

PAIA

Case Studies from Civil Society



DVD GUIDE

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HOW TO USE THIS GUIDE

The “PAIA: Case Studies from Civil Society” DVD is an interactive training tool which outlines the key issues around the use of the Promotion of Access to Information Act 2 of 2000 (PAIA) in South Africa. It is hoped that this DVD will be used by organisations and individuals to learn about PAIA and to facilitate the training of others in the use of PAIA.

This guide has been created to suggest how the DVD may be used in training. It is divided into eight segments that mirror the structure of the DVD. Within each segment, a summary of the issues discussed in the relevant section of the DVD is given so that you can see at a glance what segments are relevant at the different points of your training. Within each segment two approaches are suggested for incorporating the DVD into your training.

The first approach is centred on the main ‘theme’ of each segment. This links the DVD to core issues that the participants can relate to; depicting issues they may face in their work or community. There are suggested activities for each insert that can be used to stimulate discussion and debate about the main theme.

This is marked by the use of the activity icon:



The second approach relates the segment directly to SAHA’s **PAIA Workshop Guide** and **PAIA Resource Kit**, which can be used alongside the DVD to assist in PAIA learning. This option focuses on the lessons gathered from the DVD in terms of learning the PAIA ‘legal process’ and explaining this simply with step-by-step help. The activities already contained within those additional resources can then be used to further understanding.

You will know when to refer to these resources when you see the following icons:

WG PAIA Workshop Guide

RK PAIA Resource Kit

SEGMENT 1

The Right to Know

SUMMARY

This segment introduces the right to know as a fundamental human right, contained in Article 19 of the Universal Declaration of Human Rights and enforceable in South Africa under section 32 of the Constitution and the Promotion of Access to Information Act 2 of 2000 (PAIA). The segment also highlights the importance of the right to access information in maintaining a democracy. It considers the veil of secrecy under which South Africa operated during the apartheid era and the need to dispel the myth that secrecy is safer than transparency. Finally, the segment emphasises the role of citizens in giving effect to the right to access information by demanding that information.

THEME – THE BENEFIT OF INFORMATION

This segment is designed to get participants thinking and talking about the importance of their right to access information. Specifically we can discuss:

- the way society may be affected by not having access to information;
- the way society may benefit from having access to information;
- the places people get information; and
- any examples where participants have used information they have gained to assist them.



Break into small groups and discuss stories currently in the news or issues facing your community. As a group, pick a situation which shows how people can be negatively affected by not having information. Now, using this example, select a scribe and take 15 minutes to think about:

- What type of information could help you resolve this problem? Where might you get information from? How could you use that information to benefit you or your community?
- What information have you used to benefit you or your community in the past?
- What problems do you think might occur if governments and companies do not have to share information with the people? Have you seen examples of this?

Then report back to the larger group so that you can share your experiences with the rest of the participants (approximately 3 minutes per group).

LEARNING THE LEGAL PROCESS – THE RIGHT TO INFORMATION IN SOUTH AFRICA

The segment may be used to introduce participants to the legislation which gives South Africans the right to access information:

- Section 32 of the Constitution; and
- PAIA

WG

Consider this segment alongside the **PAIA Workshop Guide, pages 6 and 9**, which discuss the laws on access to information.



Read pages 6 and 9 of the **PAIA Workshop Guide** as a group. Looking at these pages, which discuss section 32 of the Constitution and PAIA, you can see that you can request information from 2 different types of entities. In pairs take 5 minutes to consider:

- What 2 types of entities can you request information from?
- What are the differences in the requirements for requesting information from the 2 types of entities?

SEGMENT 2

Making Power Accountable

SUMMARY

This segment uses the efforts of the Public Service Accountability Monitor (PSAM) in getting access to the Rapid Assessment Survey that was done on behalf of the Eastern Cape Government to show the type of information that can be accessed under the Act and how it can be used to hold government accountable. PSAM is a non-profit organisation focussed on service delivery issues in the health, housing and education sector. In 2005 PSAM learned that the Eastern Cape Government had commissioned a survey to assess the challenges and successes of that province in its delivery in the socio-economic sector. PSAM requested a copy of the survey from the Eastern Cape Government under PAIA. At first the request was denied but PSAM lodged an internal appeal and then went to court to get access to the survey. The survey is now used by PSAM in its everyday work to identify parts of government activity that require civil society intervention.

