

# **PAIA Civil Society Network (PAIA CSN) Shadow Report: 2013**

## ***1. Introduction***

The Promotion of Access to Information Act, 2000 (PAIA), was passed in 2000 and commenced operation in March 2001. The PAIA Civil Society Network, established in 2009, is an umbrella body of organisations working to advance the right of access to information in South Africa. The member organisations are committed to strengthening the implementation and use of PAIA, raising awareness about the right amongst citizens, and working with bodies subject to the Act to encourage compliance and promote a culture of openness, accountability and transparency.

This report reflects the experiences of the network's member organisations in using PAIA during the 12 months commencing August 2012. It is a shadow report, produced annually by the network, which is designed to complement the work done by the South African Human Rights Commission in monitoring the implementation of PAIA by providing a perspective on implementation from organisations that utilise the rights in the Act on a regular basis.

## ***2. Summary of Civil Society's PAIA experience***

Since the inception of the PAIA CSN in 2009, there has been a steady increase of requests submitted each year by members of the network. This increase in requests reflects an increased awareness amongst civil society of the right to information and the value of access to information as a practical and strategic advocacy tool in the work of civil society.

Unfortunately, this increase in civil society awareness and activity around PAIA has not been met by a comparable increase in effective implementation by information holders. In fact the overall performance of information holders has decreased this year as compared to the network's assessment of previous years. In particular there has been a decrease in the full release of records requested by information holders – from 35% in 2009, to 22% in 2011, and now down to an all-time low of 16% for the 2012 / 2013 reporting period.

Instead, refusals of requests for access are on the rise, with 66% of initial requests being refused. Most alarmingly there has been a substantial increase in deemed refusals, which reflect a failure by an information holder to respond to a request. 54% of all requests submitted in the reporting period (excluding those that were still pending at the end of the reporting period) were deemed to have been refused. This is up from an already worryingly high rate of deemed refusals (39%) from 2011. In instances where network members lodged an internal appeal against a refusal of a request, over 62% of those appeals were also deemed to have been refused.

That information holders are ignoring requests for information in such large numbers demonstrates an urgent need for intervention on two levels. The first is the provision of training in respect of the implementation of PAIA. Information holders must receive training so that officers understand their obligations in terms of PAIA and are able to facilitate the right to information as well as meet their statutory obligations. In order for such training to occur, greater resources must be provided to the PAIA units to undertake training, or to the South African Human Rights Commission and / or civil society organisations to provide such training to information holders. Related to this is the need to

address poor records management within public bodies – without functional records management and retrieval systems to enable effective identification and retrieval of records on demand, the right of access to information is profoundly hampered.

Furthermore, information holders must allocate adequate resources to the implementation of PAIA. In particular, there is a need for resources to be allocated to establishing efficient and effective record-keeping systems and engaging sufficient staff to manage requests. In an audit undertaken by the South African Human Rights Commission between 2008 and 2012, it was revealed that less than 15% of the audited institutions had specifically budgeted for PAIA implementation and compliance requirements<sup>1</sup>. Given this widespread, and apparently acceptable, disregard for the need to enable statutory compliance with the law (along with other legislation governing the obligation of public bodies to create and maintain records) the damning statistics collated in this report are depressingly unsurprising.

### **3. PAIA request statistics**

Information concerning PAIA requests made in the period from 1 August 2012 to 30 July 2013 was collected by the Centre for Applied Legal Studies (CALs), the Centre for Environmental Rights (CER), Corruption Watch, Khulumani Support Group, Public Service Accountability Monitor (PSAM) and the South African History Archive (SAHA)<sup>2</sup>. During that period those bodies submitted a total of 258 requests under PAIA, 236 being submitted to public bodies and 22 to private bodies.

