

USING PAIA TO PROMOTE HOUSING RIGHTS

A guide to using the Promotion of Access to Information Act to
advocate for access to adequate housing



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INTRODUCTION

The Promotion of Access to Information Act, 2000 (PAIA) regulates the right of individuals and organisations to access information held by public and private bodies in South Africa.

This guide offers practical advice on how to make an access to information request in terms of PAIA, providing examples of how PAIA can be used to address housing issues faced by both individuals and communities and to advocate for the right to have access to adequate housing.

It outlines the responsibilities of those public bodies that make housing policy, and provides contact details for submitting PAIA requests to those bodies. This guide also describes the process for submitting requests to private bodies and includes practical examples of what other rights you may be exercising or protecting, when exercising your right to have access to housing.

The most commonly claimed grounds for refusing information are clearly set out, with examples of different strategies you could use to challenge refusals to provide information. Case studies showing how individuals and organisations have used PAIA in advocating for housing rights are also provided.

This guide is designed to be used with other PAIA materials developed by SAHA. You will know when to refer to these resources when you see the following icons:

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 for people wanting to learn how to use PAIA. It also serves as a quick reference guide for anyone trying to engage practically with PAIA. The Workshop Guide can be downloaded, free of charge, from the SAHA website: http://www.saha.org.za/publications/paia_workshop_guide.htm

CS

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 and guide downloaded, free of charge, from the SAHA website: http://www.saha.org.za/publications/paia_case_studies_from_civil_society_dvd.htm

PU

PAIA Unpacked – A Resource for Lawyers and Paralegals is a desk reference which sets out the key legal requirements of PAIA and how those requirements have been interpreted and applied by the courts. It can be downloaded, free of charge, from the SAHA website: http://www.saha.org.za/publications/paia_unpacked_a_resource_for_lawyers.htm



The scissors icon is used in this guide to indicate that the words provided inside the box are examples of the kinds of answers you can adapt and use in PAIA forms when preparing a request or an internal appeal.

WHY IS PAIA IMPORTANT TO THE RIGHT TO HAVE ACCESS TO ADEQUATE HOUSING?

South Africa has one of the most progressive constitutions in the world, with clear recognition of a range of socio-economic rights, including the right to have access to adequate housing.

This right reflects some of the most fundamental physical and psychological needs of all human beings. Living in a safe, clean and healthy place enables people to raise families, work and study, socialise and rest in a supportive environment. A home should be a space where people are able to build and conduct their private lives with dignity and security.

The right to have access to adequate housing means that the government of South Africa must take reasonable steps to make sure that South Africans have adequate housing. This right also protects against forced removals from housing, relocation of entire communities, and arbitrary searches of homes that were a devastating feature of apartheid South Africa.

The Constitution of the Republic of South Africa also protects a range of other related rights that give South Africans a right to water, privacy (including not to have your property searched or possessions seized without reason), freedom to live anywhere in South Africa, the right to live in an environment that is not harmful to health or well-being, as well as a range of other rights.

South Africans can demand that their rights are enforced and respected by complaining to the South African Human Rights Commission and if required, taking the matter to court.

However, despite recognition of such an important right and the opportunity to have that right enforced and respected, adequate housing remains a serious problem for many South Africans¹. Many people live in places that are not safe and do not have access to clean water, electricity, toilets, or transport.² Even though many houses are of poor quality with inadequate access to basic services, many people have to pay so much money for that housing that they do not have enough money for things like food, clothes, transport, or supporting their families.

In response to the lack of progress on these issues and the need for additional resources for housing, in the 2012 budget the South African government allocated R50.5 billion to low-income housing and the upgrading of informal settlements in secondary cities, as well as R27 billion for upgrading informal settlements in large cities over the next 3 years.

The challenge now is for individuals and communities to hold government to account for use of that money. Access to information can help you to actively participate in the short and long term planning required to make your housing right a living reality that meets the need of your community. Using information obtained under PAIA allows you to monitor and advocate for housing issues in your community to protect the rights of even the poorest of the poor, for generations to come.

¹ The Organisation for Economic Co-operation and Development (OECD) (2013), OECD Economic Surveys: South Africa 2013, OECD Publishing, pages 25 and 44 http://dx.doi.org/10.1787/eco_surveys-zaf2013-en states that the Reconstruction and Development Programme of 1994 was an example of an overly ambitious plan that failed to eliminate precarious settlements and the housing deficit affecting 2.1 million households by 2010.

² CHETTY, Lee-Roy Mail and Guardian Thought Leader "Addressing the Housing Shortage in South Africa" 1 December 2012 - <http://www.thoughtleader.co.za/leeroychetty/2012/12/01/addressing-the-housing-shortage-in-south-africa/> estimated that 26% of households in the six metropolitan areas in South Africa live in in-formal dwellings, often 'illegally' and with limited access to services.

EXAMPLES OF HOW PAIA CAN BE USED TO ADVOCATE FOR HOUSING RIGHTS

Information is power. Through using PAIA we are empowered to solve problems.

HOUSES BUILT UNDER THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME (RDP) AND OTHER HOUSING PROGRAMMES

If you are concerned about priorities for the building of houses in your municipality, you can submit a PAIA request to your local municipality requesting a copy of:

- Any records setting out plans to build houses for a particular municipality, over a particular period.
- Any records setting out the number of houses that have been built for a particular municipality, over a particular period.
- Records of any budget detailing amounts allocated for building houses in a particular municipality, over a particular period.
- List of bidders who bid for tenders to build houses in a particular municipality, over a particular period.
- Any selection criteria used to select the successful tenderer to build houses in a particular municipality, over a particular period.
- Service level agreements with companies that were contracted to build houses in a particular municipality, over a particular period.
- Any guidelines or procedures for allocating houses built on behalf of a particular municipality, during a particular period.

How will this information empower you?

Accessing this information will allow you to identify the number of houses that have been built and the number of houses that the municipality plans to build. You can then use this information in your advocacy efforts to hold the municipalities accountable for the quantity, quality, and appropriate allocation of houses.

UPGRADING OF INFORMAL SETTLEMENTS

If you are concerned about monitoring and providing feedback on the upgrading of informal settlements, you can submit a PAIA request to the Department of Human Settlements requesting a copy of:

- Any plans regarding upgrading of informal settlements in your local area, over a certain period.
- Any records setting out policies, criteria or a priority list considered by relevant public bodies in deciding which informal settlements will be upgraded in your local area, over a certain period.
- Records of any budget setting out amounts allocated to upgrade of informal settlements in a local area, over a particular period.

How will this information empower you?

Accessing this information will assist you to identify whether there are plans to upgrade informal settlements in your community. If there are, you can monitor progress. This information can also be used to inform campaigns to have areas in your community upgraded.

ENVIRONMENT AND HEALTH ISSUES

If you are concerned about potential environmental and health impacts from building houses on land in a particular area, you can send a PAIA request to the Department of Land Affairs and Department of Environmental Affairs requesting a copy of:

- Any records (including maps) setting out land under consideration for building of houses by any level of government in a local area, in a particular period.
- Any geological reports surveying the area where houses are proposed to be built in a local area, in a particular period.
- Any social impact assessment reports or plans for a local area, for a particular period.
- Any environmental impact assessment reports or plans for a local area, for a particular period.

How will this information empower you?

Accessing this information can assist you to decide whether to focus your advocacy efforts on a government public body, or on a private body (such as an individual or organisation), or both.

