



THErapy & LEARNING CENTRE

# PAIA MANUAL

for

# KALEIDOKIDZ (PTY) LTD

Prepared in terms of section 51 of the *Promotion of Access to Information Act* 2 of 2000 (as amended) and incorporating provisions contained in the *Protection of Personal Information Act* 4 Of 2013

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## 1. LIST OF ACRONYMS AND ABBREVIATIONS

- 1.1. **“CEO”** Chief Executive Officer;
- 1.2. **“DIO”** Deputy Information Officer;
- 1.3. **“IO”** Information Officer;
- 1.4. **“KaleidoKidz”** KaleidoKidz Proprietary Limited
- 1.5. **“Minister”** Minister of Justice and Correctional Services;
- 1.6. **“PAIA”** *Promotion of Access to Information Act, 2 of 2000*  
(as amended) (also referred to as “the Act”);
- 1.7. **“POPIA”** *Protection of Personal Information Act, 4 of 2013*;
- 1.8. **“Regulator”** Information Regulator; and
- 1.9. **“Republic”** The Republic of South Africa.

## 2. PURPOSE OF PAIA AND MANUAL

- 2.1. This PAIA Manual is useful for the public to:
  - 2.1.1. check the categories of records held by a body which are available without a person having to submit a formal PAIA request;
  - 2.1.2. have a sufficient understanding of how to make a request for access to a record of the body, by providing a description of the subjects on which the body holds records and the categories of records held on each subject;
  - 2.1.3. know the description of the records of the body which are available in accordance with any other legislation;

- 2.1.4. access all the relevant contact details of the Information Officer and Deputy Information Officer who will assist the public with the records they intend to access;
  - 2.1.5. know the description of the guide on how to use PAIA, as updated by the Regulator and how to obtain access to it;
  - 2.1.6. know if the body will process personal information, the purpose of processing of personal information and the description of the categories of data subjects and of the information or categories of information relating thereto;
  - 2.1.7. know the description of the categories of data subjects and of the information or categories of information relating thereto;
  - 2.1.8. know the recipients or categories of recipients to whom the personal information may be supplied;
  - 2.1.9. know if the body has planned to transfer or process personal information outside the Republic of South Africa and the recipients or categories of recipients to whom the personal information may be supplied; and
  - 2.1.10. know whether the body has appropriate security measures to ensure the confidentiality, integrity and availability of the personal information which is to be processed.
- 2.2. The purpose of the Act is to promote the right of access to information, to promote and foster a culture of transparency and accountability within KaleidoKidz by granting the right to information that is required for the exercise or protection of any legitimate right and to actively promote a society in which the citizens of South Africa have effective access to information to enable them to exercise and protect their rights – which includes the rights of minor children.
- 2.3. In order to promote effective governance of private bodies, it is necessary to ensure that everyone is empowered and educated to understand their rights in relation to public and private bodies.

2.4. Limitation of Rights: Section 9 of the Act recognises that the right to access information cannot be unlimited and should be subject to justifiable limitations, including, but not limited to:

2.4.1. Limitations aimed at the reasonable protection of privacy;

2.4.2. Commercial confidentiality;

2.4.3. Effective, efficient and good governance; and

2.4.4. In a manner which balances that right with any other rights, including such rights contained in the Bill of Rights in the Constitution.

2.5. This PAIA Manual complies with the requirements of the guide mentioned in section 10 of the Act and recognises that upon commencement of the *Protection of Personal Information Act 4 of 2013* (“POPIA”), that the appointed Information Regulator will be responsible to regulate compliance with the Act and its regulations by private and public bodies.

### 3. UNDERSTANDING PAIA

3.1. The *Promotion of Access to Information Act 2 of 2000* (“the Act” or “PAIA”) gives effect to the constitutional right of access to information that is enshrined in section 32 of the Bill of Rights contained in the *Constitution of the Republic of South Africa, No. 108 of 1996* (“the Constitution”). Section 32 of the Constitution provides that everyone has the right to access any information held by the state or by another person, where such information is required for the exercise or protection of any legitimate rights and actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.