#### **3.1 REQUESTS SUBMITTED TO PUBLIC BODIES**

Of the 258 requests submitted, 236 were submitted to a total of 95 public bodies. This is a significant increase, both in terms of the number of requests submitted and the number of bodies from which records are being requested. Particularly notable is the increase of requests being submitted not simply at national level, but also to provincial and local government departments.

The public bodies receiving more than 5 requests from PAIA CSN members during the reporting period are listed in the table below. The fact that 3 municipalities appear on this list suggests that there has been an increase in the use of PAIA as a strategic advocacy tool by civil society working with communities, which arguably reflects an increase in the understanding of the importance and value of the right to information in achieving advocacy goals and realising other human rights. However, this may also be a contributing factor in the rise in deemed refusals: more requests are being submitted to provincial and local government, where it appears officials may have less experience or may not have been trained in responding to PAIA requests.

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<sup>1</sup> South African Human Rights Commission, 2012. *The Promotion Of Access To Information Act (Paia) And Records Management Consolidated Audit Report: 2008 -2012*. Available: <http://www.sahrc.org.za/home/21/files/Consolidated%20PAIA%20Audit%20Report%202012.doc2.pdf>

<sup>2</sup> This report was finalised on 29 October 2013 using PAIA request data for the reporting period compiled before, and last updated as at, 7 October 2013 – the status of PAIA requests is based on records supplied to, and on file with, SAHA at that time.

BODY	No of requests	Requests pending? (within time)	Responses received within time	Requests transferred in full	Released in full	Released in part	Requests denied (active)	Requests denied (deemed)	Internal appeals submitted	Appeals pending	Appeals - response received in time	Appeals - response released in full	Appeals - response released in part	Appeals denied	Appeals deemed
City Of Cape Town	8	1	6	0	5	1	0	1	2	0	0	1	0	0	1
City Of Johannesburg	7	1	1	1	0	0	0	5	3	1	0	0	0	0	2
Department Of Basic Education	7	0	2	0	4	0	0	3	2	1	0	0	0	0	1
Department Of Correctional Services	7	0	1	0	1	1	0	5	4	1	0	2	0	0	1
Department Of Defence	6	5	0	0	0	0	0	1	1	1	0	0	0	0	0
Department Of Justice And Constitutional Development	7	4	0	0	0	0	0	3	2	1	0	0	0	0	1
Department Of Mineral Resources	14	0	3	0	3	2	5	4	5	3	0	0	0	1	1
Department Of Transport	6	1	2	2	0	0	1	2	3	0	0	0	0	1	2
EThekweni Metropolitan Municipality	7	0	0	0	3	1	0	3	5	1	0	0	0	1	2
South African Broadcasting Commission	6	4	0	0	0	0	0	2	2	0	0	0	0	0	2
South African Police Service	11	5	0	1	0	0	2	3	4	0	1	1	1	1	1
<b>TOTALS</b>	<b>86</b>	<b>21</b>	<b>15</b>	<b>4</b>	<b>16</b>	<b>5</b>	<b>8</b>	<b>32</b>	<b>33</b>	<b>9</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>4</b>	<b>14</b>

*Table 1: Bodies to whom more than 5 requests were submitted*

Of the bodies to which a high number of requests were submitted, only the City of Cape Town, Ethekeeni Municipality and the Department of Basic Education responded to more than half of the requests submitted to them by releasing records in part or in full.

Instead, half of these bodies failed to provide a response to more than half of the initial requests submitted to them. The performance of the City of Johannesburg proved to be the most concerning of those bodies to which a high volume of requests was made. Of the seven requests submitted,

one was transferred (within statutory timeframes), one remains pending, and five were not responded to within the statutory timeframe (and therefore constitute a deemed refusal under the Act). Furthermore, of the three internal appeals submitted in respect of refusals, no decision has been received in response to two of these appeals, despite the expiration of the statutory timeframe (the other remains pending). The failure by the City of Johannesburg, by the end of the reporting period, to engage at all with requesters represents a denial of the constitutional right to information and suggests, at best, an ignorance of, or at worst, a blatant disregard for, its statutory obligations.<sup>3</sup> The Department of Justice and Constitutional Development's performance was also notably poor, a pattern that is consistent with the PAIA CSN's experience of low compliance by the Department and an apparent resistance to releasing records when submitting requests in the past. All requests submitted were either denied or deemed to have been refused (excepting those that were still pending at the end of the reporting period). This poor performance is particularly concerning, given the department's responsibility for ensuring compliance with PAIA.