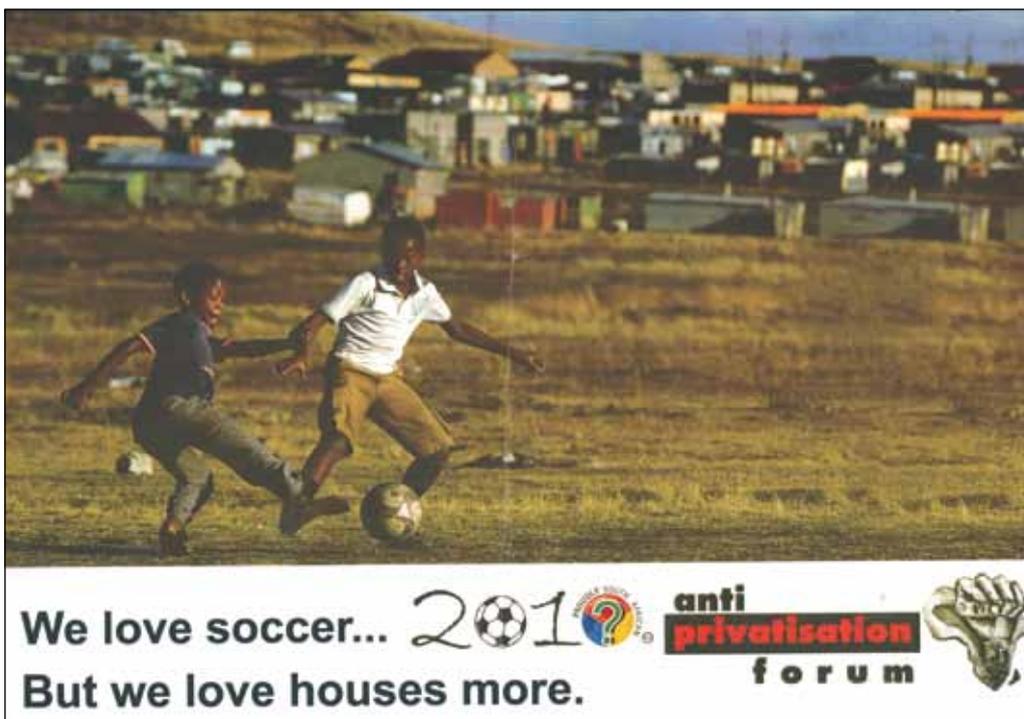
FUNDING FOR HOUSING

If you are concerned about the availability of government funded housing programmes, you can submit a PAIA request to the National Housing Finance Corporation requesting a copy of:

- Any current housing policies setting out available assistance to citizens who do not qualify for government funded housing or home loans from financial service providers (such as banks).
- Records of any budget detailing amounts allocated to assist citizens who do not qualify for government funded housing or home loans for a particular area, over a particular period.
- Records setting out any current plans to move citizens in the local municipality from renting municipal housing to citizen ownership, in a particular period.

How will this information empower you?

Accessing this information will assist you to access government sponsored housing funding programmes for citizens who do not qualify for government funded housing or a home loan from a bank.



REQUESTING INFORMATION FROM PUBLIC BODIES

You can request access to any records that you want from a public body; there is no restriction on what you can ask for. The challenge in requesting documents from a public body is working out which public body may have the records that you want.

For information on how to make a request to a public body, see:

WG

pages 22 - 37

RK

pages 17 - 24

PU

pages 15, 19 - 22

CS

For the story of Thembelihle's experiences using PAIA in their campaign for housing, watch DVD segment 5: *We the people* and see pages 12-13 of the **PAIA Case Studies from Civil Society DVD and Guide**.

Which public body may have the information you require?

Before making a PAIA request it is necessary to identify the correct body to send your request to. It can sometimes be difficult to work out which government department may hold the information you are looking for. This potential difficulty is addressed in PAIA by obliging public bodies to create a PAIA manual, and to transfer your request to the correct public body, if necessary.

Creating a PAIA manual

Section 14 of PAIA requires all public bodies to publish a manual which includes information about:

- the structure and function of the body;
- the contact details of the information and deputy information officers of the body; and
- the subjects on which the body holds records and the categories of records held on each subject.

Unfortunately after more than ten years since PAIA commenced, only a small number of public bodies have complied with this requirement. Additionally, many of those public bodies that have prepared manuals have failed to update them regularly, so often the information is out of date, particularly the contact details of information and deputy information officers.

Obligation to transfer your request

It is always best to try and submit your PAIA request to the correct public body as this will ensure the quickest response to your request. However, do not worry if after some research you are not sure if you are submitting your request to the right public body - if you make your PAIA request to the wrong public body they are required to transfer it to the correct body. This obligation is contained in section 20 of PAIA.

Responsibilities and contact details of key public bodies

Information about the key areas of responsibility for public bodies that may hold records about housing and the contact details of their information or deputy information officers is listed below. Remember these contact details may change from time to time, so you should always check the details by calling the information officer or checking the department's website before submitting a request.

DEPARTMENT OF HUMAN SETTLEMENTS

<u>KEY RESPONSIBILITIES RELEVANT TO HOUSING</u>	<u>RELEVANT LEGISLATION DEPARTMENT ADMINISTERS</u>	<u>CONTACT DETAILS</u>
<ul style="list-style-type: none">• Social housing infrastructure development• Social housing security services• Social protection and social welfare services• Development of housing interventions to assist citizen access their right to shelter in the form of houses	<ul style="list-style-type: none">• Community Schemes Ombud Service Act, 2011• Social Housing Act, 2008• Housing Act, 1997• Housing Consumer Protection Measures Act, 1998• Housing Development Agency Act, 2008	<p>Name: Busisiwe Vananda Position: Deputy Information Officer Phone: 012 421 1325 Fax: 012 341 8513 Email: Paia@dhs.gov.za Post: Private Bag X664, Pretoria 0001</p>

PAIA Information page: http://www.dhs.gov.za/content.php?pagename=PAIA#_Toc34107342

DEPARTMENT OF SOCIAL DEVELOPMENT

<u>KEY RESPONSIBILITIES RELEVANT TO HOUSING</u>	<u>RELEVANT LEGISLATION DEPARTMENT ADMINISTERS</u>	<u>CONTACT DETAILS</u>
<ul style="list-style-type: none">• Social protection and social welfare services (largely delivered through provincial government and non-profit organisations)• Social security• Development of social welfare services to reduce poverty, vulnerability and the impact of HIV/AIDS• Services to victims of crime	<ul style="list-style-type: none">• Social Assistance Act, 2004• Prevention and Treatment of Substance Abuse Act, 2008• Domestic Violence Act, 1998• Children's Act, 2005	<p>Name: Michael Machubeng Position: Deputy Information Officer Phone: 012 312 7839 Fax: 086 214 6801 Email: MichaelM@dsd.gov.za Post: Private Bag X901, Pretoria 0001</p>

PAIA manual: http://www.dsd.gov.za/other/PAIA_Manual_Final_Draft_2009.pdf

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

KEY RESPONSIBILITIES RELEVANT TO HOUSING

- Administration of justice – overseeing the courts and the National Prosecuting Authority

CONTACT DETAILS

Name: Marlyn Raswiswi
Position: Deputy Information Officer
Phone: 012 315 1730
Fax: 012 357 8004
Email: mraswiswi@justice.gov.za
Post: Private Bag X81, Pretoria 0001

PAIA manual: <http://www.justice.gov.za/paia/DOJCD%20Access%20to%20Information%20Manual.pdf>

SOUTH AFRICAN POLICE SERVICE

KEY RESPONSIBILITIES RELEVANT TO HOUSING

- Crime prevention
- Investigation of crimes including illegal removals from houses
- To facilitate law and order during the often tense eviction process
- Apprehending those conducting illegal evictions

CONTACT DETAILS

Name: Colonel Amelda Crooks
Position: National Deputy Information Officer
Phone: 012 393 2606
Fax: 012 393 2156
Email: crooksa@saps.org.za
Post: Private Bag X94, Pretoria 0001