3.2. The Act accordingly requires that procedures be put in place by public and private bodies to enable persons to obtain access to records swiftly, affordably and effortlessly. In terms of the Act, a private body includes juristic entities such as companies, close corporations and also includes partnerships and sole proprietors. POPIA, on the other hand, regulates, *inter alia*, how Personal Information is held,



received, used and disseminated by a body or person in connection with another party / person is protected and the consent therefor required.

- 3.3. In terms of section 51 of the Act, all private bodies are required to compile an information manual (“PAIA Manual”) that provides information on the types and categories of records held by a public or private body and the process that must be followed when requesting information related to such records and information.
- 3.4. Where a request is made in terms of the Act, the body to whom the request is made is obliged to release the information, subject to applicable legislative and/or regulatory requirements, except where the Act expressly provides that the information may be adopted when requesting information from a public or private body.
- 3.5. This document serves as the PAIA Manual of KaleidoKidz, as required in terms of the Act.
- 3.6. KaleidoKidz is a private learning and therapy facility, which is conducted in accordance with the requirements of the *Companies Act 71* of 2008. The Company is registered with the Companies and Intellectual Property Commission (CIPC).
- 3.7. This, the PAIA Manual of KaleidoKidz, is available on KaleidoKidz’s website at [www.kaleidokidz.co.za](http://www.kaleidokidz.co.za) and at KaleidoKidz’s head office, located at 35 Essenhout Drive, Randpark Ridge.

#### 4. KEY CONTACT DETAILS

##### 4.1. Chief Information Officer:

Name: June Elaine Rheeder  
Telephone: 065 582 7830  
Email: [elaine@kaleidokidz.co.za](mailto:elaine@kaleidokidz.co.za)  
Fax number: 011 883 6661

##### 4.2. Deputy Information Officer:

Name: Jacques Rheeder  
Tel: 011 883 9798



Email: jacques@kaleidokidz.co.za  
Fax number: 011 883 6661

4.3. Access to information general contacts:

Email: info@kaleidokidz.co.za

4.4. National or Head Office: 35 Essenhout Drive, Randpark Ridge

Postal Address: Same as above

Physical Address: Same as above

Telephone: 065 582 7830

Email: info@kaleidokidz.co.za

Website: www.kaleidokidz.co.za

## 5. GUIDE ON HOW TO USE PAIA AND HOW TO OBTAIN ACCESS TO THE GUIDE

5.1. The Regulator has, in terms of section 10(1) of PAIA, as amended, updated and made available the revised Guide on how to use PAIA ("Guide"), in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in PAIA and POPIA.

5.2. The Guide is available in each of the official languages and in braille.

5.3. The aforesaid Guide contains the description of:-

5.3.1. the objects of PAIA and POPIA;

5.3.2. the postal and street address, phone and fax number and, if available, electronic mail address of the Information Officer of every public body and every Deputy Information Officer of every public and private body designated in terms of section 17(1) of PAIA<sup>1</sup> and section 56<sup>2</sup> of POPI;

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<sup>1</sup> Section 17(1) of PAIA- *For the purposes of PAIA, each public body must, subject to legislation governing the employment of personnel of the public body concerned, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records.*

<sup>2</sup> Section 56(a) of POPIA- *Each public and private body must make provision, in the manner prescribed in section 17 of the Promotion of Access to Information Act, with the necessary changes, for the designation of such a number of persons, if any, as deputy information officers as is necessary to perform the duties and responsibilities as set out in section 55(1) of POPIA.*



- 5.3.3. the manner and form of a request for access to a record of a public body contemplated in section 11<sup>3</sup> and access to a record of a private body contemplated in section 50<sup>4</sup>;
- 5.3.4. the assistance available from the IO of a public body in terms of PAIA and POPIA;
- 5.3.5. the assistance available from the Regulator in terms of PAIA and POPIA;
- 5.3.6. all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by PAIA and POPIA, including the manner of lodging an internal appeal;
- 5.3.7. a complaint to the Regulator;
- 5.3.8. an application with a court against a decision by the information officer of a public body, a decision on internal appeal or a decision by the Regulator or a decision of the head of a private body;
- 5.3.9. the provisions of sections 14<sup>5</sup> and 51<sup>6</sup> requiring a public body and private body, respectively, to compile a manual, and how to obtain access to a manual;