Of those bodies that received lower numbers of requests, the following performed well in that they all responded to the initial requests submitted to them within the statutory timeframes, and they responded to the requests by releasing records, either in full or in part.

Body	No Of Requests	Requests Pending? (Within Time)	Responses Received Within Time	Requests Transferred In Full	Requests Transferred In Part	Released In Full	Released In Part
Dept of Social Development	1	0	1	0	0	1	0
Dept of State Security	4	2	2	1	0	0	1
Dept of Trade and Industry	2	0	2	0	0	2	0
Independent Police Investigations Directorate	1	0	1	0	0	0	1
uMhlanthunze Municipality	1	0	1	0	0	0	1
Dept of Economic Development, Environmental Affairs & Tourism (Eastern Cape)	2	0	2	0	0	2	0
Government Employees Pension Fund (GEPF)	1	0	1	0	0	0	1

*Table 2: Bodies (less than 5 requests submitted) responding positively to PAIA requests*

<sup>3</sup> It is worth noting that 5 of the requests submitted to the City of Johannesburg were the subject of a complaint submitted to the South African Human Rights Commission in June 2013. In the course of this complaint, it became clear that at the core of the Municipality's failure to address PAIA request was the lack of proper financial systems. Until recently the City of Johannesburg would not accept payment made through Electronic Fund Transfer (EFT) system. The lack of this system meant that information requesters were limited to cheque and cash payments. Furthermore, the absence of an EFT payment option meant that requesters were being biased as their requests were not being processed due to non-payment. The City has since implemented an improved system and is currently accepting payment through EFT and increased engagement with this requester seems to be leading to improved outcomes.

## Compliance with PAIA time frames

Only 22% of requests and 7% of internal appeals were responded to within the statutory time frame. This remains a significant failure in the implementation of PAIA to achieve the constitutional right to information.

There is a notable increase in the utilisation of the extension of time for responding to requests by public bodies, with an extension being requested by public bodies for 30 requests in total. However, the fact that those bodies requesting extensions still fail to respond within the statutory timeframe (the Department of Home Affairs being a case in point) suggests that under-resourcing, poor communication and poor record-keeping continue to present obstacles to the realisation of the right to information in South Africa.

## Outcomes of initial PAIA requests

Of the 236 initial requests submitted to public bodies, 16% remain pending. Of those requests to which a response should have been received in terms of the timeframes dictated in PAIA, 17% of requests were released in full, 10% were released in part and 6% were transferred to other public bodies. Alarming, over 65% of these requests to which responses should have been received were refused. In only 27% of these refusals, the requester was actually notified of a decision not to release records requested.

The most common ground for refusal, cited in 44% of responses, was that the records do not exist or cannot be found (s23). The application of this ground is worrying as it suggests poor records management exists within government departments, despite those obligations to create and maintain records laid out in a number of laws, including the National Archives Act (No. 43) of 1996, and the 'Records Management Policy Manual' (October 2007),<sup>4</sup> issued in terms of section 13(5) of the National Archives Act dealing with the control and management of records by government bodies<sup>5</sup>. The failure to create and keep records of state activities is constitutionally problematic for a range of reasons:

- It frustrates the right of the public to access such information and to know about such activities;
- It is inimical to transparent and accountable governance; and
- Such practices will impoverish the historical record which is legally required to be maintained in the National Archives.