THEME – PAIA AND ACCOUNTABILITY

Government officials are elected by the people to serve the people and use public funds to do so. It is therefore very important that those officials are held responsible for what they do by members of the public. Many groups can identify with the need to keep government accountable and what happens when power is unchecked. This segment can be used to get participants thinking and talking about abuse of power and the ways that PAIA and other tools can be used to keep government accountable.



As a group consider:

- What examples can you think of in your experiences which have shown how the state abuses power?
- How can you make government accountable through:
 - a) PAIA?
 - b) Seeking help from other organisations (name examples if possible)?
 - c) Expressing your unhappiness in other ways?

These discussions help us to see that PAIA is only one of many different types of tools and strategies that we can use to be active democratic citizens.

LEARNING THE LEGAL PROCESS – HOW TO TURN AN ISSUE INTO A PAIA REQUEST

WG

One of the difficulties often faced by people using PAIA is how to turn an issue they are facing into a PAIA request. The link between an issue and how access to information may help a person to resolve that issue will not always be clear.

Consider this segment alongside the **PAIA Workshop Guide, page 22**. This activity shows participants the practical link between their issue and making a PAIA request. Read through the activity with the group (5 minutes) and then work with the group to turn an issue identified by the group into a PAIA request in the same way (15 minutes).

SEGMENT 3

The Cost of Access

SUMMARY

This segment considers the Constitutional Court decision on how costs should be dealt with in cases where a request for information is in the public interest. Biowatch is a non-profit environmental organisation whose purpose includes watching over the introduction of genetically modified organisms. Before the introduction of PAIA, and on the basis of section 32 of the Constitution, Biowatch requested information from the Department of Agriculture about the introduction of genetically modified organism crops in South Africa. The request for information included information provided to the Department of Agriculture by private companies, including one called Monsanto. When the department refused to release the information to Biowatch it made an application to the court against the state. Monsanto chose to join the court case to protect its interests in the information it had provided to the state. At first the Judge decided that the state should provide Biowatch with most of the information it had requested. However, because some of Biowatch's requests for information had not been very specific, the Judge also decided that the state did not have to pay Biowatch's legal costs (which would usually be what happened when a party was successful against the state) and that Biowatch had to pay the legal costs of Monsanto. Biowatch appealed the costs decisions all the way to the Constitutional Court. There the court found in Biowatch's favour.

THEME – ENFORCING YOUR RIGHT TO INFORMATION

Challenging government can often seem a very difficult task. Many participants will know firsthand the experience of being the 'little person' against government, which can often feel so difficult that you may not believe it is worth trying. The case of Biowatch shows that it is possible for small organisations to take on government and win. This also shows the strength of the right to access information. If information is power, then it is vital that ordinary citizens use information to try and approach the powerful. This segment can be used to get participants thinking and talking about how PAIA makes it possible to enforce your right to access information, even if at first the state ignores you.



If a public body does not respond to your request for access to information, or denies your request, PAIA provides you with two further opportunities to try and make government give you access to that information: an internal appeal and then, if necessary, an application to court. The only option available if a private body does not respond to your request or denies your request is to make an application to court. These options are discussed further in the **PAIA Workshop Guide, page 61**. Thinking about the DVD, as a group, for the next 15 minutes lets discuss:

- If your request for access (in relation to a private body) or your internal appeal (in relation to a public body request) is not successful what challenges might you face in making an application to the court?
- Where might you be able to get help to make the court application?
- What options might be available to you other than going to court?

LEARNING THE LEGAL PROCESS – THE COST OF A PAIA APPLICATION

WG

As a group for the next 15 minutes, consider this segment alongside the **PAIA Workshop Guide, page 33**. This discusses the costs involved with making a PAIA request and associated issues, such as:

- A fee for making a request to a public or private body;
- Access fees associated with getting access to documentation;
- When a person may be exempt from paying fees; and
- How fees need to be paid.