PAIA manual Part 1: http://www.saps.gov.za/docs_publs/legislation/paia/english/part1.pdf
PAIA manual Part 2: http://www.saps.gov.za/docs_publs/legislation/paia/english/part2.pdf

NATIONAL URBAN RECONSTRUCTION AND HOUSING AGENCY

KEY RESPONSIBILITIES RELEVANT TO HOUSING

- To champion contractor development initiatives with emphasis placed on enterprise development and skills transfer
- To ensure a sustainable flow of finance for the construction of low-income and affordable housing, community facilities and infrastructure
- To provide programme management support to local and provincial departments and municipalities

CONTACT DETAILS

Name: Sindisa Nxusani
Position: Deputy Information Officer
Phone: 011 214 8700
Fax: 012 880 9139
Email: sindisa.nxusani@nurcha.co.za
Post: P.O Box 2452, Saxonwold 2132

REQUESTING INFORMATION FROM PRIVATE BODIES

Government bodies are increasingly entering into arrangements with private businesses and companies to build houses and deliver a variety of other basic services to those houses, such as electricity. Unlike public bodies, from which you can request any information, the right to information from private bodies is restricted. You can only ask a private body for information if it is *required for the exercise or protection of any right*.

It is for this reason that requesting information from a private body (Form C) requires requesters to:

- (a) indicate which right they are exercising or protecting; and
- (b) explain why the record requested is required for the exercise or protection of that right.

For information on how to make a request to a private body, see:

WG pages 22 - 37

RK pages 37 - 43

PU pages 15 - 19

CS To find out how the Federation for Sustainable Environment used PAIA to advocate about environmental issues affecting farmers, watch DVD segment 4: *Mining Information* and see pages 10 - 11 of the **PAIA Case Studies from Civil Society DVD and Guide**.

What right are you exercising and why is the information required for the exercise or protection of the right to have access to adequate housing?

When you are seeking information under PAIA about a housing issue, you may be exercising or protecting a right to have access to adequate housing or another right. Once you have established the right you are exercising or protecting, you need to explain why you need the records that you are requesting to exercise or protect that right.

Below is a list of rights that you may be exercising or protecting and some examples of how you may need access to records to exercise or protect those rights. The list is not exhaustive; there may be other rights that you are exercising or protecting or other reasons that you need access to records to exercise or protect those rights.

THE RIGHT TO HAVE ACCESS TO ADEQUATE HOUSING

Section 26 of the Constitution recognises that everyone has the right to have access to adequate housing. The Constitution also prohibits eviction from, or demolition of, homes without a court order. This means that no one can stop you getting a house and no one can illegally stop you entering your house. The government is required to take reasonable legislative and other measures, within available resources, to fully achieve this right over time. This means that the government must try to make it possible for you to get proper housing, but does not mean you have a right to a free house from the government.

Why is the information required for the exercise or protection of the right?

If you are being evicted from your home, you may need copies of any papers that provide reasons given by a bank or landlord for your eviction. If you are not given those documents, obtaining the documents under PAIA should tell you whether a court order has been obtained. The documents should also indicate what matters have been, or are likely to be, raised in court. If the body has not obtained a court order, the information would enable you to make a complaint against the eviction and take legal steps preventing your eviction, or allow you to re-enter your home until a court fully considers the issue.

THE RIGHT TO PROPERTY

Section 25 of the Constitution prohibits the arbitrary deprivation of property. This means, the Constitution prevents laws that stop you accessing, or using, your property unless it is for the overall good of the community. If your land is taken from you because it is to be used for a public purpose (for example, a road needs to be built on your land) then just compensation for the loss of your property must be made to you.

The Constitution also seeks to resolve issues from loss of the title to land or unjust removals from land after 19 June 1913, due to past racially discriminatory practices.

Importantly, the Constitution also requires legislative and other measures, within available resources, to promote conditions to enable South African citizens to gain access to land on a fair basis.

Why is the information required for the exercise or protection of the right?

You may have lost your traditional family home due to forced removals under the Land Act. If you have not received money or land awarded to you to address that loss, you may need more information to help you decide what action to take next. While some of that information may be available from a public body, you may also seek additional information from the current landholder. If that information is provided, it might give information about the current value of the land, and what the current landholder has told the public body about the land. This will help you decide how to seek the money or land ownership that has been awarded to you.

THE RIGHT TO ACCESS WATER

Section 27 of the Constitution recognises that everyone has the right to access sufficient food and water. This means that no one can stop you getting water, and no one can take your access to water away from you. The government is required to take reasonable legislative and other measures, within available resources, to fully achieve this right over time. This means that the government must try to make it possible for you to get water, but does not mean you have a right to free water from the government.

Why is the information required for the exercise or protection of the right?

You may be concerned about a landlord that charges very high amounts for water or threatens to turn off water if the landlord is not paid for water or rent. You may require access to the amounts and dates that water bills were paid by the landlord. If provided, that information will enable you to lodge a complaint or grievance, or take legal action in order to exercise your right to water.

THE RIGHT TO A HEALTHY ENVIRONMENT

Section 24 of the Constitution recognises that everyone has the right to an environment that is not harmful to their health or well-being. The Constitution also recognises the right to have the environment protected for current and future generations through legislative and other measures to prevent pollution and ecological degradation, and to secure ecologically sustainable development while promoting justifiable economic and social development.

Why is the information required for the exercise or protection of the right?

You may believe that government funded houses are proposed to be built too close to former mining sites. To investigate this you may require access to the mining maps from a mining company that formerly mined in the area, setting out the location of mine shafts and any sites for dumping of materials. If provided, that information will tell you how close the proposed housing settlement is to those old mining areas and enable you to seek advice regarding any potential physical or other health dangers from the proposed location of the new houses. If you are concerned about potential dangers, the information would enable you to advocate against the houses being built in the proposed location, or to delay the building of houses until the issues are properly investigated and action is taken to address any health issues identified.

THE RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE

Section 21 of the Constitution recognises that every South African citizen has the right to reside anywhere in the Republic of South Africa.

Why is the information required for the exercise or protection of the right?

You may be required by an employer to live in a certain location in order to be employed, or remain in employment. The housing may be substandard and you may be charged rent above the market rate. You may be concerned that your accommodation is owned by the employer. You may require access to information about the ownership and value of the housing and land. You may also require information about the maintenance arrangements. This information will tell you who is responsible for setting the rent rates and for responding to complaints about requested repairs. If provided, that information will enable you to make a complaint or grievance, or take legal action in order to improve the accommodation and to negotiate a better rent. This information will also allow you to consider seeking alternative accommodation, while also advocating against the loss of your job if you move house.

THE RIGHT TO PRIVACY

Section 14 of the Constitution recognises that everyone has the right to privacy. It prohibits unlawful searches of your home and seizure of your property or possessions.

Why is the information required for the exercise or protection of the right?

A debt collector may have come to your home seeking to value the goods in your home and remove any expensive equipment in part payment of your loan, while refusing to provide you with documents authorising their actions. You may seek from the debt collector access to any court order authorising the debt collector's actions, and information about the amount currently owed on the loan and interest charged on that debt. This information will tell you whether the debt collector is entitled to enter your home. The records obtained will also give you more information about the debt owing. This information will allow you to take action if the debt collector is acting illegally, and to renegotiate loan repayments, if that is required.



GROUNDS FOR REFUSING ACCESS TO INFORMATION

PAIA provides that if you are a requester, you must be given access to the records you request unless one of the grounds for refusal set out in the Act applies.

For further information on the grounds for refusing access, see:

WG

pages 25 - 29

PU

pages 30 - 41

CS

To hear about the challenges faced by the media when information is refused under PAIA, watch DVD segment 7: *PAIA and the Media* and see pages 16 - 17 of the **PAIA Case Studies from Civil Society DVD and Guide**.