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<sup>3</sup> Section 11(1) of PAIA- A requester must be given access to a record of a public body if that requester complies with all the procedural requirements in PAIA relating to a request for access to that record; and access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

<sup>4</sup> Section 50(1) of PAIA- A requester must be given access to any record of a private body if-

- a) that record is required for the exercise or protection of any rights;
- b) that person complies with the procedural requirements in PAIA relating to a request for access to that record; and
- c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

<sup>5</sup> Section 14(1) of PAIA- The information officer of a public body must, in at least three official languages, make available a manual containing information listed in paragraph 4 above.

<sup>6</sup> Section 51(1) of PAIA- The head of a private body must make available a manual containing the description of the information listed in paragraph 4 above.



5.3.10. the provisions of sections 15<sup>7</sup> and 52<sup>8</sup> providing for the voluntary disclosure of categories of records by a public body and private body, respectively;

5.3.11. the notices issued in terms of sections 22 and 54 regarding fees to be paid in relation to requests for access; and

5.3.12. the regulations made in terms of section 92<sup>9</sup>.

5.4. Members of the public can inspect or make copies of the Guide from the offices of the public and private bodies, including the office of the Regulator, during normal working hours. The Guide is available for inspection, *inter alia*, at the office of the offices of the Human Rights Commission at Braampark Forum 3, 33 Hoofd Street, Braampark, Johannesburg, 2017, Gauteng, South Africa and:

5.4.1 Website: [www.sahrc.org.za](http://www.sahrc.org.za);

5.4.2 E-mail: PAIA@sahrc.org.za;

5.4.3 Postal address: Private Bag 2700, Houghton, Gauteng, South Africa; and

5.4.4 Telephone: +27 (0)11 877 3600.

5.5. The Guide can also be obtained: -

5.5.1. upon request to the Information Regulator South Africa at JD House, 27 Stiemens Street, Braamfontein, Johannesburg;

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<sup>7</sup> Section 15(1) of PAIA- The information officer of a public body, must make available in the prescribed manner a description of the categories of records of the public body that are automatically available without a person having to request access

<sup>8</sup> Section 52(1) of PAIA- The head of a private body may, on a voluntary basis, make available in the prescribed manner a description of the categories of records of the private body that are automatically available without a person having to request access

<sup>9</sup> Section 92(1) of PAIA provides that –“The Minister may, by notice in the Gazette, make regulations regarding- (a) any matter which is required or permitted by this Act to be prescribed; (b) any matter relating to the fees contemplated in sections 22 and 54; (c) any notice required by this Act; (d) uniform criteria to be applied by the information officer of a public body when deciding which categories of records are to be made available in terms of section 15; and (e) any administrative or procedural matter necessary to give effect to the provisions of this Act.”



- 5.5.2. by requesting same on email at [inforeg@justice.gov.za](mailto:inforeg@justice.gov.za);
- 5.5.3. from the website of the Regulator at <https://www.justice.gov.za/inforeg/>;
- 5.5.4. from the website of KaleidoKidz, but only in Afrikaans, English and isiZulu;  
and
- 5.5.5. at the head office of KaleidoKidz, again limited to Afrikaans, English and isiZulu.

