

# ACCESSING INFORMATION FOR BETTER BASIC EDUCATION



ARCHIVE FOR JUSTICE  
South African History Archive - Since 1988

# ABOUT THE SOUTH AFRICAN HISTORY ARCHIVE

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

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

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

**For more information about FOIP, please contact:**

The South African History Archive

Box 31719

Braamfontein

2017

Tel: +27117182563

Fax: +27865001600

Web: [www.saha.org.za](http://www.saha.org.za)

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FOR SOUTH AFRICA**

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The material in this guide was developed by the South African History Archive (SAHA) as part of a long-term strategy aimed at building the capacity of individuals, communities and organisations to understand and utilise the Promotion of Access to Information Act, 2000 (PAIA) to forward different kinds of struggles for justice in South Africa.

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

## **CREDITS:**

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Content development – Kathryn Johnson (AVI volunteer, 2013 – 2014) and Lwazi Mtshiyi.

Production support – Catherine Kennedy, Nancy Nkoko, Bapate Ntikinca and Toerien van Wyk.

Design and layout – Rizelle Stander Hartmeier.

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# BACKGROUND AND CONTEXT

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. The South African History Archive (SAHA) has developed this guide to help people to access information that may assist them in their attempts to improve access to, and the delivery of, basic education in South Africa.

This guide provides:

- An overview and understanding of how PAIA can be used to address issues faced by both individuals and communities when advocating for the right to basic education and other associated rights;
- Practical advice on how to make an access to information request under PAIA;
- An outline of the responsibilities of the public bodies that write and carry out basic education policy, with contact details for making PAIA requests to those bodies;
- A practical example of how you may be exercising or protecting your right to a basic education when seeking information from private bodies;
- Guidance on the next steps in the PAIA process of making requests for information, such as making internal appeals, with practical tips on seeking information;
- Advice on the commonly claimed grounds for refusing information with suggested wording for challenging refusals to provide information, and;
- Case studies showing how individuals, communities and organisations have used PAIA in advocating for the right to a basic education.

This guide is designed to be used with other guides on using PAIA developed by SAHA. These SAHA guides, along with training materials, can be downloaded, free of charge, from the following website:

- The PUBLICATIONS section of the SAHA website (<http://www.saha.org.za>)
- The RESOURCES section of SAHA's Freedom of Information Programme website (<http://foip.saha.org.za>)

You will know when to refer to other SAHA PAIA 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.

**WG**

The *PAIA Workshop Guide* provides a comprehensive training manual for people wanting to learn how to use and practically engage with PAIA.

**CS**

The *PAIA Case Studies from Civil Society DVD and Guide* is an interactive training tool which outlines key issues around PAIA. The DVD shows how ordinary citizens have used PAIA as a strategic advocacy tool.

**PU**

*PAIA Unpacked – A Resource for Lawyers and Paralegals* provides a reference which sets out the key legal requirements of PAIA and how those requirements have been interpreted and applied by the courts.

**AA**

*Activating PAIA for Advocacy: A guide to using the Promotion of Access to Information Act to advocate for the realisation of human rights* provides a visual framework for analysing the information needed to actively advocate for changes in human rights issues.



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.

# INTRODUCTION – WHY IS PAIA IMPORTANT TO THE RIGHT TO A BASIC EDUCATION?

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 a basic education.

The Constitution goes further than just recognising the right to a basic education, it places on the state a responsibility to ensure that the right is accessible and realised.

Twenty years after achieving a genuine democracy in South Africa, apartheid's Bantu education system still casts a dark shadow over the country. Sadly, it is all too common in South Africa to see children struggling to learn in overcrowded, rundown or even entirely inadequate school environments, such as the 400 mud schools in the Eastern Cape that recently made the news<sup>1</sup>.

South Africa is one of the world's lowest ranked countries for its overall quality of education. The recently released statistics by the World Economic Forum ranks South Africa at number 146 out of 148 countries that were rated.<sup>2</sup> Many of the problems with South Africa's basic education are described generally as lack of quality education, access to education and infrastructure.

In recent years, the South African Government has developed the National Development Plan (NDP) that is aimed at eliminating poverty and reducing inequality in South Africa by 2030. The NDP has acknowledged that one of the areas that need improvement is South Africa's basic education.

Many non-government organisations (NGOs) working in the basic education sector have argued that the challenges faced in providing basic education in South Africa are not so much about a shortage of money, as it is about the effective spending of money. In 2011/12, basic education had a budget of R16,344 billion<sup>3</sup>, but reported under spending of over R1 billion.<sup>4</sup> We need more information to understand and discuss how these funds can be used to improve the standards of education in South Africa for current and future generations to help our children and future leaders.

As major stakeholders in the development of children, communities have key roles to play in making government provide more information on how money is being spent on education, and to actively participate in the improvement of basic education for all. Access to information is one tool that can help NGOs working with communities to advocate for improved basic education. This guide is aimed at assisting individuals and communities to use PAIA to monitor and advocate to realise the right to basic education for the benefit of learners and the future of South Africa.

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<sup>1</sup><http://www.dailymaverick.co.za/article/2012-03-06-eastern-cape-pupils-picket-for-libraries-and-sanitation#.VG9YhYuUeAU>

<sup>2</sup>[http://www3.weforum.org/docs/WEF\\_GlobalInformationTechnology\\_Report\\_2014.pdf](http://www3.weforum.org/docs/WEF_GlobalInformationTechnology_Report_2014.pdf)

<sup>3</sup><http://www.education.gov.za/Newsroom/Speeches/tabid/298/ctl/Details/mid/2341/ItemID/3653/Default.aspx>

<sup>4</sup><http://www.pmg.org.za/report/20130604-department-basic-education-performance-201213>

# ACCESSING INFORMATION USING PAIA

The Promotion of Access to Information Act, 2000 (PAIA) is a law that gives almost anyone a right to access information held by the state. PAIA also gives you the right to request information from another person or organisation (known in PAIA as a 'private body') but only if that information is required from that private body in order to exercise or protect a right - for example, the right to a basic education.

PAIA sets out the steps to ask for information in the body's records, and the steps for how and when a body will respond. PAIA also sets out the type of records that a public or private body can refuse to give to you.

## How to tell whether a body is a public body or a private body

Before making a PAIA request you will need to identify the correct body to send your request to, and figure out whether it is a public or a private body, as different steps and forms are required for public bodies, than are used for private bodies. For example, requests must be submitted to the Information officer or Deputy Information officer in a public body, or the Head of a private body.

Generally when you ask for information from the government, you are requesting information from a public body. Examples of public bodies include the National Department of Basic Education and the provincial Departments of Education.

The definition of a public body in PAIA also includes private companies or organisations but only if they are state-owned or they perform public or government roles (usually these companies or organisations are known as 'parastatals')<sup>5</sup>.

A private body is a body that does not provide government services, such as an independent company that supplies textbooks to schools.



For more information about how public and private bodies are defined in PAIA, see pages 11-14 of *PAIA Unpacked*.

## REQUESTING INFORMATION FROM PUBLIC BODIES



For information on how to make a request to a public body see chapter 2 of the *Workshop Guide* and pages 17 - 24 of the *Resource Kit* and the Visual Framework in *Activating PAIA for Advocacy*.

You can request access to any records that you want from a public body. One of the major challenges in requesting documents from a public body is working out which public body may have the records that you want. Finding the right public body may need some thinking and research.



### AN EDUCATIONAL EXAMPLE

If you want to request documents that relate to the construction of a school toilet, you might have to request the documents from the Provincial Department of Infrastructure Development that allowed the construction company to build toilets, and not the Department of Basic Education. (See the Case Study at page 31.)

To help you in this process, every public body is expected to produce a document which will enable people to know what records of information they have – this document is called a PAIA manual.

<sup>5</sup>A list of some of these parastatals is currently available at: <http://www.gcis.gov.za/content/resourcecentre/contactdirectory/government-structures-and-parastatals>

**LOOKING AT THE LAW****What is 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 public body; and
- the subjects on which the body holds records and the categories of records held on each subject.

By reading the PAIA manual, you should be able to tell if the public body might have the records you need and how to submit your request to that body. The PAIA manual is often on the public body's website, but if it is not you can ask for it directly from the body. Sadly, only a small number of public bodies have met this requirement under PAIA since the PAIA became law over ten years ago. Many of those public bodies that have PAIA manuals have not kept them up-to-date. So if you cannot find the PAIA manual it may be that the public body has still not written or published a PAIA manual. You can call the public body to check whether there is a manual available and whether the details in the manual are up-to-date.