You may also like to discuss fees associated with internal appeals and court applications in the event that the first PAIA request is denied:

- No fee is payable for lodging an internal appeal. However, if an internal appeal is successful, access fees can be charged.
- Despite the costs ruling in the Biowatch case, court litigation can still be expensive. Applicants will need to pay a fee to the court for lodging the appeal and you will need to hire lawyers to help you. Often it will be possible to get a lawyer on a 'pro-bono' basis. This means that if you do not win the case then you do not have to pay any legal fees. The importance of the Biowatch case is that applicants no longer need to worry about the court making them pay the legal costs of another party as long as the litigation is in the public interest. This makes the idea of starting litigation a lot less daunting.

SEGMENT 4

Mining Information

SUMMARY

In this segment Mariette Liefferink, from the Federation for Sustainable Environment, shares her views on the use of PAIA in getting information from the mining sector and using that information to try and solve issues affecting the communities near those mines. In particular Mariette shares the story of her attempt to get compensation for farmers for the pollution of their water supply by mines operated by Goldfields. Mariette explains how she used PAIA to get a copy of the South Deep Mines Environment Management Programme. That document showed that the Department of Environmental Affairs had written to Goldfields to say that the water supply was unfit for irrigation, drinking or watering of cattle due to leaks from the mine. When Mariette asked for compensation from Goldfields on behalf of the farmers, Goldfields decided to get their own independent report on the water source. Even though the independent person that prepared the report for Goldfields agreed with the Department of Environmental Affairs regarding the water pollution, Goldfields refused to accept responsibility for pollution of the water. Instead, Goldfields chose to buy the farmers land from them.

THEME – PAIA AND THE ENVIRONMENTAL SECTOR

This segment is designed to show the link between access to information and the environmental sector. It can be used to get participants who work in the environmental sector or face environmental issues in their communities talking about the ways PAIA could help them in their environmental struggles.



Break into small groups of 3 or 4 for 15 minutes and discuss:

- What environmental issues do you face in your community?
- What type of information might help you in your work?
- Who holds that information?
- How could you use the information to benefit you?
- What lessons can be learned from Mariette's campaign? How would you use those lessons to help you in your work?
- Mariette also emphasises the need to see PAIA as a tool among many in campaigning to achieve your goals. What strategies have you used in the past to assist in tackling environmental issues? What strategies could you use at the same time as making a PAIA request?

Then report back to the larger group so that you can share your experiences with the rest of the participants (approximately 3 minutes per group).

LEARNING THE LEGAL PROCESS - PRIVATE REQUESTS

WG

Consider this segment alongside the **PAIA Workshop Guide, page 9**. This discusses in brief the right to access information from private bodies. Mariette's story is a great example of how PAIA can be used to make requests from private bodies.

RK

As a group, discuss with participants issues they face that relate to private bodies. Once participants have identified an issue, break into pairs for 20 minutes to complete a PAIA request. You can follow the steps on how to complete a 'Form C' in the **PAIA Resource Kit, page 37**.

WG

If the group needs help in working out how to turn their issue into a request, refer to the **PAIA Workshop Guide, page 22**.

SEGMENT 5

For the People?

SUMMARY

The gap between communities and the decision-making process of governments can often seem large. This segment shows how PAIA can help close that gap by giving communities access to decisions made by government and the reasons for those decisions. In 2002 the residents of Thembelihle, an informal settlement, defeated attempts by government to remove them from their homes. Community members then began campaigning for better service delivery in their area, particularly in the area of housing. In 2010 residents of Thembelihle learned through the media that a housing development was being built nearby. There were rumours that members of the Thembelihle community would benefit from the development but government had not talked to the community about this. The community wanted information on the number of people from Thembelihle that would be housed in the new development and the process and criteria for deciding which residents would benefit. With the help of SAHA, the residents of Thembelihle made a successful request to the Johannesburg City Government for information on the new development.