MOST COMMON GROUNDS FOR REFUSAL CLAIMED

PERSONAL INFORMATION

Test for refusal

Access **must be refused** where the release of a record would involve the unreasonable disclosure of personal information about another person.

This requirement is set out in section 34 of PAIA in respect of public bodies and section 63 of PAIA in respect of private bodies.

Example of how the ground for refusal might apply

You may have requested a list of the people and their priority on your local housing list, in order to estimate when a member of your community might receive a house. Some or all of the information you are requesting could be denied on the basis that it is personal information, as it will include the name and other details of people on the list. However, the local authority would need to contact the people on the list for their consent to release their personal information, which may mean some information will be released to you.

Exceptions to ground for refusal

PAIA sets out a number of circumstances where the body should still provide you with access to the records you request even though they contain personal information about someone else:

- the information is already publicly available;
- the person was informed before they provided the information to the body that it belonged to a class of information that would or might be made available to the public;
- the information is personal information about an official of the body and relates to their job;
- the person consents to the body giving you the information;
- the information is requested by an heir or next of kin (for example, husband or wife) of a deceased person or a carer of a child or mentally disabled person; or
- the public interest override applies (the public interest override is explained later in this guide).

Notice requirements

Where you request a record that contains personal information about someone else the body will write to that person and tell them about your request. That person can consent or object to the release of the record to you, but the body cannot deny your request just because the other person has objected. The body must still decide whether the disclosure would be unreasonable.

CONFIDENTIAL OR COMMERCIAL INFORMATION

Test for refusal

Access ***must be*** refused where the request is for information held by a public or private body about another person or business (known as a third party) and:

- there was a legal agreement with a third party that the information would be kept confidential;
- the information was given to a public body in confidence and if the body disclosed the information the third party may not provide them with similar confidential information in the future. This applies to requests to public bodies only;
- the information is about a third party's trade secrets;
- the information is financial, commercial, scientific or technical information about another person or business, where release of the information is likely to cause commercial or financial harm to the third party; or
- release of the information could be expected to negatively impact a third party's commercial negotiations or ability to compete in a commercial market.

Access ***may be*** refused where the commercial information is held by the public or private body:

- about the body's own trade secrets, financial, commercial, scientific or technical information;
- is a copyright computer program; or
- about information that could be expected to negatively impact on commercial negotiations or commercial competition by the public or private body.

These requirements are set out in sections 36, 37 and 42(3) of PAIA in respect of public bodies and sections 64, 65 and 68 of PAIA in respect of private bodies.

Example of how the ground for refusal might apply

You may have requested information from the Department of Human Settlements about the tender information provided by a company that was unsuccessful in a bid to build the houses in a local community. The bid by that business may have been supplied to the department on a confidential basis and will contain commercial information about that business. Before deciding whether to refuse your request, the department must contact the business and ask if the business objects to release of the information.

The body cannot deny your request just because another person or business objects to release the information. The body still needs to consider whether:

- the record falls within the ground for refusal, and
- there is a failure to comply with the law and the public interest in disclosure outweighs the harm of releasing confidential or commercial information.

Exceptions to ground for refusal

PAIA sets out a number of circumstances in which public and private bodies should still provide you with access to requested records, even though they contain information that was initially considered confidential or commercial information:

- the public interest override applies (the public interest override is explained later in this guide);
- the confidential or commercial information is held by a public body and is already publicly available. This applies to requests to public bodies only;
- the confidential or commercial information is about a third party or a public body, and the third party or public body consents to the public body's release of that information. This applies to requests to public bodies only;

- the commercial information is about a third party and is held by a private body and the third party consents to the private body's release of that information. This applies to requests to private bodies only; or
- the commercial information is held by a public or private body and a test or investigation reveals a serious public safety or environmental risk.

Notice requirements

Where you request a record that contains commercial information about another person or business, the body will write to the third party and tell them about your request. That business or person can consent or object to the release of the record to you.

Additionally, if a record held by a public body contains confidential information about another person or business, they will write to tell them about your request. This does not apply to records held by private bodies. Again, that third party can consent or object to the release of the record to you.

OPERATIONS OF PUBLIC BODIES

Test for refusal

Access **may be** refused access where:

- a record contains an opinion, advice, report or recommendation the body obtained or prepared to help them make a policy or take a decision;
- a record contains an account of a discussion, consultation or deliberation (such as minutes of a meeting) to help make a policy or take a decision;
- the release of the record could reasonably be expected to frustrate the discussion and decision making process in a public body or between public bodies; or
- the record requested relates to a policy of the body and its disclosure at that time would be premature and could reasonably be expected to frustrate the success of that policy.

This requirement is set out in section 44 of PAIA.

Example of how the ground for refusal might apply

You may have requested plans to spend budget allocations on housing. Those plans may make a recommendation to a decision-maker, but have not been approved yet by the final decision-maker. The information you are requesting is about the operations of the body, however release may not be provided at that time given the potential for further discussions before a decision is taken. The disclosure of the information might be denied for that reason. However, a new request could be made once a decision is announced or you have heard that a final decision has been made.

Exceptions to ground for refusal

PAIA sets out a number of circumstances where public and private bodies should still provide you with access to requested records, regarding the internal workings of government:

- the record has been in existence for more than 20 years;
- the record contains a statement of reasons about why the body has decided to do something that has an important and negative impact on someone's rights; or
- the public interest override applies (the public interest override is explained later in this guide).

OTHER GROUNDS FOR REFUSAL

- Records of the South African Revenue Service (SARS) (section 35 of PAIA)
- Safety of individuals, and protection of property (sections 38 and 66 of PAIA)
- Police dockets in bail proceedings and protection of law enforcement and legal proceedings (sections 39, 40 and 67 of PAIA)
- Defence, security and international relations of South Africa (section 41 of PAIA)
- Economic interests and financial welfare of South Africa (section 42 of PAIA)
- Protection of research information of third party, and public body (section 43 and 69 of PAIA)
- Manifestly frivolous or vexatious (which refers to clearly 'silly' requests), or substantial and unreasonable diversion of resources (section 45 of PAIA).

PUBLIC INTEREST OVERRIDE

Test for refusal

Even where one of the grounds for refusing access applies, the body **must** release the information to you (except in the case of the SARS ground of refusal in section 35 of PAIA) where:

- the record contains evidence of:
 - a substantial contravention of, or failure to comply with, the law; or
 - an imminent and serious public safety or environmental risk; and
- the public interest in the disclosure of the record clearly outweighs the harm contemplated in the section providing a ground for refusal.

This requirement is set out in section 46 of PAIA in respect of public bodies and section 70 of PAIA in respect of private bodies.

Example of how the public interest override might apply

You may have requested information in a housing tender bid or decision on successful tender from the Department of Human Settlements. The information you requested might at first be considered confidential or commercial information. However, before the Department of Human Settlement refuses to provide the information requested from them for that reason, the department will need to consider the public interest in the information you have requested. For example, the department's report deciding to award a tender to a bidder might have considered claims of corruption by the successful bidder. Corruption is against the law and the public interest in its disclosure would be expected to outweigh any harm to the business in the release of that information. Accordingly, the department would be expected to release that part of the department's report that relates to the department's consideration of possible corruption.

WHAT IF THE BODY DOES NOT RESPOND TO YOUR REQUEST?

DEEMED REFUSAL

Test for refusal

If a body fails to respond to your request within 30 days (or 60 days if an extension of time has been granted), then the body is considered to have refused your request. You can then lodge an internal appeal (if your application was to a public body) or apply to the court (if your application was to a private body) on the basis of the deemed refusal.