**CHECKLIST FOR PREPARING A PAIA REQUEST FOR A PUBLIC BODY**
 **Find the contact details for the Information officer (or Deputy Information officer)**

The contact details for different public bodies in the education sector are in Schedule 1 of this guide on page 36 and some are in the PAIA manual for the public body. However, the contact details of Information and Deputy Information Officers may have changed since this guide was written. The PAIA manual for the public body may also not be kept up-to-date.

**TIP:** *Try to contact the Information officer (or Deputy Information officer), and check their details before sending them your PAIA request. Ask for the legal team if the telephone operator for the public body does not know the name of the body's Information officer. If there is no answer, check the public body website and call the body to check the contact information for the Information officer (or Deputy Information officer).*

 **Complete the PAIA request Form A by describing the records you are seeking**

A copy of Form A is available on request from the public body or from SAHA's website (under PAIA Resource Kit and The PAIA forms) in a Word format that you can complete: [http://www.saha.org.za/publications/paia\\_resource\\_kit.htm](http://www.saha.org.za/publications/paia_resource_kit.htm)

 **Ask for PAIA fees to be waived** (but only if your request is for personal information, if you are unemployed or if you are a low income earner)

If you are asking for information about yourself, or if you earn less than R14,712 per year, as a single person, or, less than R27,192 per year, together with your spouse / life partner, as a couple), you do not have to pay PAIA fees. You will however have to explain on the request Form A why you should not have to pay PAIA fees. In all other cases you may be required to pay a R35 request fee after your PAIA request is received, but before it is carried out. Additionally, further access fees may be charged before the records are given to you.

 **Submit your FORM A by email, fax, post or deliver it to the office**

Try and keep a record of when and how you send your form, or who you gave it to.

While it is always best to try and send your request to the correct public body in order to get a quick response, do not worry if you do not send your PAIA request to the right public body. PAIA requires a public body to transfer the request to the correct public body.

### LOOKING AT THE LAW

[s. 20 PAIA]

#### When does a public body have to transfer my request?

According to Section 20 of PAIA states that a public body is requested to transfer a PAIA request to the correct body, in the event that you make a PAIA request to the wrong party.

## WHAT TO DO IF YOUR REQUEST IS TRANSFERRED

The original public body does not have to request your permission to transfer a request but they must tell you that it has transferred a request and which public body it has transferred your PAIA request to. If your request has been transferred, you should always ask the Information officer to tell you:

- which public body the request was transferred to,
- why the transfer was made, and
- when the decision will be made by the new public body, under section 20(5) of PAIA.

This will help you to follow up the request if there is a delay or confusion about the transfer.

## REQUESTING INFORMATION FROM PRIVATE BODIES



For information on how to make a request to a private body see chapter 2 of the *PAIA Workshop Guide*, pages 37-43 of the *PAIA Resource Kit* and pages 15-19 of *PAIA Unpacked*.

Unlike public bodies, from which you can request any information, the right to information from private bodies is limited. You can only ask a private body for information if you need it for the exercise or protection of any right. In summary, this means you have to give reasons why you need the records.

As with public bodies, the place to start when making a request to a private body is to look at their PAIA Manual.

### LOOKING AT THE LAW

[s. 51 PAIA]

#### What information must be included in the PAIA MANUALS OF PRIVATE BODIES:

Section 51 of PAIA requires all private bodies to publish a manual which includes information about:

- the contact details of the head of the private body; and
- the subjects on which the body holds records and the categories of records held on each subject.

The PAIA manual may not be on the body's website. Some smaller private bodies are not yet required to have a PAIA manual.

**TIP:** *If the PAIA Manual is not available on their website, you may need to ask for it directly from the body by calling their head office*

**TIP:** *As we have mentioned, PAIA manuals are not always up-to-date, so contact the head of the body or any contact they have given or a member of the legal team to check the details of the head of the private body, before sending your PAIA request to a private body.*



## CHECKLIST FOR MAKING A PAIA REQUEST TO A PRIVATE BODY

- THINK about what information you have (or can get easily) and what information you do not have but will need to request under PAIA,
- THINK about which private body may have the information you do not have. The private body's PAIA manual will give you an indication of the nature of records that the body holds.
- FIND the contact details for the head of the private body,

- Complete the PAIA request Form C by describing the records you are seeking.**

A copy of Form C is available on request from the public body or from SAHA's website (under PAIA Resource Kit and The PAIA forms) in a Word format that can be typed into at: [http://www.saha.org.za/publications/paia\\_resource\\_kit.htm](http://www.saha.org.za/publications/paia_resource_kit.htm)

- Think about how best to explain in the PAIA request Form C:**

- a. which right you are exercising or protecting; and
- b. why the record requested is required for the exercise or protection of that right.

See the box at the bottom of the page for some suggested words that could be used if you are exercising your right to a basic education and you seek records from a private body. You can also consider changing these suggested words slightly, if you are exercising other rights, for example, the right to privacy. Different words would need to be used depending on the right you are relying on and the reasons that that right is important to your PAIA request.

- If this is a request for personal information, explaining why you should not have to pay the fees in the form. Otherwise you may be required to pay a R50 request fee before the request is carried out, and further access fees before the records are given to you. Unlike public bodies, low income earners will still have to pay fees charged by a private body.

**IMPORTANT: Unlike public body requests, PAIA does NOT require the private body to transfer your request to any other body, if you send it to the wrong body.**

**TIP:** *If you send your PAIA request to the wrong private body, you will need to send a new PAIA request to the right body.*



## AN EDUCATIONAL EXAMPLE

### Request to contractor about textbook delivery and costs

The particulars of the right to be exercised (below) is an example only and you will need to change these words to set out the right you are exercising and why the records are required to exercise or protect that right for your request.



#### **Q: Indicate which right is to be exercised or protected**

A: The records requested are required for the exercise or protection of the right to a basic education.

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

A: The records are required to understand the resources spent in the last financial year to provide textbooks. This understanding of what text books were paid for and were available to learners is requested to support the right to a basic education at this school and will inform potential actions to ensure the ongoing exercise and protection of that right of access to basic education in the Eastern Cape for all children in the province.

## How long do I have to wait before receiving a response?

Both private and public bodies have 30 days to respond to a PAIA request. The body can take another 30 days if they say that they need more time before the end of the first 30 days. The body can only take 60 days to respond to a PAIA request if the extra time is needed to (a) search a large number of records, (b) search records in another town, (c) consult within the body; or (d) if you consent in writing to the extra days.



# MAKING AN INTERNAL APPEAL

If you do not receive a response to your PAIA request or if your PAIA request for information has been refused, your next step is to make an internal appeal. However, you can only appeal against a PAIA request made to a public body.

There is no right of internal appeal where a private body does not give access to requested information. Accordingly, if a private body refuses your PAIA request for information you can make a complaint to the South African Human Rights Commission or the Public Protector for their intervention, or appeal to a court.

Where a public body does not give you access to requested information, PAIA allows you to appeal this decision. The appeal will be sent to a new, more senior decision-maker within the public body, known as the 'relevant authority'. The relevant authority is usually the:

- (i) Minister (for a national government body),
- (ii) Member of Executive Council (for a provincial government body, or
- (iii) Municipal Manager (for a municipal government body).

The relevant authority is required to respond to a PAIA internal appeal within 30 days. PAIA does not allow the relevant authority to extend time to 60 days for a response on an internal appeal. If you have not heard anything in relation to your internal appeal and the decision is not made in 30 days, the relevant authority is considered to have refused your request.

When the relevant authority makes a decision on your request they can agree or disagree with the original decision. This might mean your PAIA request is still denied, or you might get some or all of the records you requested.

If the relevant authority still refuses to give you the records you asked for from the public body after your internal appeal, you can consult with a Chapter 9 Institution, such as the South African Human Rights Commission or the Public Protector and ask for their help, or you can appeal to a court of law.

**WG**

**RK**

For more information about making an internal appeal about your PAIA request, see page 30 and Chapter 4 of the *PAIA Workshop Guide*, and pages 25-35 of the *PAIA Resource Kit*. For more information about consulting with a Chapter 9 institution see page 1.5 of the *PAIA Workshop Guide*.

## HOW TO APPEAL IF YOUR REQUEST HAS BEEN IGNORED

If a body fails to provide you with a decision to your request for information within 30 days (or 60 days if the body has requested an extension of time), then, according to PAIA, the body has, in effect, refused your request. This is called a '**deemed refusal**'.

**[s. 27 PAIA]**

### LOOKING AT THE LAW

#### Appealing a deemed refusal

Section 27 of PAIA for public bodies and Section 58 of PAIA for private bodies sets out that: "You can make 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 a deemed refusal".