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<sup>4</sup> This policy, along with other directives related to information governance for public bodies, is publicly accessible on the website of the National Archives at: <http://www.national.archives.gov.za/>.

<sup>5</sup> Other relevant legislation to the obligations to create and maintain state records include, amongst others, the Promotion of Administrative Justice Act (No. 3 of 2000), National Environmental Management Act (No. 107 of 1998), and Public Finance Management Act (No. 1 of 1999).

GROUND CITED	No. of times cited	%
s23 - Records do not exist or cannot be found	11	44
s36 - Mandatory protection of commercial information of third party	9	36
s37 - Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party	1	4
s38 - Mandatory protection of safety of individuals, and protection of property	3	12
s39 - Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings	2	8
s40 - Mandatory protection of records privileged from production in legal proceedings	1	4
s42 - Economic interests and financial welfare of Republic and commercial activities of public bodies	2	8
s44 - Operations of public bodies	3	12
s45 - Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources	3	12

*Table 3: Grounds for refusal cited by public bodies*

It is also worth noting that in 40% of the responses received, the body failed to provide adequate information about why access was being refused and how the ground for refusal related to the particular record requested, despite this being a requirement laid out in section 25(3) of PAIA.

But, the most worrying trend evident in the responses to initial requests submitted by the network is that 73% of denied requests were actually deemed refusals, that is, the information holder simply failed to communicate what decision had been made.

The following public bodies failed to provide a decision to any and all initial requests submitted to them by the PAIA CSN during the reporting period:

- Armscor
- City Of Tshwane
- Denel
- Department Of Defence
- Department Of Home Affairs
- Department Of Human Settlements
- Department Of Justice And Constitutional Development
- Department Of Labour
- Department Of Public Service And Administration
- Department Of Public Works
- Department Of Rural Development And Land Reform

- Department Of Traditional Affairs
- Eastern Cape Department Of Human Settlements
- Emfuleni Local Municipality
- Free State Department Of Education
- Free State Department Of Cooperative Governance, Traditional Affairs And Human Settlements
- Gauteng Department Of Local Government And Housing
- Gauteng Office Of Premier
- Gauteng Provincial Government
- Government Communication And Information System
- Greater Tzaneen Municipality
- Lesedi Local Municipality
- Metrorail
- Mopani District Municipality
- Mpumalanga Department Of Agriculture, Rural Development And Land Administration
- Municipality of Mogale City
- National Nuclear Regulator
- National Treasury
- North West Department Of Education
- Nuclear Energy Corporation Of South Africa
- Roads Agency Limpopo
- South African Broadcasting Commission
- South African Local Government Association
- Umalusi Council For Quality Assurance In General And Further Education And Training
- Umzimkhulu Municipality
- Water Tribunal: Department Of Water Affairs

## **Internal Appeals**

In 2012 / 2013, 69 internal appeals were submitted to public bodies in response to refusals to release records. Responses to 22% of these requests were still pending at the end of the reporting period (within timeframes of PAIA).

The internal appeal mechanism appears to be working slightly better than it has in the past. Refusals at the requests stage were substituted with decisions to release either in full or in part in 17% of the appeals, higher than the 7% of appeal decisions upholding the initial refusal in 2011. Notably, the Department of Correctional Services, after having failed to respond to over 70% of initial requests, overturned initial refusals in 2 of the 3 appeals submitted to the body.

However, the number of appeals to which requesters simply never received a response remains high – over 50% of internal appeals submitted are deemed to have been dismissed.

Most worryingly, the following public bodies failed to respond both to all initial requests submitted AND all internal appeals submitted to them by the network during the reporting period:

- Armscor
- Eastern Cape Department Of Human Settlements
- Free State Department Of Cooperative Governance, Traditional Affairs And Human Settlements
- Gauteng Provincial Government
- Lesedi Local Municipality
- Mpumalanga Department Of Agriculture, Rural Development And Land Administration
- South African Broadcasting Commission
- Umalusi Council For Quality Assurance In General And Further Education And Training
- Water Tribunal: Department Of Water Affairs

The failure by information holders to respond to requests and internal appeals highlights the desperate need for an independent regulator that would provide civil society with an independent, inexpensive and swift review process to counter the blatant disregard by organs of states with their obligations under PAIA.