## **6. CATEGORIES OF RECORDS WHICH ARE AVAILABLE ACCORDANCE WITH OTHER LEGISLATION [SECTION 51(1(c))]**

6.1 Records are kept in accordance with such other legislation as is applicable to KaleidoKidz includes, but is not limited to the following legislation:

- 6.1.1 *Basic Conditions of Employment Act 75 of 1997*;
- 6.1.2 *Companies Act 71 of 2008*;
- 6.1.3 *Compensation for Occupational Injuries and Diseases Act 130 of 1993*;
- 6.1.4 *Competition Act 89 of 1998*;
- 6.1.5 *Constitution of the Republic of South Africa Act 108 of 1996*;
- 6.1.6 *Debt Collectors Act 114 of 1998*;
- 6.1.7 *Electronic Communication and Transactions Act 25 of 2002*;
- 6.1.8 *Employment Equity Act 55 of 1998*;
- 6.1.9 *Financial Intelligence Centre Act 36 of 2000*;
- 6.1.10 *Income Tax Act 95 of 1967*;
- 6.1.11 *Insolvency Act 24 of 1936*;



- 6.1.12 *Labour Relations Act 66 of 1995;*
- 6.1.13 *National Credit Act 34 of 2005;*
- 6.1.14 *National Health Act 61 of 2003;*
- 6.1.15 *Occupational Health and Safety Act 85 of 1993;*
- 6.1.16 *Patents, Designs and Copyright Merchandise Marks Act 17 of 1941;*
- 6.1.17 *Pension Funds Act 24 of 1956;*
- 6.1.18 *Prescription Act 68 of 1969;*
- 6.1.19 *Prevention of Organised Crime Act 121 of 1998;*
- 6.1.20 *Promotion of Access to Information Act 2 of 2000;*
- 6.1.21 *Protection of Personal Information Act 4 of 2013;*
- 6.1.22 *Skills Development Act 97 of 1998;*
- 6.1.23 *Skills Development Levies Act 9 of 1999;*
- 6.1.24 *The Criminal Procedure Act 51 of 1977;*
- 6.1.25 *The Labour Relations Act 66 of 1995;*
- 6.1.26 *Trademarks Act 194 of 1993;*
- 6.1.27 *Unemployment Contributions Act 4 of 2002;*
- 6.1.28 *Unemployment Insurance Act 63 of 2001;*
- 6.1.29 *Value-Added Tax Act 89 of 1991;*



6.1.30 *Protection of Personal Information Act 4 of 2013*; and

6.1.31 *Children's Act 38 of 2005*.

6.2 Although we have used our best endeavours to supply a list of applicable legislation, it is possible that this list may be incomplete. Whenever it comes to our attention that existing or new legislation allows a Requester access on a basis other than as set out in PAIA, we shall update the list accordingly. If a Requester believes that a right of access to a record exists in terms of other legislation listed above or any other legislation, the Requester is required to indicate what legislative right the request is based on, to allow the Information Officer the opportunity of considering the request in light thereof.

## **7. CATEGORIES OF RECORDS WHICH ARE HELD BY KALEIDOKIDZ ACCORDANCE WITH OTHER LEGISLATION [SECTION 51(1(d))]**

7.1 The records referred to below indicate the categories of information that KaleidoKidz holds within its possession. The information is classified, confidential and grouped according to records relating to the following subjects and categories:

7.1.1 Human resources records: -

7.1.1.1 Personal records provided by franchisees, employees and staff members of KaleidoKidz;

7.1.1.2 Salary records;

7.1.1.3 Conditions of employment and other personnel-related contractual and quasilegal records;

7.1.1.4 Internal evaluation records;

7.1.1.5 UIF records;

7.1.1.6 PAYE records;

7.1.1.7 Leave records;

7.1.1.8 Franchise records;

7.1.1.9 Training records; and

7.1.1.10 Human Resources policies and procedures.

7.1.2 Patient-related records: -

7.1.2.1 Records provided by a patient, clients, and / or parents;

7.1.2.2 Records generated internally by or within KaleidoKidz's practice relating to patients including transactional records and health records of patients /clients; and