## CHECKLIST FOR making an internal appeal where there has been NO DECISION FROM A PUBLIC BODY

1. Check it is more than 30 days from the day the public body received your PAIA request.

**TIP:** Count the day after the public body received the PAIA request as Day 1. Count for 30 days and then the 30th day is the day the response to the PAIA request is due, unless that is a Sunday, in which case the 30th day should be counted as the next Monday.

2. Complete the internal appeal Form B explaining that there has been no response to your PAIA request.

A copy of Form B is available on request from the public body or from SAHA's website (under PAIA Resource Kit and The PAIA forms) in a Word format that can be typed into at: [http://www.saha.org.za/publications/paia\\_resource\\_kit.htm](http://www.saha.org.za/publications/paia_resource_kit.htm)

**TIP:** Your internal appeal Form B should be sent to the Information officer and it is worth again checking the contact details of the information officer before sending in the internal appeal. The Information officer will send your Form B to the relevant authority. Your follow up on your PAIA request before sending in the internal appeal can also assist in writing your internal appeal Form B.

**RK**

The words in the box below may be adapted and inserted, where they are relevant, into the 'grounds for appeal' section of Form B (see pages 28 and 31-35 of the PAIA Resource Kit for further information).



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/spoke] 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.]
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 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 PAIA (including 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.

**WG**

**RK**

**PU**

For more information about lodging an internal appeal for a deemed refusal of a PAIA request, including how to complete the required Form B, see page 70 of the PAIA Workshop Guide, pages 25-35 of the PAIA Resource Kit and pages 42-44 of PAIA Unpacked.

## HOW TO APPEAL IF YOUR REQUEST HAS BEEN REFUSED

### Checklist for making an internal appeal where a public body DOES NOT PROVIDE ALL THE INFORMATION THAT YOU REQUESTED

- 1. Read the decision carefully and consider the reasons given for not providing the records requested.**

**TIP:** If sections of PAIA are given in the decision, look the sections up in the PAIA legislation at: <http://www.acts.co.za/> (under Department of Justice and Constitutional Development see Promotion of Access to Information Act, 2000) to see if you agree that the sections of PAIA used by the body really do mean that you should not be given the records you have requested.

- 2. Complete the internal appeal Form B explaining why you disagree with the decision and why you think that the records and information requested in your PAIA request should be given to you.**

A copy of Form B is available on request from the public body or from SAHA's website (under PAIA Resource Kit and The PAIA forms) in a Word format that can be typed into at: [http://www.saha.org.za/publications/paia\\_resource\\_kit.htm](http://www.saha.org.za/publications/paia_resource_kit.htm)

**TIP:** The internal appeal Form B should be sent to the Information officer and it is worth again checking the contact details of the information officer before sending in the internal appeal Form B. The Information officer will send your internal appeal Form B to the relevant authority.

WG

RK

PU

For more information about lodging an internal appeal, including how to complete the required internal appeal Form B, see Chapter 4 of the *PAIA Workshop Guide*, pages 25-35 of the *PAIA Resource Kit* and pages 42-44 of *PAIA Unpacked*.

For more information about lodging an internal appeal for a deemed refusal of a PAIA request, including how to complete the required Form B, see page 70 of the *PAIA Workshop Guide*, pages 25-35 of the *PAIA Resource Kit* and pages 42-44 of *PAIA Unpacked*.



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. By letter dated [insert the date of the letter or email 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 decision 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 below and amend and then insert any grounds of appeal 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.

## REASONS 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 reasons described in PAIA that public bodies are allowed to use to refuse your request for access to information applies. These are usually called the 'grounds for refusal', which means the reasons given for the refusal.



For further information on the grounds for refusing access see pages 25-28 of the *PAIA Workshop Guide* and pages 30-41 of *PAIA Unpacked*.

### Most common grounds for refusal claimed by public bodies

In the experience of SAHA and the PAIA Civil Society Network<sup>6</sup> in 2013 the most common ground for refusal of a PAIA request was under section 23 of PAIA for a public body (which is the same as section 55 of PAIA for a private body) on the basis that reasonable efforts were made to find the record however the body believes that the record(s):

- (i) are in the body's possession but cannot be found, or
- (ii) do not exist.

**[ss. 23 (public bodies) & 55 (private bodies) PAIA]**

The second most common ground for refusal of records in 2013 was that the body was required to protect commercial information of a third party (section 36 for public bodies, which is similar to section 64 for private bodies). This has some overlap with the public body refusing records on the grounds of protecting confidential information of a third party at section 37 of PAIA (which is similar to section 65 for a private body).

**[ss. 36 (public bodies) & 64 (private bodies) PAIA]**

The next most frequently used grounds to refuse documents were:

- (i) safety of individuals, and protection of property (section 38 for public bodies, which is similar to section 66 for private bodies). This has some overlap with refusal on the grounds that it contains personal information (section 34 for public bodies, which is the same as section 63 for private bodies),
- (ii) operation of a public body (section 44 of PAIA), and
- (iii) manifestly frivolous or vexatious (which refers to clearly 'silly' requests), or substantial and unreasonable diversion of resources (section 45 of PAIA, there is no similar provision for private bodies).

**[ss. 38 (public bodies) & 66 (private bodies) PAIA]**

**[s. 44 PAIA]**

**[s. 45 PAIA]**

### Other grounds for refusal

Some of the other, less common, grounds for refusal of a PAIA request are set out below:

- (i) records of the South African Revenue Service (SARS) (section 35 of PAIA)
- (ii) police dockets in bail proceedings and protection of law enforcement and legal proceedings (sections 39 and 40 of PAIA for public bodies, which is similar to section 67 of PAIA for private bodies)
- (iii) defence, security and international relations of South Africa (section 41 of PAIA)
- (iv) economic interests and financial welfare of South Africa (section 42 of PAIA)
- (v) protection of research information of third party and public body (section 43 of PAIA for public bodies, which is similar to section 69 of PAIA for private bodies).

**[s. 35 PAIA]**

**[ss. 39 & 40 (public bodies) & 67 (private bodies) PAIA]**

**[s. 41 PAIA]**

**[s. 42 PAIA]**

**[ss. 43 (public bodies) & 69 (private bodies) PAIA]**

<sup>6</sup>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. In 2013 those organisations included Centre for Applied Legal Studies (CALS), the Centre for Environmental Rights (CER), Corruption Watch, Khulumani Support Group (KSG), Public Service Accountability Monitor (PSAM) and the South African History Archive (SAHA).

## HOW TO APPEAL COMMON GROUNDS FOR REFUSAL

The most common grounds for refusal of a PAIA request are set out in detail below, with examples of grounds of appeal that you may be able to use to challenge each of these grounds for refusal when preparing an internal appeal.

**IMPORTANT:** *The grounds for appeal are examples only and you will need to read the particular reasons provided by the public body carefully for each of your requests so that you can make sure you are using the best grounds for appeal for your particular request.*

### [s. 23 PAIA]

#### Records cannot be found or do not exist

Often a public body will rely on section 23 of PAIA (which is the same as section 55 of PAIA for a private body) to refuse a request on the basis that they have made reasonable efforts to find the record but the body believes that the record(s):

- (i) are in the body's possession but cannot be found, or
- (ii) do not exist.

For example, there was poor record keeping and record transfer during a change of staff around the time that there were closures of two schools in Soweto. The Department of Education (Gauteng) has now denied a request for records created by those staff members, on the basis that the records could not now be found

In these cases, the public body needs to provide an affidavit or affirmation confirming this, under PAIA.

**TIP:** *You should always request an affidavit or affirmation from the body if it is not provided, even before putting in an internal appeal. If you have the affidavit or affirmation you should read it carefully to see if there are grounds to argue that the public body may not have conducted proper searches for the records requests.*

### Examples of grounds of appeal if information is refused on the basis that the RECORDS CANNOT BE FOUND OR DO NOT EXIST

#### Records cannot be found

- The information requested is expected to be located within the body at [*insert details of where you have seen/read about/heard the information is located*].

Therefore, it does not appear reasonable to conclude that the information cannot be found under section 23(1)(b)(i) of PAIA. Further searches for the record are sought as part of this internal appeal.

#### Records do not exist

- The information requested is expected to be located within the body at [*insert details of where you have seen/read about/heard the information is located*].

Therefore, it does not appear reasonable to conclude that the information does not exist under section 23(1)(b)(ii) of PAIA. Further searches for the record are sought as part of this internal appeal.



### Failure to provide affidavit or affirmation

- The public body has failed to provide an affidavit or affirmation, as required by section 23(2) of PAIA. In particular, the public body has failed to set out all the steps taken to [*find the record in question or to determine whether the record - choose between the relevant options if the record (i) cannot be found, or (ii) does not exist – by deleting whichever is not applicable*].