This requirement is contained in section 27 of PAIA in respect of public bodies and section 58 in respect of private bodies.

MAKING AN INTERNAL APPEAL

Where a public body refuses you access to information, PAIA allows you to make an appeal against the decision of the body. The appeal will be decided by the relevant authority; the Minister (in respect of a national government body), the Member of Executive Council (in respect of a provincial government body) or the Municipal Manager (in respect of a municipal government body).

There is no right of internal appeal where a private body refuses access to information. If a private body refuses your request for information you must appeal to a court or make a complaint to the Public Protector or the South African Human Rights Commission.

PREPARING INTERNAL APPEAL FORMS

If you have been refused access to information, the words in the box below can be adapted and inserted into the 'grounds for appeal' section of Form B.

For information on making an internal appeal, see:

WG

pages 60 - 74 and 80 -82

RK

pages 25 - 35

PU

pages 30 - 44

CS

To hear how Khulumani sought information under PAIA to take action for their community, watch DVD segment 6: *Speaking Out*, and see pages 14-15 of the **PAIA Case Studies from Civil Society DVD and Guide**.



1. On *[insert the date you sent the PAIA request]*, *[insert the name of the person or organisation that made the PAIA request]* made a request for information under PAIA. A copy of the request is attached to this appeal.
2. By letter dated *[insert the date of the letter you received from the public body refusing your PAIA request]* the public body informed *[insert the name of the person or organisation that made the PAIA request]* that the request had been refused. A copy of the letter is attached to this appeal.
3. *[Insert the name of the person or organisation that made the PAIA request]* contests the refusal and submits this appeal.
4. *[Insert grounds of appeal – consider the examples detailed in this guide and insert any of the appeal grounds that are relevant to the refusal you received from the public body.]*
5. *[Insert the name of the person or organisation that made the PAIA request]* therefore respectfully submits that the relevant authority should order that access be given to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute a new decision, for the information officer's original decision.

GROUNDS OF APPEAL

The words in the boxes below can be used as the basis of your appeal and may be adapted and inserted, where they are relevant, into paragraph 4 in the box above, setting out grounds for appeal.

The words in the boxes below are designed to provide some words that you can use in the forms to appeal a decision based on the most common grounds for refusal. The grounds for appeal are examples only and you will need to review the particular reasons provided by the public body in respect of each refusal of your request.

For information on the grounds for appeal, see:

WG

pages 60 - 74 and 80 -82

RK

pages 28, 31 - 35

PU

pages 30 - 44

EXAMPLES OF GROUNDS OF APPEAL WHERE INFORMATION IS REFUSED ON THE BASIS THAT THE RECORD CONTAINS PERSONAL INFORMATION

Publicly available information

- The information is already publicly available. [*Insert details of where you have seen/read about/heard the information discussed*].

Therefore, access to the information may not be refused under section 34(2)(c) of PAIA.

Official of the public body

- The information relates to the position or functions of an individual who is, or was, an official of the public body. [*Insert details of how the information relates to the position or function of the official of the public body. For example, it may relate to the contact details, responsibilities, salary or actions taken by the person while they held a public position*].

Therefore, access to the information may not be refused under section 34(2)(f) of PAIA.

Failure to provide adequate reasons

- The public body has failed to state adequate reasons for the refusal, as required by section 25(3)(a) of PAIA. In particular, the public body has failed to state why the granting of access to the information would amount to an unreasonable disclosure of personal information.

In accordance with section 81(3) of PAIA, the public body carries the burden of establishing that the refusal is made after considering the ground contained in the Act. Accordingly, the public body must establish that the disclosure of the information would be unreasonable.

The Eastern Cape High Court in *Centre for Social Accountability v the Secretary of Parliament and others* [2011] ZAECGHC 33 considered what would constitute unreasonable disclosure.

The Court found that a three part test should be applied:

- i. is the information that is said to be personal, covered by the principle of freedom of identity;
- ii. did the individual subjectively harbor a legitimate and reasonable expectation that such information would be protected by the right to privacy; and
- iii. does society have an objective legitimate and reasonable expectation that the information should be protected.

The Court found that all three of these requirements must be satisfied before a disclosure of personal information may be found to be unreasonable.

No justifiable basis has been provided to support a claim that the disclosure of the information would be unreasonable.

Failure to apply the test for refusal

- The public body refused access to the information solely on the basis that the individual, whose personal information is contained in the record, objected to the release of the record. >>

PAIA does not allow the public body to refuse access on this basis. Although section 49(1) (a) of PAIA requires that any representation made to the public body by a third party be given due regard, such representations are not to be determinative of the matter.

The public body must still demonstrate that the disclosure of the information would be unreasonable in accordance with section 34 of PAIA. The public body has failed to do so, and has relied solely on the third party's objections. The public body has therefore unlawfully refused access to the information.

Furthermore, no justifiable basis has been provided to support a claim that the disclosure of the information would be unreasonable



The personal information could be severed from the document

- Section 28 of PAIA requires that the public body sever any part of a requested record that does not contain personal information and can reasonably be severed from any part that does, so as to provide the requester with access to the part which does not contain personal information.

The request is for records which relate substantially to [*insert a summary of nature/subject/content of record requested*]. Accordingly, any personal information contained in those records is secondary to the main purpose of the document and must be able to be severed.

The public body is therefore required to sever the personal information from the record (for example, by blacking out the confidential information) and release the remainder of the record.

HOW THESE GROUNDS OF APPEAL MAY APPLY

An interesting issue arises as to whether PAIA can be used to obtain information about whether decision-makers on housing contracts are owners of any land where new settlements might be built, or have any ownership or other interest in the companies that are awarded contracts to build houses.

The information that might be requested is information about ownership of land and shares in companies by government officials. That information will be requested from a public body, such as the employing department or the Parliament (noting requests cannot be made to individual Members of Parliament).

The relevant public body may argue the information requested is personal information and seek to deny access to the information on that basis.

In considering whether to appeal a decision that denies access to this kind of personal information, a number of questions should be considered:

- Is the information already **publicly available**, for example on a land titles register? If so, is PAIA the easiest and cheapest way to obtain that information?
- Is the information about **an official of a public body** which relates to their position or functions, because it relates to decisions the person made in their job?
- Did the individual **object** to providing that information? If so, did the public body consider whether the release was unreasonable?
- Is the information an **unreasonable disclosure** of the official's personal information given that official's right to privacy, balanced against the importance of making sure that the housing contract is the best use of taxpayer's money, and was not in the official's personal interest?
- Alternatively, did the public body consider whether the information about the official's ownership of the particular land or shares in the particular company are able to be **severed** and released, without releasing information about all land and shares owned by the official?

EXAMPLES OF GROUNDS OF APPEAL WHERE INFORMATION IS REFUSED ON THE BASIS THAT THE RECORD CONTAINS COMMERCIAL INFORMATION

Publicly available information about a person or business (known as a third party)

- The information about the third party is already publicly available. [*Insert details of where you have seen/read about/heard the information discussed*].
Therefore, access to the information may not be refused under section 36(2)(a) of PAIA.

Publicly available information about a public body

- The information about the public body is already publicly available. [*Insert details of where you have seen/read about/heard the information discussed*].
Therefore, access to the information may not be refused under section 42(5)(a) of PAIA.

Failure to provide adequate reasons

- The public body has failed to state adequate reasons for the refusal, as required by section 25(3)(a) of PAIA. In particular, the public body has failed to state why the granting of access to the information would [*insert relevant reasons under PAIA for refusing access to the information – for example, reveal a trade secret of the body or a third party; cause harm to the commercial or financial interests of the body or a third party; or disadvantage the body or third party in contractual or other negotiations or commercial competition*].
In accordance with section 81(3) of PAIA, the public body carries the burden of establishing that the refusal is made in accordance with the ground contained in the Act. Accordingly, the public body must establish that the disclosure of the information would cause the relevant harm. No justifiable basis has been provided to support a claim that the disclosure of the information would cause the relevant harm.