THEME – PAIA AND HOUSING

This segment is designed to show the link between access to information and housing issues. It can be used to get participants who work in the housing sector or face housing issues in their communities talking about the ways in which using PAIA could assist them in their struggles.



Break into small groups of 3 or 4 for 15 minutes and discuss:

- What housing issues do you face in your community?
- What type of information might help you in dealing with those issues?
- Who holds that information?
- How did having access to information benefit Thembelihle residents?
- How could you use information to benefit you and your community?

Then report back to the larger group so that you can share your experiences with the rest of the participants (approximately 3 minutes per group).

LEARNING THE LEGAL PROCESS – MAKING A PAIA REQUEST

RK

Take 5 minutes to discuss, as a group, government decisions which have affected the communities of the participants. Once participants have identified an issue, break into pairs for 20 minutes to complete a PAIA request. You can follow the steps on how to complete a 'Form A' in the **PAIA Resource Kit, page 17**.

WG

If the group needs help in working out how to turn their issue into a request, see further the **PAIA Workshop Guide, page 22**.

SEGMENT 6

Speaking Out

SUMMARY

In this segment members of Khulumani talk about the benefits of using PAIA. In particular, they discuss how the use of PAIA can increase the opportunities for communities to communicate with government and affect the environment they live in. The segment highlights the need to be persistent in chasing responses to requests for information and in continuing to communicate with government once information has been received. Zdena Mtetwa highlights that often people within public bodies that receive your requests may not know how they have to deal with your request and you may need to phone or write to them regularly to make sure your request is being processed. Zdena also speaks about the documents Khulumani got from the Department of Justice about the Truth and Reconciliation Commission, which were received only after an internal review was sent to the minister.

THEME – PAIA AND SERVICE DELIVERY

This segment is designed to show the link between access to information and service delivery issues. It can be used to get participants who work in the service delivery sector or face service delivery issues in their communities talking about the ways in which using PAIA could help them in their struggles.



Break into small groups of 3 or 4 for 15 minutes and discuss:

- What service delivery issues do you face in your community?
- What type of information might help you in dealing with those issues?
- Who holds that information?
- How did having access to information benefit Bekkersdal residents?
- How could you use information to benefit you and your community?

Then report back to the larger group so that you can share your experiences with the rest of the participants (approximately 3 minutes per group).

LEARNING THE LEGAL PROCESS – LODGING AN INTERNAL APPEAL

WG

Consider this segment alongside the **PAIA Workshop Guide, pages 65-69**. With the group, discuss the availability of an internal appeal procedure and the steps to be taken in making an appeal. Then break into pairs for 30 minutes to allow participants to complete an internal request form.

RK

You can follow the steps on how to complete a 'Form B' in the **PAIA Resource Kit, pages 24-35**. If any participants have previously completed a PAIA request and that request has been refused or ignored you might like to use that example as the case study in respect of the internal appeal form.

SEGMENT 7

PAIA and the Media

SUMMARY

In this segment Stefaans Brummer, from the amaBhungane unit at the Mail & Guardian, details both successes that he and his colleagues have had in using PAIA but also the challenges associated with using the Act. In particular, Stefaans indicates the difficulty for journalists in working with the time frames provided under the Act and also the capacity of bodies to rely on the exemptions included in the Act to deny access to information.

THEME – PAIA AND JOURNALISM

This segment is designed to demonstrate the connection between access to information and journalism. It can be used to get journalists or journalism students talking about the ways in which using PAIA could assist them in their work.



As we can see from the DVD, there is not a strong tradition of journalists using PAIA. This is largely because journalists fear the timelines that PAIA involves. Break into small groups of 3 or 4 for 15 minutes and discuss:

- What kind of stories would not be hindered by time delays?
- How could you pre-empt and plan stories so that you could use PAIA?
- How could you maximise using PAIA?
- How do you think PAIA makes a journalist's job easier or harder?

Then report back to the larger group so that you can share your ideas with the rest of the participants (approximately 3 minutes per group).