An affidavit or affirmation setting out all relevant steps taken by the body to find the record is requested under this internal appeal, in accordance with section 23(2) of PAIA.

[s. 36 PAIA]

### Protection of commercial information

Another common ground for refusal of records is that the body is required to protect commercial information of (i) a third party (section 36 for public bodies, which is similar to section 64 for private bodies) or (ii) a body (section 42(3) for public bodies, which is similar to section 68 for private bodies). A third party is any other person or business.

This ground of refusal can sometimes be claimed by the public body at the same time as they refuse records on the grounds of protecting confidential information of a third party at section 37 of PAIA (which is similar to section 65 for a private body).

This ground for refusal might be used by public bodies in the basic education sector when requesting information about appropriate procurement arrangements with private bodies, such as for text books, or school furniture or to build toilets in schools.

As an example, a PAIA request could be sent to a public body for records containing greater detail about those procurement arrangements, by seeking a copy of any records setting out:

- the tender documents that describe what goods and services were required by the public body (these may already be public so it is worth looking for those documents on the public body's website before making a PAIA request),
- the contractor's bid setting out their knowledge and expertise in providing the goods or services,
- the contractual agreement setting out the terms and conditions, the key deliverables, deadlines and performance standards that the contractor must meet,
- the financial documents/budget setting out the money paid to the contract or to be paid to the contractor.

The relevant public body may argue the information requested, for example about a procurement process, is commercial or confidential information and seek to deny access to the information on that basis.

### How can you check if whether a refusal is valid?

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, important 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.

### ***Exceptions to ground for refusal***

PAIA also 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 the 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 duty to notify a third party 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.



### **EXAMPLE FOR THE EDUCATION SECTOR**

You may have requested information from the Department of Basic Education (the department) about the tender information provided by a company that was successful in the bid to build the toilets in a local school. 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 the release of the information.

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

- whether the record falls within the ground for refusal, and
- whether the records would show a failure to comply with the law or reveal a serious public safety

or environmental risk and the public interest in disclosure of this failure or risk outweighs the harm of releasing personal information. Which according to Sections 46 and 70 of PAIA is referred to as the “public interest override”

In considering whether to appeal a decision that denies you access to records 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 public body or contractor’s website? If so, is PAIA the easiest and cheapest way to obtain that information?
- Has the public body indicated its **reasons** why release of the commercial information requested would cause harm to the commercial or financial interests of the contractor? Has the public body considered that some time has gone by and the original bid information is no longer the contractor’s current pricing? If the public body considers that the release of the commercial information would disadvantage the body or third party in bids or negotiations for other contracts, has the public body considered whether a total or final financial amount is able to be provided (see *Transnet Limited v SA Metal Machinery Pty Ltd* [2005] ZASCA 113)?<sup>7</sup>
- 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 contractor:
  - o harm to their commercial or financial interests;
  - o disadvantage in (other) contract or other negotiations; or
  - o prejudice to their commercial competition?

If not, it is arguable that the release of the information about the contractor’s payments 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).

- 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 requested records? For example, can the information about the contractor’s previous experience in this type of procurement be provided, even if the financial information requested about the costs for text books, cannot be provided?

### Examples of grounds of appeal if information is refused on the basis that the RECORDS CONTAIN 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 by the public body 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 by the public body under section 42(5)(a) of PAIA.

<sup>7</sup>Available at: <http://www.saflii.org/za/cases/ZASCA/2005/113.html>



### **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, would (i) reveal a trade secret of the body or a third party; (ii) cause harm to the commercial or financial interests of the body or a third party; or (iii) 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 if 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 by a public body 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 would (i) lead to a successful action for damages for a breach of confidentiality of a third party; or (ii) 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 for checking if whether a refusal is valid

- 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

**Operations of a public body**

Another frequently used ground to refuse documents is to refuse access to records about the operations of a public body (section 44 of PAIA).

In attempting to hold government to account for implementing the right to a basic education, requests can be made for education policies, plans, reports and other documents.

**EXAMPLE FOR THE EDUCATION SECTOR**

A PAIA request could seek a copy of all records that detail the announced closure of school(s), which might seek:

- policy documents setting out the criteria for school closures,
- reports or audits assessing school(s) against that criteria,
- complaints or other correspondence about the school(s) to be closed, or
- information about the school(s), such as student attendance records and annual financial statements.

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

Sometimes it is not clear if the requested documents exist, and a number of PAIA requests may be needed to test what is available.

**TIP:** *You can always make a second PAIA to seek documents that were not sought in the first request if the released records from the first request show that more relevant documents are available.*

Also, procurement documents, and the underlying policies and procedures are not always available from a request to one public body. For example, they may be held by provincial (not national) departments, or be held by public works or infrastructure departments (instead of the education departments), or the records may even be held by private contractors.

**TIP:** *Rather than rely on the public body to transfer a request (and noting that no requests can be transferred to private bodies), you may wish to put in a similar request to a number of public or private bodies in order to save time and broaden the number, and content of, documents provided to you.*

**LOOKING AT THE LAW****Operations of Public Bodies – Checking whether a refusal is valid**

According to the PAIA of 2000, Section 44, the information officer of a public body may refuse a request for access to a record of the body if:

- a record contains an opinion, advice, report or recommendation the public 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 public body and its disclosure at that time would be premature and could reasonably be expected to frustrate the success of that policy.

## Exceptions to ground for refusal

PAIA sets out a number of circumstances where public 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 further on page 64 of the *PAIA Workshop Guide*).



## EXAMPLE FOR THE EDUCATION SECTOR

For example, you may have requested information from the Department of Basic Education (the department) or a provincial Department of Education about plans to spend budget allocations on infrastructure, such as text books. Those plans might still be draft plans as the recommendation to the financial decision-maker might not have been approved at the time of your PAIA request. The disclosure of the information might be denied on the basis that the information is about the operations of the public body. In particular, the PAIA request might be refused because of the potential for further discussions and changes to the budget plan before a decision is made on the final budget.

In considering whether to appeal a decision that denies you information on the basis that it is information about the operations of a public body, a number of questions should be considered:

- Is the information already **publicly available**, for example are complaints about the school(s) mentioned in newspapers or the criteria for school closures already provided to NGOs or school principals? If so, is PAIA the easiest and cheapest way to obtain that information?
- 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 (i) discourage the formulation of policy or decision making; (ii) get in the way of open communication or deliberations; (iii) cause difficulties for success of a policy through premature disclosure; (iv) risk the effectiveness of a testing or auditing procedure or method used by the body; (v) breach an express or implied promise regarding confidentiality; or (vi) is a draft document? Do you consider that actions or involvement by you or another person or NGO at this stage will improve the success of the selecting and planning school closures, 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** (by blacking out the information that cannot be released) from the issues in the documents that have been finalised?

## Examples of grounds of appeal if 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 deliberation within government is 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, in terms of section 44(3) of PAIA, access to the information may not be refused under section 44 (1) 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, in terms of section 44(4) of PAIA, access to the information may not be refused under sections 44(1) or (2) 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 it would (i) frustrate the formulation of policy or decision making; (ii) inhibit candid communication, discussion or deliberation; (iii) frustrate the success of a policy through premature disclosure; (iv) jeopardise the effectiveness of a testing or auditing procedure or method used by the body; (v) breach an express or implied promise regarding confidentiality; or (vi) 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.

## [s. 45 PAIA]

### Manifestly frivolous, vexatious or substantial and unreasonable diversion of resources".

At times a public body will rely on section 45 of PAIA to refuse records on the basis that:

- (i) the request is manifestly frivolous or vexatious; or
- (ii) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

For example, if you requested a very large number of documents that dealt with all provinces and for many years.

In relation to claims that the request is frivolous or vexatious, you will need to carefully read the reasoning in the decision by the public body. If no reasons are provided you will need to ask for the reasons why the request was refused using this ground for refusal of records. While you are not required to give reasons for your request to a public body, you may want to explain to the public body why it was reasonable to request the records requested.

In relation to claims that the resources involved in responding to the PAIA request are unreasonable, it is suggested that you consider whether you can put in a new request which narrows the request, for example to records for a particular date or period or for records relating to a specific location. If you have asked for a number of different records, you could also consider putting in multiple PAIA requests that ask for one record each.

### **Examples of grounds of appeal if information is refused on the basis that THE REQUEST IS FRIVOLOUS/VEXATIOUS OR UNREASONABLE USE OF RESOURCES**

#### **Request is manifestly frivolous or vexatious**

- The request for information is a reasonable request [*insert details of why the request is reasonable – noting you do not have to explain your reasons for requesting the records, but you can give those reasons if you are happy to do so*].

Therefore, it does not appear reasonable to conclude that the request was frivolous or vexatious under section 45(a) of PAIA. Further consideration of the request is sought as part of this internal appeal.

