provided is inadequate, please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.***

1. Indicate which right is to be exercised or protected: _____

The right of access to information and...

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Please write and call.

Signed at _____ this _____ day of _____ .

SIGNATURE OF REQUESTER

APPENDIX D

FINANCIAL PROCESS: REQUEST FEES - DECODED

Name of Public/private body	Procedure for Payment of request fees
DAC – Department of Arts and Culture	Same as NAR: Pay request fee when collecting copy of records (will also need to pay access fee at this stage). Judith Jansen, DAC, judith.jansen@dac.gov.za
DCS – Department of Correctional Services	Submit PAIA request. DCS will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DCS with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DEA – Department of Environmental Affairs and Tourism	Submit PAIA request. DEA will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DEA with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DFA – Department of Foreign Affairs	Submit cheque for R35 request fee when submitting PAIA request. Make a photocopy of the cheque and correspondence for your records.
DHA – Department of Home Affairs	DHA will send you correspondence requesting that you deposit R35 request fee directly into DHA's ABSA Account. They will provide you with a reference number which must be used as the reference number when depositing money into their account, using a Deposit Slip, available at ABSA Banks. Make a copy of the Deposit slip and fax this to DHA along with a covering letter and a copy of the letter to which you are responding. Refer to your PAIA request reference number (they will also provide their reference number - which you should also refer to in correspondence).
DHS – Department of Housing	Submit PAIA request to DOH, they will then ask for request fee. This can be paid either by sending a cheque or by postal order. Make a copy of cheque/postal order for your records. Susan Neething, PAIA Unit, DHS - 012 421 1721
DLA – Department of Land Affairs	Submit PAIA request. DLA will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DLA with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DME – Department of Minerals and Energy	Submit PAIA request. DME will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DME with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DOA – Department of Agriculture	Submit PAIA request. DOA will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DOA with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DOC – Department of Communications	Submit PAIA request. DOC will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DOC with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DOD – Department of Defence	Send cheque and original form A (and attachments) in the mail (preferably registered post). Make a photocopy of the cheque, the completed form A & attachments for your records. Follow up with phone call immediately to advise that you are submitting a PAIA request.
DOE – Department of Education	Submit PAIA request. DOE will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DOE with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DOH – Department of Health	Submit PAIA request. DOH will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DOH with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DOJ – Department of Justice and Constitutional Development	Pay request fee by purchasing Revenue Stamps at the Post Office and sending to DOJ in the postal mail. Provide DOJ with a letter and the Revenue Stamps. Photocopy the letter and revenue stamps before you send them in the mail. Ensure you refer to PAIA request reference number in all correspondence.
DOL – Department of Labour - 012 309 4345 to speak with PA to A/DG (Mr L Kettledas)	Send cheque and original form A (and attachments) in the mail (preferably registered post). Make a photocopy of the cheque, the completed form A & attachments for your records. Follow up with phone call immediately to advise that you are submitting a PAIA request.

Name of Public/private body	Procedure for Payment of request fees
DOS – Department of Social Development	Submit PAIA request. DSD will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DSD with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DOT – Department of Transport	Submit PAIA request. DOT will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DOT with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DPE – Department of Public Enterprises	Send cheque and original form A (and attachments) in the mail (preferably registered post). Make a photocopy of the cheque, the completed form A & attachments for your records. Follow up with phone call immediately to advise DIO that you are submitting a PAIA request. For further details re: payment contact Mr Phahlani - 012 431 1090. DPE also accept payment in cash.
DPLG – Department of Provincial and Local Government	Submit PAIA request. DPLG will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DPLG with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DPW – Department of Public Works	Submit PAIA request. DPW will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DPW with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DST – Department of Science and Technology	Submit PAIA request. DST will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DST with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
DWAF – Department of Water Affairs and Forestry	Submit PAIA request. DWAF will contact you regarding payment of request fee. You will need to respond by paying request fee and providing DWAF with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
NAR – National Archives of South Africa	Pay request fee when collecting copy of records (will also need to pay access fee at this stage).
NAT – National Treasury	Send cheque and original form A (and attachments) in the mail (preferably registered post). Make a photocopy of the cheque, the completed form A & attachments for your records. Follow up with phone call immediately to advise that you are submitting a PAIA request.
NIA – National Intelligence Agency	NIA prefers for you to call first to advise that you are submitting a PAIA request. Most of NIA records are on Microfilm.
PRE – Department of the Presidency	Send cheque and original form A (and attachments) in the mail (preferably registered post). Make a photocopy of the cheque, the completed form A & attachments for your records. Follow up with phone call immediately to advise that you are submitting a PAIA request.
PSA – Department of Public Service and Administration	Submit PAIA request. PSA will contact you regarding payment of request fee. You will need to respond by paying request fee and providing PSA with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records. - Donnie Maree, Legal Services - 012 336 1218
PSC – Public Service Commission	Submit PAIA request. PSC will contact you regarding payment of request fee. You will need to respond by paying request fee and providing PSC with a copy of the proof of payment. Keep a copy of the letter and proof of payment for your records.
SAPS – South African Police Service	Submit PAIA request (can call to check that Request was received). SAPS will then provide you with an invoice for the request fee. Pay by cash at a SAPS Police Station. They will issue you a receipt - this is your proof of payment. Fax proof of payment together with Cover Letter which details the PAIA request reference number to SAPS.
SASS – South African Secret Service	Send cheque and original form A (and attachments) in the mail (preferably registered post). Make a photocopy of the cheque, the completed form A & attachments for your records. Follow up with phone call immediately to advise that you are submitting a PAIA request.