## Failure to provide records

The failure to provide access to the records poses a great difficulty for requesters, as PAIA does not expressly provide any right of appeal (either internally or to court) where access has been granted but is not provided. This problem is well demonstrated by the failure of the PAIA unit at the Department of Justice and Constitutional Development to release a workable copy of the Truth And Reconciliation Commission (TRC) database to the South African History Archive (SAHA) by the conclusion of this reporting period, despite the Minister having overturned the initial refusal to release this to SAHA nearly 4 years earlier, in September 2009<sup>6</sup>. Another case in point from the reporting period is the lengthy delay between SAHA being informed by Trans-Caledon Tunnel Authority of a decision to release records (nearly 5 months after the request was submitted in November 2012) and actually receiving the released records in September 2013.

## 3.2 REQUESTS SUBMITTED TO PRIVATE BODIES

The remaining 22 requests were submitted to 16 different private bodies. While this is a slight increase from the 15 requests submitted to private bodies by the network in 2011, it still indicates a failure by civil society to adequately explore this aspect of PAIA. It may also indicate that many civil society organisations find it challenging to demonstrate that a record requested from a private body is required for the exercise or protection of any right. This is compounded by the strict interpretation of the term 'required' that has been applied by the courts (in *Unitas v van Wyk* 2006 (4) SA 436 (SCA)) it was found that in order to meet the threshold the requester must show that the records are 'essential or necessary' for the exercise or protection of a right, not just 'useful or relevant'<sup>7</sup>.

<sup>6</sup> For more information, see [http://www.saha.org.za/news/2013/April/departement\\_of\\_justice\\_blocks\\_access\\_to\\_trc\\_database\\_for\\_over\\_three\\_years.htm](http://www.saha.org.za/news/2013/April/departement_of_justice_blocks_access_to_trc_database_for_over_three_years.htm)

<sup>7</sup> It is worth noting that shortly after the end of the reporting period, the South Gauteng High Court in September 2013 granted an order under PAIA compelling a private body (ArcelorMittal South Africa Limited) to disclose environmental records to a community organisation. In so doing, the court expressly confirmed the rights of fence-line communities to access to information about environmental impacts from private companies, stating that "a community based, civil society organisation such as the Applicant, is entitled to monitor, protect and exercise the rights of the public at least by seeking



Of the 22 requests submitted, 14 are pending (the statutory time frame for responding has not expired). Only 50% of bodies responded within the statutory timeframes, with 2 requests resulting in a full or partial release of records and 6 being refused. Two of the refusals reflect a failure of the part of the private body to respond at all (deemed refusals).

The refusal of 75% of requests made to private bodies indicates a serious problem in the realisation of the constitutional right to information of private bodies, particularly given the lack of any appeal mechanism other than a court action. This is particularly significant when half of the requests refused were deemed to be refused because of a failure by a private body to respond to the request. Without an inexpensive and timely avenue for appeal a portion of private bodies are therefore avoiding their legal obligations and denying the constitutional rights of citizens to information by simply ignoring requests.

#### **4. ADDITIONAL PAIA COMPLIANCE CHECKS**

The submission of formal requests is only one of the ways in which PAIA is intended to give effect to the right of access to information. Section 14 of PAIA read with Regulation GNR.187 of 15 February 2002 compels public bodies, such as national government departments, to produce clear and readily accessible information about what records are produced or held by the body, the procedure for submitting a PAIA request to the body, as well as details of the kinds of records that are made available proactively – that is, there is no need to submit a PAIA request in order to obtain these records. In recognition of the various languages spoken in South Africa, this manual should be made available in at least three of the official languages and should be published on the department's website.