Failure to apply the test for refusal by a third party

- The public body refused access to the information solely on the basis that the third party, whose commercial information is contained in the record, objected to the release of the record. PAIA does not allow the public body to refuse access on this basis. Although section 49(1)(a) of PAIA requires that any representation made to the public body by a third party be given due regard, such representations are not to be determinative of the matter.
The public body must still demonstrate that the disclosure of the information meets the criteria for the grounds of refusal in section 36(1) of PAIA. The public body has failed to do so, and has therefore unlawfully refused access to the information.
Furthermore, no justifiable basis has been provided to support a claim that the disclosure of the information falls within the grounds of refusal.

Failure to apply the test for refusal by a public body

- The public body refused access to the information solely on the basis that another public body, whose commercial information is contained in the record, objected to the release of the record. PAIA does not allow the public body to refuse access on this basis. Although section 49(1)(a) of PAIA requires that any representation made to the public body by another public body be given due regard, such representations are not to be determinative of the matter.
The public body must still demonstrate that the disclosure of the information meets the criteria for the grounds of refusal in section 42(3) of PAIA. The public body has failed to do so, and has therefore unlawfully refused access to the information.
Furthermore, no justifiable basis has been provided to support a claim that the disclosure of the information falls within the grounds of refusal. >>



The commercial information could be severed from the document

- Section 28 of PAIA requires that the public body sever any part of a requested record that does not contain commercial information and can reasonably be severed from any part that does, so as to provide the requester with access to the part which does not contain commercial information. The request is for records which relate substantially to [*insert a summary of nature/subject/content of record requested*]. Accordingly, any commercial information contained in those records is secondary to the main purpose of the document and must be able to be severed. The public body is therefore required to sever the commercial information from the record (for example, by blacking out the confidential information) and release the remainder of the record.

EXAMPLES OF GROUNDS OF APPEAL WHERE INFORMATION IS REFUSED ON THE BASIS THAT THE RECORD CONTAINS CONFIDENTIAL INFORMATION



Publicly available information

- The information about a third party is already publicly available. [*Insert details of where you have seen/read about/heard the information discussed*]. Therefore, access to the information may not be refused under section 37(2)(a) of PAIA.



Failure to provide adequate reasons

- The public body has failed to state adequate reasons for the refusal, as required by section 25(3)(a) of PAIA. In particular, the public body has failed to state why the granting of access to the information would [*insert relevant criteria under PAIA for refusing access to the information – for example, lead to a successful action for damages for a breach of confidentiality of a third party; or prejudice the future supply of confidential information by a third party (in circumstances where accessing similar confidential information from the third party in the future would be in the public interest)*]. In accordance with section 81(3) of PAIA the public body carries the burden of establishing that the refusal is made in accordance with the ground contained in the Act. Accordingly, the public body must establish that the disclosure of the information would cause the relevant harm. No justifiable basis has been provided to support a claim that the disclosure of the information would cause the relevant harm.



Failure to apply the test for refusal

- The public body refused access to the information solely on the basis that the third party, whose confidential information is contained in the record, objected to the release of the record. PAIA does not allow the public body to refuse access on this basis. Although section 49(1)(a) of PAIA requires that any representation made to the public body by a third party be given due regard, such representations are not to be determinative of the matter. The public body must still demonstrate that the disclosure of the information meets the criteria for the grounds of refusal in section 37(1) of PAIA. The public body has failed to do so, and has therefore unlawfully refused access to the information. Furthermore, no justifiable basis has been provided to support a claim that the disclosure of the information falls within the grounds of refusal.



The confidential information could be severed from the document

- Section 28 of PAIA requires that the public body sever any part of a requested record that does not contain confidential information and can reasonably be severed from any part that does, so as to provide the requester with access to the part which does not contain confidential information. The request is for records which relate substantially to [*insert a summary of nature/subject/ >>*

content of record requested]. Accordingly, any confidential information contained in those records is secondary to the main purpose of the document and must be able to be severed. The public body is therefore required to sever the confidential information from the record (for example, by blacking out the confidential information) and release the remainder of the record.

HOW THESE GROUNDS OF APPEAL MAY APPLY

Over recent years an issue has arisen in relation to housing loans for people that are not eligible for government housing, and yet have difficulties in obtaining housing loans to buy their own home. You may seek access to information about current and new loan packages, and a range of performance data about those housing loans from across the banking and finance sector.

The issue as to whether a request can be made directly to the banks on the basis that the information is necessary to exercise a right to adequate housing is not addressed at this point of the guide, as there is no internal appeal from a PAIA request to a private body.

A PAIA request could be sent to a public body for any existing records that might have been created to develop the policy on these issues, seeking a copy of any records setting out:

- the names of some or all banks and other financial service providers offering housing loans in South Africa,
- the names of some or all housing loans available in South Africa,
- any features of housing loans available in South Africa (including, but not limited to, interest rates, income threshold requirements, and criteria for rejection of applications for housing loans), and
- a comparison of housing loan offerings, across the housing loans available in South Africa.

The relevant public body may argue the information requested is commercial or confidential information and seek to deny access to the information on that basis.

In considering whether to appeal a decision that denies you this information on the basis that it is commercial and confidential information, a number of questions should be considered:

- Is the information already **publicly available**, for example on the bank websites? If so, is PAIA the easiest and cheapest way to obtain that information?
- Did the banks **object** to the public body providing that information? If so, did the public body consider whether the release was within the appropriate reasons for a ground of refusal?
- Has the public body indicated its **reasons** why release of the commercial information requested was within the grounds of refusal? If the public body considers that the release of the commercial information about the housing loans would cause harm to the commercial or financial interests of the bank, has the public body considered that more information about housing loan products might assist the bank in obtaining new customers? If the public body considers that the release of the commercial information would disadvantage the body or third party in negotiations with housing loan customers or commercial competition with other banks, has the public body considered that increased information about available housing loans will make clearer the limits on the best loans available, that is, improving negotiation discussions?
- Has the public body indicated its **reasons** why release of the confidential information requested was within the grounds of refusal? Has the public body set out its reasoning as to whether release of the confidential information would cause the banks:
 - o harm to their commercial or financial interests;
 - o disadvantage in contract or other negotiations; or
 - o prejudice to their commercial competition?

If not, it is arguable that the release of the information about the housing loans would not lead to a successful action for damages for a breach of confidentiality of a third party and access to the information should not be refused (see *Transnet Limited v SA Metal Machinery Pty Ltd* [2005] ZASCA 113).

- Has the public body set out its **reasons** as to whether release of the information would put at risk the future supply of confidential information by the banks, in circumstances where access to similar confidential information from the banks in the future would be in the public interest? If the public body only pulled together housing loan information from the banks on a one-off basis, can the public >>

- body argue that release of the information will put at risk future supply of similar information?
- Alternatively, did the public body consider whether the parts of the records that contain confidential or commercial information are able to be **severed** from the other information in the document? For example, can criteria for rejection of an application be given, even if the information about income threshold for rejection cannot be provided?

EXAMPLES OF GROUNDS OF APPEAL WHERE INFORMATION IS REFUSED ON THE BASIS THAT THE RECORD CONTAINS INFORMATION ABOUT THE OPERATIONS OF A PUBLIC BODY



Publicly available information

- The information is already publicly available. [*Insert details of where you have seen/read about/heard the information discussed*].

Therefore, the frustration of deliberative processes and success of policies contemplated by section 44(1)(b) of PAIA cannot be expected to arise from the release of the record.