#### **Request would substantially and unreasonable divert resources of the public body**

- The information requested is seeking [*insert greater detail of what records were sought under the request*] which is not a large request for a public body of the size of the Requestee.

Therefore, it does not appear unreasonable to conclude that the information could be easily identified and provided, contrary to the claim that this is a substantial and unreasonable diversion of the public body's resources under section 45(b) of PAIA. Further searches for the record are sought as part of this internal appeal.

#### **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 [(i) *is manifestly frivolous or vexatious* or (ii) *would substantially and unreasonable divert resources of the public body*].

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 provide reasons as to why this request comes within section 45 of PAIA.

## Personal information or harm to a person

A less common, but sometimes used ground for refusal of records is that the release of the information is denied because of the need to protect people or property in accordance with section 38 for public bodies (which is similar to section 66 for private bodies).

This ground of appeal has some overlap with the body refusing records on the grounds of protecting personal information in accordance with section 34 of PAIA (which is similar to section 63 of PAIA for a private body).

Some of the basic education sector issues that arise might be resolved if there was more access in relation to school performance, for example by monitoring data on pass rates and learner's performance.

The relevant public body may argue that that information, for example about a school's performance, reveals personal information about students, and at worst could lead to harm to some persons (or property) and seek to deny access to the information on that basis.

## PROTECTION OF PEOPLE OR PROPERTY

### *How to test if whether a refusal is valid*

Section 38 of PAIA in respect of public bodies and Section 66 in respect of private bodies states that access to records **must be** refused where the release of a record could reasonably be expected to endanger the life or physical safety of an individual.

Access **may be** refused where the requested information is held by the public or private body and its disclosure would be likely to prejudice or impair:

- the security of:
  - a building, structure or system (including computer or communications systems)
  - a means of transport; or
  - any other property; **or**
- methods, systems, plans or procedures for the protection of:
  - a person in witness protection scheme
  - the safety of the public or part of the public
  - a building/structure or system, means of transport or other property.

## PERSONAL INFORMATION

### *How to test if a refusal is valid*

According to Section 34 of PAIA in respect of public bodies and Section 63 of PAIA in private bodies, access **must be** refused where the release of a record would involve the unreasonable disclosure of personal information about another person. Importantly, PAIA specifically says that information about a person who has been dead for more than 20 years is not considered 'personal information' for the purposes of PAIA.

### *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. These are if:

- 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 to 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.

For example, you may have requested information from the Department of Basic Education (the department) about the test results of students in the same grade at a number of public and private schools, in order to assess the performance of those schools.

Some or all of the information you are requesting might be denied on the basis that it is personal information, as it could include the name and other details of students. However, the public body would need to contact the learners for their consent to release their personal information, which may mean some information will be released to you, if the parents or child's guardian agrees to release of the information.

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

- Is the information already **publicly available**, for example in the student year book? If so, is PAIA the easiest and cheapest way to obtain that information?
- Is the information 'personal information' as defined by PAIA? If so, is it unreasonable to disclose that personal information?
- Did the body consider whether the parts of the records that contain personal information are able to be **severed** from the other information in the requested records? For example, can the information about the learner's name be removed and the remainder of the requested information be provided?

### **Examples of grounds of appeal where information is refused on the basis that the RECORD CONTAINS INFORMATION RELEVANT TO THE PROTECTION OF A PERSON OR PROPERTY**



#### **Publicly available information about person or property**

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

Given that the information has not lead to harm to the [select the relevant option and delete the other option - person to date, it is therefore unreasonable to expect that the release of the information would endanger the life or physical safety of an individual - OR - property to date, it is therefore unlikely that the release of the information would lead to any prejudice or impairment under section 38 of PAIA].



### **Failure by public body 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 would (i) endanger the life or physical safety of an individual; or (ii) prejudice or impair the security of a building or means of transport or other property; or (iii) prejudice or impair the plans for the protection of a person in witness protection, the public, or a building or means of transport or other property*].

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.



### **The information about the person or property 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 the information that might be necessary to ensure the protection of a person or property, where that information can reasonably be severed from any part that is necessary for such protection, so as to provide the requester with access to the part which does not contain that information.

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

The body is therefore required to sever the information that cannot be released, due to the need to protect people or property, from the record (for example, by blacking out that information) and release the remainder of the record.

## **Examples of grounds of appeal where information is refused on the basis that the RECORD CONTAINS PERSONAL INFORMATION**



### **Publicly available information in request to public body**

- The information about the person 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 by the public body under section 34(1)(c) of PAIA.



### **Record is more than 20 years old**

- The record is about a person that has been dead for 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, as the information is not 'personal information' under the definition of 'personal information' at section 1 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 unreasonably disclose personal information under PAIA.

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 unreasonably disclose personal information.

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



### **Failure to apply the test for refusal by a public body**

- The public body refused access to the information solely on the basis that the person, 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 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 personal information) and release the remainder of the record.

## THE PUBLIC INTEREST OVERRIDE

The public interest override is a very important part of PAIA because it means that there are certain kinds of information – such as evidence of corruption or threats to public safety - that the South African public has the right to know EVEN when some of the grounds for refusal may apply.

### How to check whether the PUBLIC INTEREST OVERRIDE may apply

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.

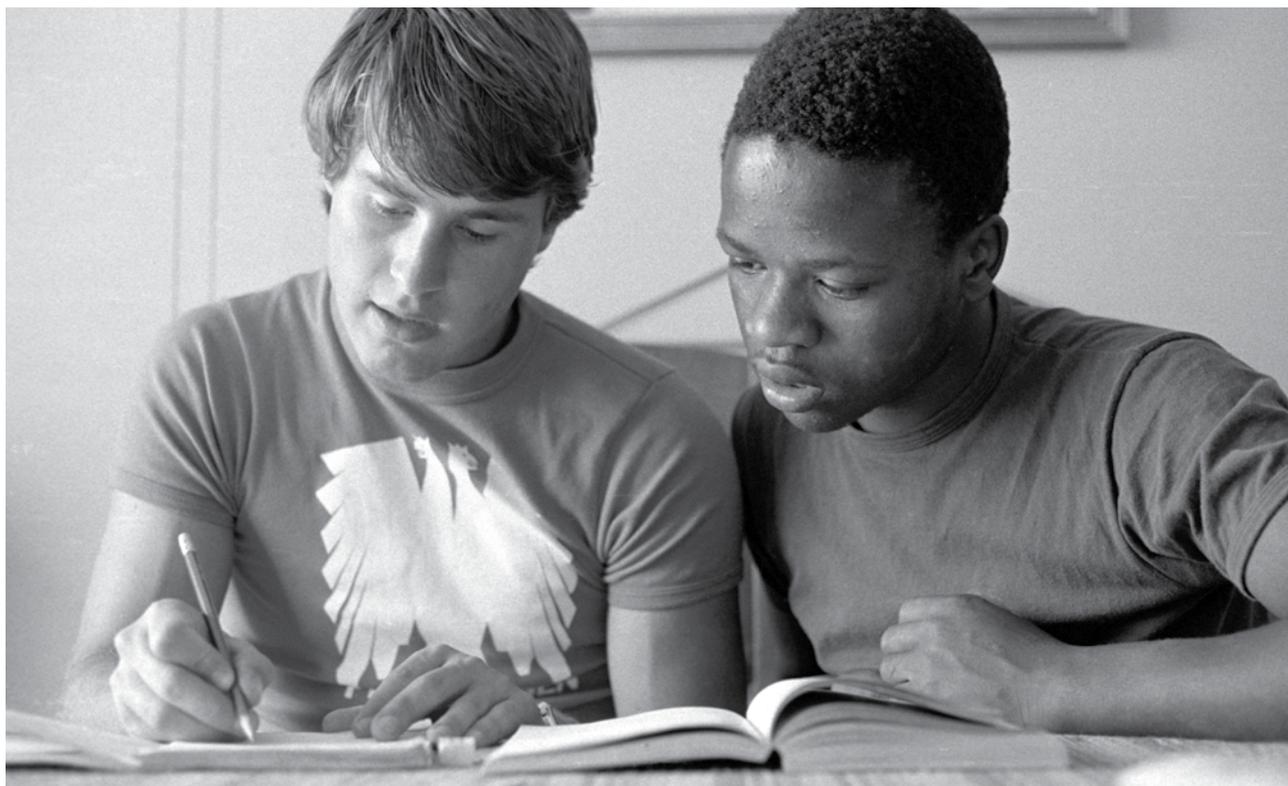


### AN EDUCATIONAL EXAMPLE

You may have requested information on an education tender bid or decision on successful tender from the provincial Department of Infrastructure Development (the department). The information you requested might initially be considered confidential or commercial information.