*NB: Each government department may change their procedure for payment of request fees. In order to ensure that you are cooperating with their standard procedure it is advisable to phone and ask the department Directly.

- **All Private Bodies.** Contact the relevant individual dealing with PAIA requests and ask them directly for their procedure for payment of request fees.

APPENDIX E

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18 (1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 2]

FOR DEPARTMENTAL USE

Reference number: _____

Request received by: _____

(state rank, name and surname of information officer/deputy information officer)

on _____ (date) at _____ (place).

Request fee (if any): R _____

Deposit fee (if any): R _____

Access fee: R _____

SIGNATURE OF INFORMATION
OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The information officer/deputy information officer: Ms Marilyn Raswiswi, Deputy
information officer, Department of Justice and Constitutional Development, Private
Bag X8, PRETORIA 0001

B. Particulars of person requesting access to the record

- (a) The particulars of the person who requests access to the record must be recorded below.
(b) Furnish an address and/or fax number in the Republic to which information must be sent.
(c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: CHARLOTTE YOUNG

Identity/passport number: 730012713 (British)

Postal address: PO BOX 31719, Braamfontein, 2017

Fax number: (011) 717 1964

Telephone number: (011) 717 1941

E-mail address: foip@saha.org.za

EXAMPLE OF A COMPLETED FORM A (PAGE 2 OF 4)

AND

Full names and surname: FREEDOM NGUBONDE

Identity/passport number: 7508015478089

Postal address: PO BOX 31719, Braamfontein, 2017

Fax number: (011) 403 0878

Telephone number: (011) 339 5031

E-mail address: freedom@khulumani.net

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: _____

Identity/passport number: _____

D. Particulars of record

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
- (b) If the provided space is inadequate please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios (pages).**

1. Description of record or relevant part of the record: Records concerning the work of the Truth and Reconciliation Commission (TRC) Unit, including:

(i) Working plans regarding the work of the TRC Unit;

(ii) Records concerning victims and survivors from the apartheid-era that the TRC Unit has assisted to date, detailing:

a) the number of victims and survivors; and

b) the town and/or province where they reside.

NB: In view of section 34 we request that you do not disclose details that would violate third party confidentiality. Please provide a record only of (a) the number of victims and survivors and (b) the town and/or province where they reside.

(iii) Records detailing the annual budget allocated to the TRC Unit from its inception to the current financial year (2008).

(iv) Annual reports of the TRC Unit from its inception to 2008.

2. Reference number, if available: _____

3. Any further particulars of record: _____

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees: _____

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: _____ _____	Form in which record is required: _____ _____
----------------------------	--

Mark the appropriate box with an "X".

NOTES:

- (a) Your indication as to the required form of access depends on the form in which the record is available.
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.
- (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

EXAMPLE OF A COMPLETED FORM A (PAGE 3 OF 4)

1. If the record is in printed form:

X	Copy of record*		Inspection of record
----------	-----------------	--	----------------------

2. If record consists of visual images:

(This includes photographs, slides, video recordings, computer-generated images, sketches, etc.).

	View the images	X	Copy of the images*		Transcription of the images*
--	-----------------	----------	---------------------	--	------------------------------

3. If record consists of recorded words or information which can be reproduced in sound:

	Listen to the soundtrack (audio cassette)	X	Transcription of the soundtrack* (written or printed document)
--	--	----------	---

4. If record is held on computer or in an electronic or machine-readable form:

	Printed copy of the record*		Printed copy derived from the record*	X	Copy in computer readable form* (stiffy or compact disc)
--	-----------------------------	--	---------------------------------------	----------	--

* If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?

YES

NO

X

A postal fee is payable.

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record? *English*

How would you prefer to be informed of the decision regarding your request for access to the record? *Please write and phone*

Signed at _____ this _____ day of _____ .

SIGNATURE OF REQUESTER

APPENDIX F

PAIA REQUEST OVERVIEW

Request Number:

Who submitted this:	
Date of submission of original submission:	
Which information officer was it submitted to:	
information officer contact details:	
What is the subject of the request:	
Was it to a public or private body:	
When a response is due:	
Was the appeal transferred and when:	
If transferred, to which information officer:	
What was the response:	
If it was refused, on what grounds was this done:	
Date of submission of appeal:	
Subject of appeal – on what grounds was the appeal by you submitted:	
When a response to the appeal is due:	
Were the records provided: Yes/No/Only in part:	
Where the records are kept:	
Number of pages of record:	
Date file closed:	

NOTES SECTION:

APPENDIX G

PHONE CALL LOG

Request Number: _____

DATE & TIME	YOU	CALLER (CAL)	TELEPHONE NUMBER (TEL)	RESULT OF THE CALL (RES)	NOTES



FORD FOUNDATION

*The Freedom of Information Project: Capacity Building in the Community-based Sector commenced in April 2008.
For further information please contact:*

The South African History Archive's Freedom of Information Programme,
foip@saha.org.za, www.saha.org.za, Tel: 011 717 1941, Fax: 011 717 1964