During the reporting period, CALS, on behalf of the PAIA CSN, conducted a compliance check in order to identify the extent to which national government departments are making PAIA manuals available in line with the legislation.

##### **Methodology:**

The website of each national government department was checked for the following:

- Was there a PAIA manual accessible on the department's website?
- Is the manual available in 3 languages?

An initial check was conducted of the websites of 45 national government departments in August 2012, which revealed that only 24 (53%) of these bodies had a PAIA manual available on their websites, and only 5 (11%) were available in three languages.

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the information to enable it to assess the impact of various activities on the environment and like-minded individuals must be encouraged to exercise a watch-dog role in the preservation and rehabilitation of our natural resources" (Vaal Environmental Justice Alliance v Company Secretary, ArcelorMittal South Africa Limited and Another, Case No. 39646/12), at 16). The court applied a lower threshold for determining whether a right that is being protected and or exercised, than many other private bodies have been applying to date, which is a positive development in terms of submitting PAIA requests to private bodies in the future.

See <http://cer.org.za/news/joint-media-release-victory-vaal-community-court-orders-arcelormittal-sa-hand-documents>

At the end of the reporting period this had improved slightly:

- 27 (60%) had a manual available on the department's website
- 8 (18%) have PAIA manuals available in at least three languages

This high level of non-compliance is very worrying, seeing as without access to a PAIA manual, it is very difficult for a person to even begin to understand what information is available and who they can contact to find out more about accessing this information.

Furthermore, given that this requirement first came into force over a decade ago, these high levels of non-compliance reflect the extent to which public bodies fail to understand or treat as important their obligations in terms of PAIA, and section 32 of the Constitution.

At the conclusion of the reporting period, the following national departments still had no PAIA manual available on their website (with those national departments that have been in existence for at least 10 years, hence non-compliant for the same, marked with an asterisk):

- Department of Arts and Culture\*
- Department of Health\*
- Department of Human Settlements\*
- Independent Complaints Directorate
- Department of Independent Police Investigative Directorate\*
- Department of Military Veterans (Department of Defence)\*
- Department of National Treasury\*
- Parliament\*
- The Presidency\*
- Department of Public Administration Leadership and Management Academy
- Department of Public Enterprises\*
- Department of Public Works\*
- State Security Agency\*
- Department of Trade and Industry\*
- Department of Traditional Affairs
- Department of Transport\*
- Department of Water Affairs\*
- Department of Women, Children and People with Disabilities

And although the following departments have published manuals on their website, they still have not complied with the requirement to publish these manuals in at least 3 languages. Again, those national departments who have been in existence in their current form for over 10 years have been indicated with an asterisk, so appear to have been non-compliant for over a decade:

- Department of Agriculture, Forestry and Fisheries (previously Department of Agriculture)\*
- Department of Basic Education
- Department of Communications\*
- Department of Cooperative Governance and Traditional Affairs
- Department of Correctional Services\*
- Department of Economic Development

- Department of Energy
- Department of Environmental Affairs
- Department of Higher Education and Training
- Department of Home Affairs\*
- Department of Human Settlements\*
- Department of International Relations and Cooperation (previously Department of Foreign Affairs)\*
- Department of Justice and Constitutional Development\*
- Department of Labour\*
- Department of Military Veterans (previously Department of Defence)\*
- Department of Mineral Resources
- Department of Performance Monitoring and Evaluation
- Department of Science and Technology\*
- Department of Social Development\*
- South African Revenue Service\*
- Statistics South Africa\*

While beyond the scope of this compliance check, it is important to note that whilst there are some departments that comply with PAIA, the levels of currency of these manuals are worrying. It is SAHA's experience that while a particular department has complied by making available PAIA manuals on line, often these are outdated and further research needs to be done to establish for instance who the new contact persons are.