However, before the department refuses to provide the information requested 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 due to fraud is against the law and the public interest in its disclosure would arguably outweigh any harm to the business in the release of that information. Accordingly, you could argue that the department should release that part of the department's report that relates to the department's consideration of possible corruption.



# CASE STUDIES: PROCUREMENT, SCHOOL CLOSURES AND PRIVATE SCHOOLS

## CASE STUDY ONE: Procurement of school infrastructure by the Gauteng Department of Education

### **QUESTION 1: Thinking about the problem – what is the outcome of the problem and what has caused the problem?**

The problem relates to transparency of school infrastructure procurement for the Department of Education (Gauteng) (the department).

Early in 2014 the Principal of a Gauteng school requested the department to fence the school for the safety of students.

The department appeared to respond by building toilets that had never been requested by the Principal. The outcome has been the procurement of toilets that are currently not working and pose a health and safety hazard. One of the school teachers has already experienced first hand the safety risks of the unfinished toilet construction when she fell into one of the toilet holes that had been left uncovered by the construction company and broke her leg. She was out of work for 6 weeks.

Before the toilet construction project, the school had old but functioning toilets. Currently the toilets are malfunctioning because they were not properly constructed using pipe, which makes the toilets difficult to use.

The local school community has had two unanswered questions:

- (i) why were the toilets built in the first place?
- (ii) why were the toilets not properly built, and why is the department not requiring them to be fixed by the contractor?

### **QUESTION 2: Seeking information about the problem – what is known and what is not known about the problem?**

Ronald, who works as a stakeholder and public engagement manager at Corruption Watch, intervened to assist the community to get information relating to these questions.

Ronald sent letters and tried to get interviews with the department's officials. He also searched through the department's website to get information.

Unfortunately, after a range of attempts at engagement over a number of weeks he still did not have sufficient facts to answer these two questions, and to resolve the underlying problem.

Ronald contacted SAHA as part of its basic education initiative, to understand how PAIA could help provide information to answer these questions.

With the help of SAHA, Ronald submitted two PAIA requests seeking to obtain records that would reveal:

- (i) on what basis a decision was made to build the toilets, and when and by whom that decision was made. Ronald sought planning meeting minutes and needs assessments that were used to justify the building of the toilets. These documents were expected to reveal why and when this decision was made, and by whom.
- (ii) who was responsible for the current building of the toilet and what contractual requirements they had to complete the toilets. Ronald sought contracts and other tender documents setting out the names of companies involved in the construction of the toilets and service level agreements that created a responsibility to complete the proper building of the toilets.

The department responded to Ronald's request, with two separate releases of records. The records released appeared to show that the toilets were built as part of a more general infrastructure improvement project, undertaken by the department in that area. Amongst the released records were copies of the contractual agreements with the contractor hired to build the toilets. The contractual agreements, provided a due date for completion of the construction of the toilets, which had passed long before Ronald approached SAHA, and set out responsibilities for risk bearing, for both the department and the contractor. The released records did not however show why the toilets are not yet complete, why the department does not appear to be requiring the contractor to complete them and the basis for the need to have built the toilets in the first place.

**QUESTION 3: Based on the facts as known what is the proposed solution?**

In seeking this information Ronald wanted to understand if there was a contract that set out obligations to have the toilets completed to a satisfactory standard, quickly and safely. If so, Ronald wanted to have a meeting with the community so they would know if, and how, that contract could be enforced in order to get fully functioning toilets.

He also wanted to assist the community to better understand the decision and reasoning of the department to construct toilets the school did not need. Ronald was seeking to discover whether the decision to award a contract for work that was not requested by the school was due to corruption by any parties involved, or whether it had just been a decision that had been coincidentally made at a time when the school had sought a fence for the school. At this stage there is no evidence of corruption, but there is some indication of lack of communication and accountability for decisions. Ronald will also be talking with the community to see how they would like to hold the department's officials responsible for their decision to provide the toilets which were not needed, and but not to provide the much needed school fencing.

**QUESTION 4: What actions will be taken to advocate for a solution to the current problem?**

Ronald now proposes to help the concerned community and the school governing body to advocate to ensure the toilets are fixed to meet acceptable standards. Ronald will do this by approaching the sanitation forum that has been established at the school, asking them to ask the department and contractor to fix the toilets. The sanitation forum consists of school children's parents, the school staff and the school governing body.

Ronald will also encourage the school officials and school community to raise the question with the department as to if, and when, they can seek funding for a fence for the school – and how to make a case for that funding, and for the better management of that contract when the fence is being built.

Given the documents show some evidence of lack of transparency and consultation in decision making, Ronald also proposes to share those documents with NGO stakeholders and the media, calling for greater transparency and better accountability.

## CASE STUDY TWO: School closures in Soweto

### QUESTION 1: Thinking about the problem – what is the outcome of the problem and what has caused the problem?

Over the last few years, a couple of schools in Soweto have been closed by the Department of Education (Gauteng) (the department).

Jabu, a social activist and a member of the National Association of School Governing Bodies in Soweto has been concerned about these school closures. He was worried about four schools in particular because closures of these schools:

- (i) occurred without sufficient notice or engagement with the community and school governing bodies, which would have informed better decisions and planning around the closures, and would have engaged the community on changes in their local neighbourhood,
- (ii) forced learners to attend other schools in many cases at considerable cost and inconvenience for learners, and
- (iii) left buildings abandoned, which could now be occupied by criminals and if visited (e.g. by young children when playing) pose a safety risk to members of the community.

### QUESTION 2: Seeking information about the problem – what is known and what is not known about the problem?

After Jabu analysed the problem, he concluded that he needed more information required about:

- (i) the criteria that was used for closing these schools, and if there was an assessment of these schools against that criteria,
- (ii) whether the existing process for closing schools was followed, and if it was, whether that process had involved appropriate community consultations on school closures, and
- (iii) what the plans are for the former school's land and buildings in the next few years and how the school buildings can be made more secure in the short term.

Jabu has been committed to getting this information from the department's officials about the school closure decisions. However, the department's officials had ignored all his approaches for information.

Given that these less formal requests failed, Jabu resorted to submitting a PAIA request for documents about the processes followed by the department to decide to close down these schools.

Jabu had no prior experience in requesting information under PAIA, before attending a PAIA workshop that was hosted by SAHA in 2014. However, after assistance from SAHA, Jabu made a request for:

- (i) policy documents setting out the criteria for deciding to shut down schools,
- (ii) policy and procedural documents setting out the process for consultations on shutting down schools, and
- (iii) correspondence relating to the issues around the decision to shut down the schools.

Four months after the initial PAIA request was lodged, and well outside the PAIA legislated timeframes, after much follow up, the department responded indicating that:

- one school had been merged, and that the department relied on legislation (South African Schools Act, 1996 (Act No 84 of 1996)) as the criteria for merger of one of the schools. That legislation requires notice of the merger to be made in a local newspaper and 90 days for submissions to be made about the proposed merger,
- there were only limited documents in relation to another school, which had closed in 2009, the department indicated that this was due to the fact that managerial changes had led to most documents not being located. The department indicated that schools are generally closed due to a reduction in the number of learners and the financial viability of schools operating close to other schools. However, it is unclear whether this applied to the school closures in these specific

instances. "That is because, although the department had indicated that they had found the submission to close the school, and that they had provided to SAHA, it was not attached to the email forwarded to SAHA. It is not clear whether this was a deliberate omission or a genuine mistake, Jabu, with the assistance of SAHA, will follow this up with the department."

Further information gathering indicates that legislation on school closures of public schools requires that the School Governing body be notified of the proposed closure of a school and makes provision for opportunity for that School Governing body to make submissions on the proposed closure. Similarly, the legislation requires that a public hearing is held to enable submissions to be made about the proposed school closure.

### **QUESTION 3: Based on the facts as known what is the proposed solution?**

Throughout his advocacy on this issue, Jabu has been keen to lobby the department for a more consultative and communicative process on school closures. Jabu is concerned that without this communities will have no patience with further school closures.

Jabu is talking to the community about what this problem has meant for them and what they will do about it. At this stage, Jabu proposes that:

- (i) criteria, as well as policies and procedures in place for school closures, are made available on the department's website and that copies thereof be distributed to community organisations. This will make the criteria transparent and allow communities to better understand these criteria, in due course making decision-makers more accountable for decisions to close schools,
- (ii) department procedures be drafted to make clear when and how school communities will be consulted and advised of decisions to close schools, in accordance with legislative requirements,
- (iii) money be budgeted in school closures for securing school land and buildings after a school is closed, and that longer term plans about those building are required as part of a decision to close a school, and
- (iv) in the case of school closures, the department procedures be drafted to set out that the communities should be asked to put forward plans for the better use of school buildings and land, and that in the current case communities be allowed to do so in relation to these recent school closures.