LEARNING THE LEGAL PROCESS – THE EXEMPTIONS

WG

Consider this segment alongside the **PAIA Workshop Guide, pages 25-28**. The group should discuss what information must, may and may not be given to a requester (based on the information in the relevant pages of the chapter). This may take up to one hour. If a record contains information listed in one of the exemptions in the Act then the public or private body is not obliged to release the information to you. These exemptions can be divided into two categories – information that must not be given and information that may not be given.

SEGMENT 8

Building an Open Democracy

SUMMARY

This segment considers the work of the Open Democracy Advice Centre and the South African History Archive in testing the boundaries of PAIA and in helping people to access their right to information. In particular the segment considers SAHA's Capacity Building Project through which SAHA has trained community based organisations in the use of PAIA to gain access to information relevant to the issues facing their memberships.

THEME – BECOMING A PAIA CHAMPION

The right to access information belongs to every citizen of South Africa. However, many people do not know that they have the right to information or how to exercise it. It is therefore the obligation of all South Africans to teach their fellow citizens about their rights. This segment can be used to:

- Encourage people to become champions of PAIA;
- Consider to whom they may pass on their new knowledge about how to use the Act and how they may do that; and
- Discuss the advantages and disadvantages of networks like the PAIA CSN.



Individually or in pairs spend 15 minutes thinking about:

- How you will use PAIA to assist you in your work.
- Now that you know about your right to information, who can you share this knowledge with? Consider people in your workplace and in your community.
- What steps could you take to inform those people of their right to information?
- Do you know other people that would benefit from PAIA training? Could you train them? Or refer them to another organisation for training?
- In the DVD, SAHA discusses the creation of the PAIA Civil Society Network. How do you think being part of a network could be helpful? Are there any disadvantages of being part of a network? What could you contribute to the network?

Then report back to the group to share your ideas with the rest of the participants (approximately 3 minutes per group).

LEARNING THE LEGAL PROCESS – RECORDS MANAGEMENT

WG

Consider this segment alongside the **PAIA Workshop Guide, Chapter 3**. This discusses in detail records management and PAIA. The story of SAHA and its training programme highlights the importance of records management in PAIA because of the large number of forms and correspondence you may have to complete before you can access information. The facilitator should lead participants through chapter 3 of the PAIA Workshop Guide, completing the different activities (approximately 1 hour) to work on developing a records management system for their own future PAIA requests.

Also consider how poor record[s] management in the body you request information from might affect a PAIA request. The experiences of SAHA and ODAC have shown there is a direct relationship between how good a public body's records management is and how well it can respond to your request.

HELPFUL RESOURCES

The PAIA forms can be downloaded from:

http://www.justice.gov.za/forms/form_paia.htm

The PAIA Workshop Guide can be downloaded from:

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

The PAIA Resource Kit can be downloaded from:

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

THE WEBSITES OF ORGANISATIONS MENTIONED IN THE DVD ARE:

- **Amabhungane:** www.amabhungane.co.za
 - **Biowatch:** www.biowatch.org.za
 - **Black Sash:** www.blacksash.org.za
- **Claude Leon Foundation:** www.leonfoundation.co.za
- **Federation for Sustainable Environment:** www.fse.org.za
 - **groundWork:** www.groundwork.org.za
 - **Khulumani Support Group:** www.khulumani.net
- **Open Democracy Advice Centre:** www.opendemocracy.org.za
- **Open Society Foundation of South Africa:** www.osf.org.za
- **Public Service Accountability Monitor:** www.psam.org.za
 - **Socio-Economic Rights Institute:** www.seri-sa.org
- **Tshwaranang Legal Advocacy Centre:** www.tlac.org.za

CONTACT DETAILS OF ORGANISATIONS THAT CAN HELP WITH PAIA-RELATED PROBLEMS:

- **South African History Archives** at 011 717 1941, or online at www.saha.org.za
- **The Legal Resources Centre** at 011 836 9831, or online at www.lrc.org.za
- **The Public Protector** at 0800 11 20 40, or online at www.pprotect.org
- **The South African Human Rights Commission** at 011 484 8300, or online at www.sahrc.org.za