Manuals that are available are often not easy to locate on the department's website, often searches return with unrelated or no results. This could be attributed to the second issue around accessibility that being the saved name of the PAIA manual. The manner in which a record is saved on the website plays a role in how people find the records they seek and access contact details.

These low levels of compliance with section 14 of PAIA are sadly not unexpected. A similar exercise was conducted by SAHA just prior to this reporting period (in June 2012) to assess levels of compliance by public bodies with Section 15 of PAIA – which requires bodies to annually submit to the Minister of Justice a description of the categories of records of the body that are automatically available without a person having to request access in terms of PAIA, and to make it available through the departmental website.

The findings in that compliance check were even more damning: of the 40 national departments checked, only three bodies had provided such a description to the Department of Justice & Constitutional Development (DOJ) and through their own website. 4 bodies made this information available through the DOJ site alone and one body had made this information available through their website only. In total, 80% of the bodies had failed to comply with this requirement at all.

Proactive disclosure is central to ending the culture of secrecy that was created under apartheid. If government actively takes steps to create a citizenry that is informed about the operations of government, it will be promote accountability within government and trust within the citizenry. This is particularly essential in view of the bureaucratic nature of the request process under PAIA which poses many challenges for citizens that have low literacy skills and/or limited resources. Furthermore, making information available to large numbers of people simultaneously avoids the need to repeatedly respond to PAIA requests for the same information, thereby promoting efficiency within government.

## 5. Conclusion

The right of citizens to hold government and private industry accountable for their actions is an essential part of any well-functioning democracy. What is most worrying about the trends evinced in this report is that the right to access to information seems to be more at risk in South Africa today than ever before.

And it is not simply civil society that recognised that PAIA should be a vital tool in advancing accountability in South Africa – indeed, the National Development Plan 2030 clearly recognises the importance of PAIA in providing “a foundation for open, transparent and accountable government” (appropriately in the NDP’s chapter on combatting corruption).

The NDP also acknowledges that:

...the state has been poor at making information available timeously and in a form accessible to all citizens. Government officials are often reluctant to provide information when it is requested. Requests for information are routinely ignored, despite the existence of the Promotion to Access to Information Act. There is endemic lack of compliance. Ineffective implementation of the Promotion of Access to Information Act is due to wilful neglect, lack of appreciation of the importance of the right, an institutional culture of risk aversion and/or secrecy and a lack of training<sup>8</sup>.

The NDP even puts forth a series of recommendations, including the establishment of an information regulator with enforcement powers (as has been proposed in the Protection of Personal Information Bill) and the release of more “open data”<sup>9</sup>. These recommendations and observations around patterns of non-compliance are hardly new – those members of the PCSN who have been engaging with PAIA since its inception have been making similar observations for as long as it has been in effect<sup>10</sup>, observations which have been echoed in those reports produced by the still woefully under-resourced PAIA unit at the SAHRC.

Sadly, this recognition within the NDP of the centrality of PAIA in promoting transparency and accountability seems unlikely to translate into anything meaningful: until senior leadership is held to account for persistent non-compliance and their failure to prioritise and resource PAIA units, and train officials appropriately, the right of access to information will remain one that exists on paper alone for most South Africans.

Prepared by:

Catherine Kennedy and the Freedom of Information Programme team at the South African History Archive (SAHA)

For and on behalf of the PAIA Civil Society Network

29 October 2013

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<sup>8</sup> National Planning Commission. 2012. *National Development Plan 2030* – Chapter 14: Fighting Corruption. [Online]. <http://www.info.gov.za/view/DownloadFileAction?id=172305>

<sup>9</sup> Ibid. p 452

<sup>10</sup> See Chapter 6 of SAHA publication “*Paper Wars: access to information in South Africa*” (2009) – for more information, visit [http://www.saha.org.za/publications/paper\\_wars.htm](http://www.saha.org.za/publications/paper_wars.htm)