7.1.2.3 Contractual records.

7.1.3 Financial records: -

7.1.3.1 Annual reports;

7.1.3.2 Management reports;

7.1.3.3 VAT returns;

7.1.3.4 Income tax returns and assessments;

7.1.3.5 Invoices;

7.1.3.6 Receipts;

7.1.3.7 Asset records; and

7.1.3.8 Insurance policies and claim.

7.1.4 Legal:

7.1.4.1 Agreements with Clients;



- 7.1.4.2 Agreement with Suppliers;
  - 7.1.4.3 Franchise Agreements;
  - 7.1.4.4 Power of Attorneys;
  - 7.1.4.5 Resolutions; and
  - 7.1.4.6 Lease agreements.
- 7.1.5 Company Secretarial: -
- 7.1.5.1 Memorandum of Incorporation;
  - 7.1.5.2 Secretarial records;
  - 7.1.5.3 Tradename registrations;
  - 7.1.5.4 Trademark registrations;
  - 7.1.5.5 Company registration documents;
  - 7.1.5.6 Statutory registers;
  - 7.1.5.7 Register of Directors;
  - 7.1.5.8 Point-of-Sale Systems;
  - 7.1.5.9 Databases;
  - 7.1.5.10 Information Technology;
  - 7.1.5.11 Marketing records;
  - 7.1.5.12 Internal correspondence;



7.1.5.13 Operational records;

7.1.5.14 Product-related records;

7.1.5.15 Internal policies and procedures;

7.1.5.16 Compliance records;

7.1.5.17 Minutes of meetings; and

7.1.5.18 Contractual records and information relating to suppliers, service providers, professional advisors (such as attorneys and auditors) and financiers.

7.1.6 Miscellaneous:

7.1.6.1 Internal Correspondence;

7.1.6.2 Information technology records;

7.1.6.3 Trade secrets;

7.1.6.4 Domain name registrations;

7.1.6.5 Website information; and

7.1.6.6 Asset registers.

7.1.7 Products and services: -

7.1.7.1 Product specifications; and

7.1.7.2 Product documentation (including application forms.

7.1.8 Information relating to minor children (under the age of 18 years): -



7.1.8.1 All information relating to minor children of whatsoever nature, held received, and compiled in whatsoever form, by KaleidoKidz, including but not limited to personal records, medical records and generally any information relating thereto; and

7.1.8.2 All information relating to the pre-screening assessments, and post-treatment results relating to minor children.

7.2 The accessibility of the records may be subject to the grounds of refusal set out in the Act. Amongst other, records deemed confidential on the part of a third party, will necessitate permission from the third party concerned, in addition to normal and legislative requirements, before KaleidoKidz will consider access.

## **8. PROCESSING OF PERSONAL INFORMATION IN TERMS OF POPIA**

8.1 KaleidoKidz holds, processes, utilises and disseminate personal information for the following specific, and lawful reasons:

8.1.1 to initiate recruitment of and the management of employees and staff members;

8.1.2 to comply with relevant legislation governing employees;

8.1.3 to monitor account payments of patients;

8.1.4 to engage with service providers;

8.1.5 for marketing and event purposes;

8.1.6 to comply with all relevant legislation; and

8.1.7 to operate KaleidoKidz's business and centre.



## **9. CATEGORIES OF DATA SUBJECTS UNDER POPIA**

9.1 The following categories of data subjects' personal information are held, received, compiled and/or used and/or processed and/or disseminated (as the case may be) by KaleidoKidz:

9.1.1 Employees : records of employees' term of employment;

9.1.2 Franchisees: records of franchisees;

9.1.3 Patients' life cycle;

9.1.4 Service providers: records of service providers; and

9.1.5 General public: Managing, answering, and responding to general enquiries.

## **10. RECIPIENTS OF PERSONAL INFORMATION**

10.1 Statutory authorities;

10.2 Law enforcement;

10.3 Tax authorities;

10.4 Financial institutions;

10.5 Medical schemes;

10.6 Employee pension and provident funds; and

10.7 Industry bodies.

## **11. TRANS-BORDER FLOWS OF PERSONAL INFORMATION**

11.1 KaleidoKidz is hereby authorised to transfer data / personal information trans-border;  
and



11.2 KaleidoKidz may proceed to transfer such data in order to store Data with third party cloud/ internet / data storage providers, but always in accordance with applicable legislation regarding data protection.