### **QUESTION 4: What actions will be taken to advocate for a solution to the current problem?**

Jabu also plans to let community members know that the department is required to consult with school communities. Jabu wants to raise the issue about the apparent lack of consultation on school closures with the National Association of School Governing Bodies, the community and the media. The lack of adequate consultation suggests to Jabu that the department does not take the communities' concerns seriously and that the department does not see itself as accountable to the community. This lack of good governance on such important issues to the future of South Africa's education system is unacceptable to Jabu.

Jabu is also concerned by the department's response that it does not have some of the records because of change in management. This implies that the department is not undertaking good record keeping of documents that are required for compliance with the duty to share information with communities. Jabu will raise the issue that the department should make sure that change in management does not affect record keeping of information that may be needed by communities.

Jabu also plans to mobilise the community to raise their dissatisfaction with the department's response and to seek departmental action on the need for better security and safety procedures around the abandoned schools, as well as the use of the closed the school land and buildings for the benefit of the community at large.

## CASE STUDY THREE: Monitoring private school performance in delivering basic education

### **QUESTION 1: Thinking about the problem – what is the cause and effect of the problem?**

Many parents pay close attention to how private schools perform, as they are concerned to select the school that will make sure their child has the best start in life, and to ensure the school is providing value for the money they pay for that education.

Additionally, the broader community is also concerned to ensure that public resources are adequately used to meet the constitutional right to a basic education, including by private schools, where parents are also contributing to those education costs.

### **QUESTION 2: Thinking about the problem – what is known and what is not known about the problem?**

Lwazi is the father of a child who attends a private primary school. He has also worked as a training and community liaison officer for SAHA.

Lwazi decided to explore what information is available to parents and the community to monitor the success of schools in delivering basic education for children at that school and to meet obligations to educate children more generally.

Lwazi initially searched publicly available information as to the amount of the government subsidy that the school that his child attends receives from the state. The search did not yield any results about the specific school. Lwazi's search merely confirmed that some private schools are subsidized by the state. However, Lwazi remained unclear about the amount and use of that subsidy for private schools.

Given his awareness of, and interest in PAIA, Lwazi submitted a PAIA request for records relating to government funding and school infrastructure support from the State that the primary school attended by his son received in the 2013 financial year. Lwazi hoped that this might also raise with the school the issue of the need for proactive disclosure of more information about the spending on the school's infrastructure, and provide an opportunity for the school to become more familiar with PAIA.

However, the school has not responded to this PAIA request. This may be because the school is unfamiliar with PAIA, or perhaps because the school does not consider itself a private body, in that the school may consider that they are performing Constitutional and/or some public functions in terms of the schools legislation, arguably making them a 'part b' public body under PAIA. This might mean the PAIA request needs to be made on a different PAIA form.

### **QUESTION 3: Based on the facts as known what is the proposed solution?**

Given part of this PAIA request was to raise the profile of PAIA with the school and promote transparency by the school, Lwazi proposes to contact the school to ask them why they had not responded to this PAIA request.

Lwazi will also consider exploring the idea of requesting the records from the government institution that may have subsidized the school.

Ultimately, Lwazi is interested in talking with others that would like to advocate for more information from schools and government about what subsidy is received by each school for the education of learners in that school

### **QUESTION 4: What will be done to advocate for a solution to the current problem?**

Given that Lwazi is generally interested in the need for accountability by schools against appropriate performance standards, Lwazi proposes to use his networks in the National Association of Schools Governing Body to ask them to continue to lobby through the media and directly with schools and Departments for more publicly available information at a national and school level for parents to use in determining if their child should attend a private school and, if so, which private school would be best support their child's educational future.

# CONTACT DETAILS FOR PUBLIC BODIES IN THE BASIC EDUCATION SECTOR

## RESPONSIBILITIES AND CONTACT DETAILS OF KEY PUBLIC BODIES

Information about the key areas of responsibility for public bodies that may hold records about basic education 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 before submitting a request.**

### DEPARTMENT OF BASIC EDUCATION (NATIONAL)

**PAIA manual: [www.education.gov.za/TheDBE/PAIAManual/tabid/1043/Default.aspx](http://www.education.gov.za/TheDBE/PAIAManual/tabid/1043/Default.aspx). Available as at November 2014.**

<u>RESPONSIBILITIES</u>	<u>LEGISLATION ADMINISTERED</u>	<u>CONTACT DETAILS</u>
<ul style="list-style-type: none"> <li>• provide relevant and up to date quality education</li> <li>• develop and maintain the education system</li> <li>• provide access to lifelong learning</li> <li>• develop the policy and legislative framework on which the education system rests</li> </ul>	<p><b>BY DEPARTMENT</b></p> <ul style="list-style-type: none"> <li>• South African Schools Act, 1996 (Act No. 84 of 1996)</li> <li>• National Education Policy Act, 1996 (Act No. 27 of 1996)</li> <li>• Employment of Educators Act, 1998 (Act No. 76 of 1998)</li> <li>• Adult Basic Education and Training Act, 2000 (Act No.52 of 2000)</li> <li>• South African Council for Educators Act, 2000 (Act No. 31 of 2000)</li> </ul>	<p><b>Name:</b> Chris Leukes</p> <p><b>Position:</b> Deputy Information Officer/ Director Legal Services</p> <p><b>Tel:</b> +2712 357 3712</p> <p><b>Fax:</b> +2712 323 0601</p> <p><b>Email:</b> <a href="mailto:leukes.c@dbe.gov.za">leukes.c@dbe.gov.za</a></p> <p><b>Post:</b> Private Bag X895, Pretoria, 0001</p>

### EASTERN CAPE – DEPARTMENT OF EDUCATION

**PAIA manual: As at November 2014, no PAIA manual available on website.**

<u>RESPONSIBILITIES</u>	<u>CONTACT DETAILS</u>
<ul style="list-style-type: none"> <li>• offer quality public education system that transforms schools into centres of community and promotes shared moral values, good governance and sustainable development</li> <li>• provide quality education for sustainable development</li> <li>• provide socially relevant and economically responsive programmes that address the human resource needs of the province and the country</li> <li>• encourage a participatory decision-making process which will empower the whole community at all levels.</li> </ul>	<p><b>Name:</b> Mr Phila Ngqumba</p> <p><b>Position:</b> Deputy Information Officer/ Statutory Advisory and Protocol Services</p> <p><b>Tel:</b> +2740 608 4028/9 or +2783 275 0668</p> <p><b>Fax:</b> +2740 608 4016</p> <p><b>Email:</b> <a href="mailto:phila.ngqumba@edu.ecprov.gov.za">phila.ngqumba@edu.ecprov.gov.za</a> <a href="mailto:nqabakazi.gcanga@edu.ecprov.gov.za">nqabakazi.gcanga@edu.ecprov.gov.za</a></p> <p><b>Post:</b> Private Bag X0032, Bhisho, 5605</p>

## FREE STATE – DEPARTMENT OF EDUCATION

**PAIA manual:** [www.education.fs.gov.za/page\\_id=1790](http://www.education.fs.gov.za/page_id=1790). Available as at November 2014.

### RESPONSIBILITIES

- provide an education system that is free, compulsory, universal and equal for all children of the Free State Province
- promote sound corporate governance through sustainable use of resources
- provide effective and accessible quality basic education
- provide subsidies to independent schools in line with norms and standards.

### CONTACT DETAILS

**Name:** Ms Elzabe Rockman

**Position:** Deputy Information Officer

**Tel:** +2751 405 5801 or  
+2713 766 552

**Fax:** +2786 506 7406

**Email:** [dg@premier.fs.gov.za](mailto:dg@premier.fs.gov.za)

**Post:** Private Bag X20565, Bloemfontein, 9300

## GAUTENG – DEPARTMENT OF EDUCATION

**PAIA manual:** [www.education.gpg.gov.za/Documents/PAIA%20MANUAL.pdf](http://www.education.gpg.gov.za/Documents/PAIA%20MANUAL.pdf). Available as at November 2014.

### RESPONSIBILITIES

- ensure every learner does well at school and leaves our institutions with the knowledge, skills and qualifications that will give them the best chance of success in adult life
- ensure quality learning and teaching takes place in the classrooms every day.