Final decision has been taken

- A final decision on the subject matter of the PAIA request has been made [*insert details of where you have seen/read about/heard the decision has been made – attach any documents that state that the decision has been taken*].

Section 44 aims to protect the internal workings of government to ensure that open and frank deliberations within government are not hindered by the premature release of information.

Once a decision has been taken on a matter, the need for the protection no longer exists.

Accordingly, the frustration of deliberative processes and success of policies contemplated by section 44(1)(b) of PAIA cannot be expected to arise from the release of the record. Additionally, the records can no longer be considered preliminary, working or draft records under section 44(2)(c) of PAIA.



Record is more than 20 years old

- The record came into existence more than 20 years before the date of the request. [*Insert details of when the document was created*].

Therefore, access to the information may not be refused under section 44(3) of PAIA.



Record constitutes statement of reasons

- The record contains an account of, or the reasons for, a decision taken by a public body, which are required to be given under section 5 of the Promotion of Administrative Justice Act, 2000.

Therefore, access to the information may not be refused under section 44(4) of PAIA.



Failure to provide adequate reasons

- The public body has failed to state adequate reasons for the refusal, as required by section 25(3)(a) of PAIA. In particular, the public body has failed to state why the granting of access to the information would [*insert relevant criteria – for example, frustrate the formulation of policy or decision making; inhibit candid communication, discussion or deliberation; frustrate the success of a policy through premature disclosure; jeopardise the effectiveness of a testing or auditing procedure or method used by the body; breach an express or implied promise regarding confidentiality; or is a draft document*].

In accordance with section 81(3) of PAIA the public body carries the burden of establishing that the refusal is made in accordance with the ground contained in the Act. Accordingly, the public body must establish that the disclosure of the information would cause the relevant harm.

No justifiable basis has been provided to support a claim that the disclosure of the information would cause the relevant harm.

HOW THESE GROUNDS OF APPEAL MAY APPLY

Many PAIA requests that were made after SAHA's PAIA workshop requested housing policies, plans, reports and other documents that the requester was not even sure existed. Sometimes a number of PAIA requests will be needed to test what is available. A second PAIA request can be made to seek documents that are identified through the first request.

Housing plans and budgets, and the underlying policies and procedures are not always available from a request to one public body. However, the public body is required to help you by letting you know which public body can assist, or directly transferring your request to that body, whichever is quicker. Rather than rely on the public body, you may wish to put in a similar request to a number of public bodies in order to save time and broaden the number, and content of, documents provided to you.

A PAIA request may seek a copy of all records that detail the number of houses to be made available in a particular area by a certain date, and any connected investigations, discussions or findings in relation to any impacts on those who will be living in the houses due to:

- lack of availability of regular government funded public transport, water, street lighting or electricity,
- environmental factors in relation to air, land, or water, or
- security issues in the local area, including regular police presence.

However, the public body may argue that any reports on these issues are not finalised, or it is too early to release the documents.

In considering whether to appeal a decision that refuses access to the records about the information sought, a number of questions should be considered:

- Is the information already **publicly available**, for example to assist businesses making bids for a tender to build the houses?
- Has a **final decision** been made about all, or part, of the PAIA request? If so, can you provide documents or statements from people to explain why you understand a final decision has been made?
- Has the public body indicated its **reasons** why release of all records would discourage the formulation of policy or decision making; get in the way of open communication or deliberations; cause difficulties for success of a policy through premature disclosure; risk the effectiveness of a testing or auditing procedure or method used by the body; breach an express or implied promise regarding confidentiality; or is a draft document? Do you consider that actions or involvement by you and other community based organisations at this stage will improve the success of the policy and plans, and assist discussions on the policy and plans? If so, why?
- Alternatively, did the public body consider whether the parts of the records that are still in draft and not finalised, are able to be **severed** from the issues in the documents that have been finalised?



PREPARING INTERNAL APPEAL FORMS - DEEMED REFUSAL

If a public body does not respond to your request within 30 days (or 60 days, if more time is given), then the body is deemed to have refused your request. In those circumstances you can make an internal appeal.

The words in the box below may be adapted and inserted, where they are relevant, into the 'grounds for appeal' section of Form B.

For more information about lodging an internal appeal in response to a deemed refusal, including how to complete the required form (Form B), see:

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pages 42-44



1. On *[insert the date you sent the PAIA request]*, *[insert the name of the person or organisation that made the PAIA request]* made a request for information under PAIA to *[insert the name of the public body]* ('the public body'). A copy of the request is attached to this appeal.
2. *[Insert details of any further contact – for example - On [insert the date of any follow up you made about your original PAIA request], [insert the name of the person or organisation that made the PAIA request] wrote to the [information officer./deputy information officer] of the public body reminding them that in accordance with PAIA the public body was required to respond to the request within 30 days and that period had expired. A copy of this [email/letter] is attached to this appeal].*
3. Despite *[insert the name of the person or organisation that made the PAIA request]* reminding the public body of its obligations under PAIA, the public body has failed to respond to the request. The failure by the public body to provide a decision on the request constitutes a deemed refusal in accordance with section 27 of PAIA.
4. *[Insert the name of the person or organisation that made the PAIA request]* contests the deemed refusal and submits this appeal.
5. In accordance with section 11 of PAIA, *[insert the name of the person or organisation that made the PAIA request]* has complied with the procedural requirements of PAIA and the public body has not offered any ground for refusal under sections 33 to 46 of PAIA for refusing access to the requested records. The public body has therefore unlawfully refused access to the requested records, and *[insert the name of the person or organisation that made the PAIA request]* must be given access to the records requested from the public body.
6. Furthermore, no justifiable basis has been provided on which the public body could refuse access to the requested records.
7. *[Insert the name of the person or organisation that made the PAIA request]* therefore respectfully submits that the relevant authority should order that *[insert the name of the person or organisation that made the PAIA request]* be given access to the requested records pursuant to section 77(2) of PAIA, which empowers the relevant authority to substitute a new decision for the information officer's original decision.

CASE STUDY: PAIA OPENS UP COMMUNICATION

Bandile Mdlalose is a social activist who fights for the rights of the homeless in rural KwaZulu-Natal. Bandile's father had entered into a home loan agreement with Permanent Bank in KwaZulu-Natal. In the late 1990's, Permanent Bank was bought by Nedbank. Unfortunately on the closure of the Permanent Bank, Bandile's father was not aware that he had to continue paying his home loan to Nedbank.

Over the years an ongoing dispute arose between Nedbank's lawyers and Bandile's father, including around the size of the debt, the interest payable, and the amount still owing on his house.

After taking part in SAHA's PAIA workshops, Bandile realised that PAIA could be extended to requesting records from private bodies in order to exercise or protect a right.

Fearing the possibility of being evicted from his home, Bandile realised that her father needed to protect his right to adequate housing. In order to protect this right to housing, he needed access to his personal information held by Nedbank.

Bandile used PAIA to request records that had previously been denied to her father using more conventional methods.

Bandile submitted a PAIA request to Nedbank for a copy of:

- the home loan agreement between Bandile's father and Permanent Bank,
- the transfer letter of the loan agreement from Permanent Bank to Nedbank,
- records of any correspondence sent to Bandile's father informing him of the bank changes and Nedbank's banking details, and
- bank statements reflecting payment transactions that took place from the first payment to the most recent bank statement.

After receiving the PAIA request, the Deputy Information Officer of Nedbank wrote back to Bandile acknowledging her request, and seeking an extension of time to respond to the request, given that most of the documents are at least 15 years old.

Bandile's action in making a PAIA request has already assisted her father to reopen communication channels with Nedbank. Her action has also meant that her father is allowed to remain in his house until further action is taken for the matter to be resolved.