## **12. SECURITY MEASURES TO PROTECT PERSONAL INFORMATION**

12.1 KaleidoKidz has implemented a number of security measures to protect personal information processed by it as the Responsible Party in terms of the POPIA, which include but are not limited to the following: -

12.1.1 Physical security measures;

12.1.2 Cyber security measures / Regular change of passwords and firewalls; and

12.1.3 KaleidoKidz has access to specialists in cyber information security and has policies regarding information security in place.

## **13. REQUEST FOR ACCESS TO INFORMATION [SECTION 51(E)]**

13.1 The requester must complete annexure “2”, being Form C, and submit this form together with a request fee, to the Information Officer of KaleidoKidz.

13.2 The form must be submitted to the Information Officer of KaleidoKidz at KaleidoKidz’s Head Office address, or electronic mail address as stated earlier in this PAIA Manual.

13.3 Form of request:

13.3.1 The requester (the person seeking information) must use the prescribed form, as attached in terms of Article 8 (PAIA) of this PAIA Manual, when requesting access to a record. The request must be directed to the Information Officer. This request must be made to the address, fax number or electronic mail address of KaleidoKidz, see [section 53(1)] – PAIA;

13.3.2 The requester must provide sufficient detail on the request form to enable the Information Officer to identify the record / information required and the identity / details of the requester;



- 13.3.3 The requester should indicate in which format the access to the information requested is required;
- 13.3.4 The requester should indicate if any other manner and/or format is to be used to inform the requester regarding the information required and state the necessary particulars how to be informed [sections 53(2)(a) and (b) and (c)] – PAIA;
- 13.3.5 The requester must identify the right that is sought to be exercised or to be protected and provide an explanation of why the requested record is required for the exercise or protection of that right [section 53(2)(d)] – PAIA;
- 13.3.6 If a request is made on behalf of another person, the requester must submit proof of the capacity in which the requester is making the request on behalf of such other person and to the satisfaction of the designated head of the private body [section 53(2)(f)] – PAIA;
- 13.3.7 A requester who seeks access to a record containing personal information about that requester's own personal information, is not required to pay the request fee;
- 13.3.8 Every other requester, who is not a personal requester, must pay the fee;
- 13.3.9 The information officer of KaleidoKidz must notify the requester (other than a personal requester) by notice, requiring the requester to pay the prescribed fee (if any) before further processing the request [section 54(1)] – PAIA;
- 13.3.10 The requester may lodge an application to the court against the tender or payment of the request fees 54(3)(b)] – PAIA;
- 13.3.11 After the Information Officer of KaleidoKidz has decided on the request, the requester must be notified in the required form and format; and
- 13.3.12 On granting of the request to information, a further access fee must be paid for the search, reproduction, preparation and for any time that has exceeded



the prescribed hours to search and prepare the record for disclosure [s 54(6)] – PAIA.

#### **14. AVAILABILITY OF PAIA MANUAL & GUIDE**

- 14.1 This PAIA manual is available for inspection at the offices of KaleidoKidz;
- 14.2 This PAIA manual is also available on Po0chil's website, free of charge;
- 14.3 The PAIA Guide is available for inspection at the offices of KaleidoKidz in Afrikaans, English and isiZulu; and
- 14.4 The PAIA Guide is also available on KaleidoKidz's website in Afrikaans, English and isiZulu.

#### **15. FEES [SECTION 51(1(F))]**

- 15.1 The requester is the person making the request for access to information of a record. The Act mentions two types of requesters:
  - 15.1.1 Personal requester: A person who requests access to his/her own personal information; and
  - 15.1.2 Other requester: A person requesting access to information of third parties.
- 15.2 The following fees are payable when making a request for information:
  - 15.2.1 Request fee: Standard fee payable by other requesters, but not payable by personal requesters, payable at the time that the request is made; and
  - 15.2.2 Access fee: Payable in all instances where a request for access is granted unless payment of the access fee is specifically excluded in terms of the Act or any regulations published pursuant to the Act. This fee is calculated by considering reproduction costs, search and preparation time and cost, as well as postal costs, as the case may be.