### CONTACT DETAILS

**Name:** Adv Ntini Mtshizana

**Position:** Deputy Information Officer

**Tel:** +2711 355 0560/0973

**Fax:** +2786 219 8568

**Email:** [Ntini.Mtshizana@gauteng.gov.za](mailto:Ntini.Mtshizana@gauteng.gov.za)

**Post:** PO Box 7710, Johannesburg, 2000

## KWAZULU NATAL – DEPARTMENT OF EDUCATION

**PAIA manual:** [www.kzneducation.gov.za/DocumentsPublications/Manuals.aspx](http://www.kzneducation.gov.za/DocumentsPublications/Manuals.aspx). Available as at November 2014.

### RESPONSIBILITIES

- support well educated, skilled and highly developed citizenry
- provide equitable access to quality for the people of KwaZulu-Natal
- ensure the classroom is the centre-piece for education.

### CONTACT DETAILS

**Name:** Mr Sishi Nkosinathi

**Position:** Deputy Information Officer

**Tel:** +2733 392 1003

**Fax:** +2733 392 1203

**Email:** [nkosi.sishi@kzndoe.gov.za](mailto:nkosi.sishi@kzndoe.gov.za)

**Post:** Anton Muziwakhe Lembede Building  
247 Burger Street, Pietermaritzburg, 3200

## LIMPOPO – DEPARTMENT OF EDUCATION

**PAIA manual: As at November 24, 2014 no PAIA manual available on website.**

### RESPONSIBILITIES

- act as a catalyst for human development, providing innovative and inspiring quality life-long education
- deliver the curriculum in an innovative, effective and efficient way
- maximize accountability
- foster community participation and governance in education
- ensure equitable and efficient allocation and utilization of resources
- strive for a competent and motivated workforce.

### CONTACT DETAILS

**Name:** Martin K Mashaba

**Position:** Deputy Information Officer

**Tel:** +2715 290 7702

**Fax:** +2782 772 1889

**Email:** [mashabakm@edu.limpopo.gov.za](mailto:mashabakm@edu.limpopo.gov.za)

**Post:** 113 Biccard, Polokwane, 0700

## MPUMALANGA – DEPARTMENT OF EDUCATION

**PAIA manual: As at November 24, 2014 no PAIA manual available on website.**

### RESPONSIBILITIES

- provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people talents and capabilities and advance the democratic transformation of society
- develop, evaluate and maintain policy, programmes and systems for general and further education and training
- provide education policy, planning and development support services for the department.

### CONTACT DETAILS

**Name:** Ms Mahlasedi Mhlabane

**Position:** Deputy Information Officer

**Tel:** +2713 766 5520

**Fax:** +2713 766 5577

**Email:** [r.motubatse@education.mpu.gov.za](mailto:r.motubatse@education.mpu.gov.za)

**Post:** Building 5, Government Boulevard, Riverside Park, Nelspruit, 1200

## NORTHERN CAPE – DEPARTMENT OF EDUCATION

**PAIA manual: As at November 24, 2014 no PAIA manual available on website.**

### RESPONSIBILITIES

- transform our quality education system
- deliver quality public education to all learners of the Northern Cape which will enable them to play a meaningful role in a dynamic, developmental and economic society.

### CONTACT DETAILS

**Name:** Tshepo Pharasi

**Position:** Deputy Information Officer

**Tel:** +2753 839 6500

**Fax:** +2753 839 6580

**Email:** [tpharasi@ncpg.gov.za](mailto:tpharasi@ncpg.gov.za)

**Post:** 156 Barkly Road, Kimberley, 8300

## NORTH WEST – DEPARTMENT OF EDUCATION

**PAIA manual: As at November 24, 2014 no PAIA manual available on website.**

### RESPONSIBILITIES

- provide quality education for high learner attainment through outstanding teaching and support
- move beyond compliance by going an extra mile
- share information in a responsible and transparent manner
- respond to our fellow employees and other stakeholders with honesty, fairness and respect.

### CONTACT DETAILS

**Name:** Professor Tebogo

**Position:** Deputy Information Officer

**Tel:** +2718 388 3040

**Fax:** +2718 387 3293

**Email:** *smandyu@nwpg.gov.za*

**Post:** 3rd floor, Garona Building, Dr James Moroka Drive, Mabatho, 2735

## WESTERN CAPE – DEPARTMENT OF EDUCATION

**PAIA manual: As at November 24, 2014 no PAIA manual available on website.**

### RESPONSIBILITIES

- provide various specialised education services and subsidies
- build solid foundations in literacy and numeracy in primary school
- improve learner pass rates
- improve the number and quality of our matric results.

### CONTACT DETAILS

**Name:** Ms Penny Vinjevold

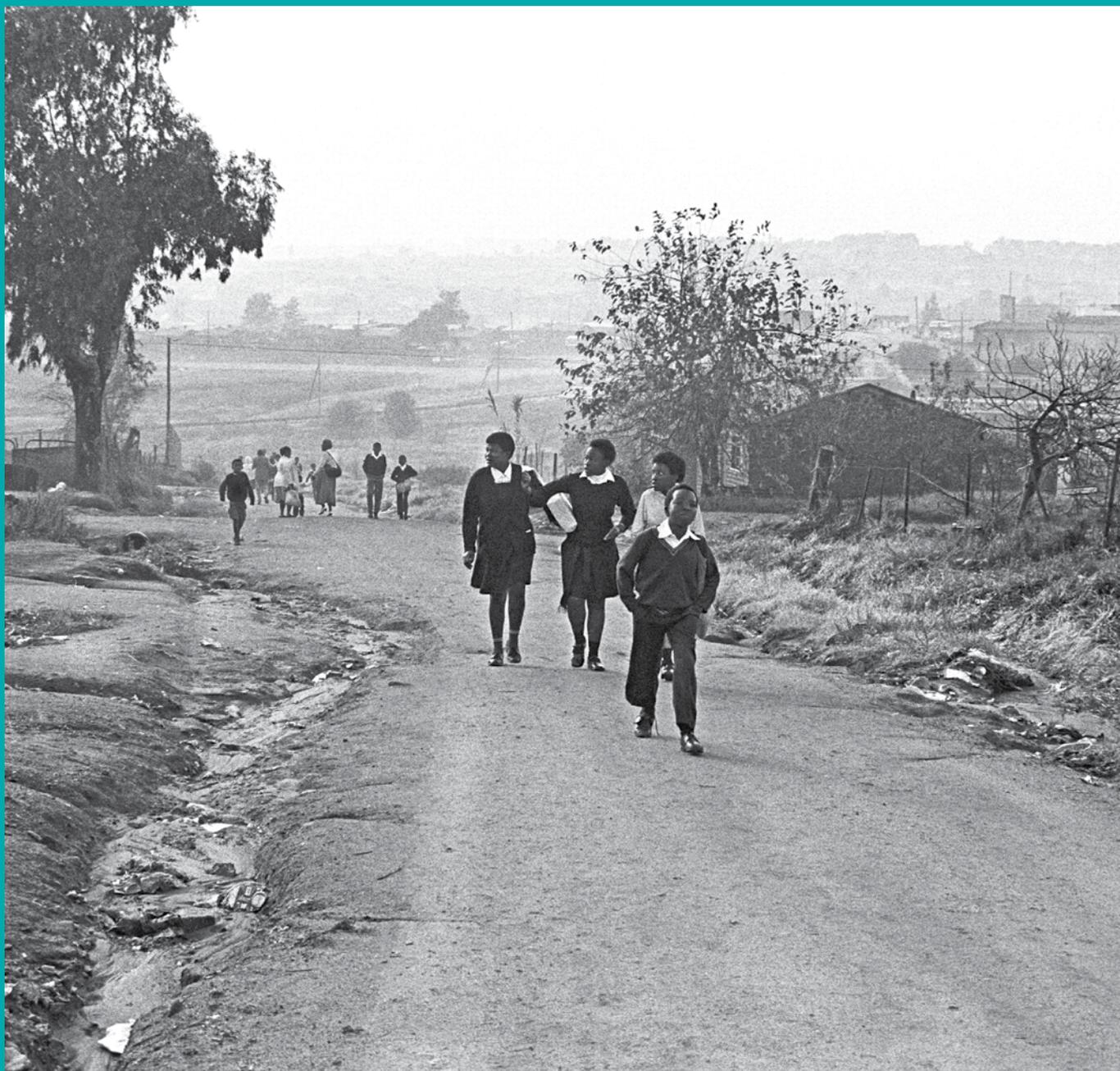
**Position:** Deputy Information Officer

**Tel:** +2721 467 2535

**Fax:** +2721 461 3694

**Email:** *Penny.Vinjevold@westerncape.gov.za*

**Post:** Grand Central Building, Cape Town, 8000



**This guide seeks to assist non-government and community based organisations, communities and individuals by providing practical assistance and advice on how and when to make an access to information request, by providing examples of how PAIA can be used to address basic education issues and to advocate for the right to a basic education for all South Africans.**



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