“ PAIA can be used as a shield to protect our rights and a spear with which to defend the very same rights... we are now able to talk to the bank and hopefully reach a workable agreement.” – Bandile Mdlalose

CASE STUDY: THE PEOPLE'S TOOL FOR CHANGE

In early 2005, community members blockaded a road in Durban in protest at the sale of land that had long been promised by the local municipal council to shack dwellers for housing. As a result of the protest, the Abahlali baseMjondolo (AbM) community based social movement was formed.

AbM, loosely translated, means 'shack dwellers'. AbM is now one of the largest organisations of mobilised poor in post-apartheid South Africa, and now has tens of thousands of supporters from more than 30 settlements.

Initial use of PAIA

In 2006, as the protest actions grew over the failure of the local council to deliver housing to the local community, leaders within the movement realised that they needed to be better informed about the issues involved.

As a result of this realisation, AbM contacted various organisations and were ultimately given assistance by the Open Democracy Advice Centre (ODAC) to use PAIA to access plans for the city's informal settlements and the local housing budget from the local municipality. This initial success in accessing and using information for their communities informed successful advocacy strategies and actions for AbM.

However, following this initial success, AbM has not continued to use PAIA actively, primarily because there has not been sufficient knowledge within AbM of how to use PAIA to access critical information on an ongoing basis.

Learning more about PAIA

It was in that context that AbM received an invitation to SAHA's PAIA workshop. AbM were eager to learn more, and build internal capacity on using PAIA to access information. Through their internal process, AbM elected their General Secretary to attend the workshops, on the basis that sending someone in a senior position within the movement would provide the ongoing expertise and capability to continue to make strategic PAIA requests.

As part of SAHA's PAIA workshop, participants are asked to actively consider their information needs and to make a PAIA request. The General Secretary of the AbM made three requests to: (i) eThekweni Municipality, (ii) Provincial Department of Housing and (iii) Office of the Premier, in similar terms seeking:

- previous memorandums submitted to the municipality and the Office of the Premier from 2006 to 2013, about the municipality's plans to provide houses;
- the Municipality's plans to develop informal settlements from 2007 to 2012;
- the Municipality's plans to distribute land to communities from 2007 to 2012;
- emergency evacuation policies and plans for informal settlements;
- Provincial policies on house allocation from 2007 to 2012;
- complaint or grievance procedures available to members of the community. >>



"Using PAIA has always assisted us to plan our actions properly. Thanks to SAHA, internal capacity has been developed and we will be using PAIA more often to help Abahlali baseMjondolo realise human rights." – Sibusiso Zikode, President of AbM.

However, after more than 30 days, the Premier, municipality and the department, had not acknowledged receipt of the request, or provided the materials requested. Accordingly, with assistance from SAHA, AbM submitted an internal appeal.

The internal appeal resulted in a personal response from the Premier, who produced most of the memoranda requested by the movement.

The positive response from the Premier and his office was cautiously welcomed by AbM. However, AbM still seeks the additional requested records as important evidence of active plans to allocate land, and provide houses and basic services. At this stage, AbM has indicated that should the municipality, department or the Premier not produce all requested documents, they will lodge a complaint with the South African Human Rights Commission.

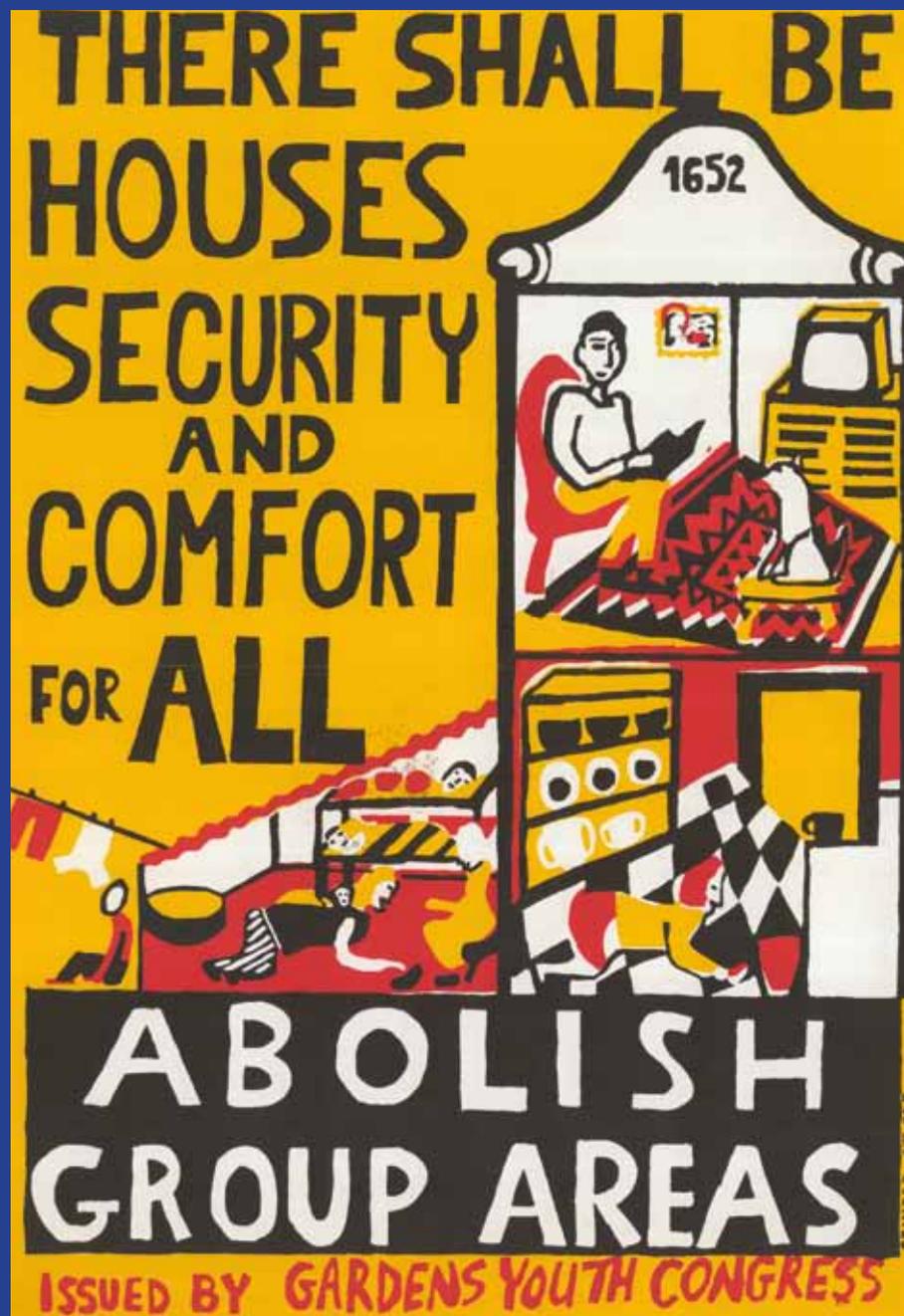
AbM's use of PAIA and related advocacy efforts have to date reminded eThekweni Municipality, Provincial Department of Housing and Office of the Premier that their actions are subject to public scrutiny and that each public body will be held accountable for the way it treats citizens. Additionally, these results show that there needs to be constant communication between the citizens and public servants.

Furthermore, the AbM experience illustrates the need to build internal capacity to use available tools, such as PAIA, to access information, as well as to most effectively use the information PAIA can provide.



AbM members protesting, on route to submit a memorandum to the eThekweni Municipality manager, April 2013

The guide offers practical advice on how to make an access to information request in terms of PAIA, providing examples of how PAIA can be used to address housing issues faced by both individuals and communities and to advocate for the right to have access to adequate housing.



For more information, please contact

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