- 15.3 The Information Officer may require that requesters pay a deposit in respect of the access fee at the time of making the request. If the request is subsequently declined, the deposit will be refunded.
- 15.4 If a request fee and/or a deposit is payable, the Information Officer will not process the request until payment thereof has been made.
- 15.5 If a request for information is granted, the Information Officer will advise the requester of the amount of the access fee payable before the record will be released.
- 15.6 Bank account details for purposes of making payments can be obtained from the Information Officer and may be made by way of a direct deposit into the designated bank account or by way of a bank guaranteed cheque.
- 15.7 Annexure 1 hereto sets out the amounts payable in respect of the prescribed fees.

**THUS APPROVED AND SIGNED ON THIS THE 7<sup>TH</sup> DAY OF JANUARY 2025 BY THE INFORMATION OFFICER AND OWNER OF KALEIDOKIDZ (PTY) LTD, DULY AUTHORISED:**



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**JUNE ELAINE RHEEDER**

## ANNEXURE 1: SCHEDULE OF FEES

The applicable fees are as follows:

Item	Description	Amount
1.	Request fee, payable by every requester	R140.00
2.	Photocopy or printed black & white copy for every A4 page	R2.00 per page
3.	Printed copy of A4-size page	R2.00 per page
4.	For a copy in a computer-readable form on a flash drive (provided by the requester)	R40.00
5.	For a transcription of visual images, for an A4-size page or part of the page	This service will be outsourced and will depend on the quotation from the service provider.
6.	For a copy of visual images	This service will be outsourced and will depend on the quotation from the service provider.
7.	For a transcription of an audio record, per A4-size	R24.00
8.	For a copy of an audio record on a flash drive (provided by the requester)	R40.00
9.	For each hour or part of an hour (excluding the first hour) reasonably required to search for, and prepare the record for disclosure The search and preparation fee cannot exceed	R145.00 – R435.00 R435.00
10.	Deposit: if the search exceeds 6 hours	One-third of the amount per request. It is calculated in terms of items 2 to 8 above.
11.	Postage, email or any other electronic transfer	Actual expense, if any.

**THUS APPROVED AND SIGNED ON THIS THE 7<sup>TH</sup> DAY OF JANUARY 2025 BY THE INFORMATION OFFICER AND OWNER OF KALEIDOKIDZ (PTY) LTD, DULY AUTHORISED:**



**JUNE ELAINE RHEEDER**

**ANNEXURE 2: REQUEST FOR ACCESS TO RECORD**



# FORM 2

## REQUEST FOR ACCESS TO RECORD

[Regulation 7]

**NOTE:**

1. Proof of identity must be attached by the requester.
2. If requests made on behalf of another person, proof of such authorisation, must be attached to this form.

**TO:** The Information Officer


(Address)

E-mail address:

Fax number:

Mark with an "X"

Request is made in my own name

Request is made on behalf of another person.

PERSONAL INFORMATION			
Full Names			
Identity Number			
Capacity in which request is made <i>(when made on behalf of another person)</i>			
Postal Address			
Street Address			
E-mail Address			
Contact Numbers	Tel. (B):		Facsimile: <input type="text"/>
	Cellular:		
Full names of person on whose behalf request is made <i>(if applicable):</i>			
Identity Number			
Postal Address			

Street Address			
E-mail Address			
Contact Numbers	Tel. (B)		Facsimile
	Cellular		
<b>PARTICULARS OF RECORD REQUESTED</b>			
<i>Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)</i>			
Description of record or relevant part of the record:			
Reference number, if available			
Any further particulars of record			
<b>TYPE OF RECORD</b> <i>(Mark the applicable box with an "X")</i>			
Record is in written or printed form			
Record comprises virtual images <i>(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)</i>			
Record consists of recorded words or information which can be reproduced in sound			
Record is held on a computer or in an electronic, or machine-readable form			

**FORM OF ACCESS**  
*(Mark the applicable box with an "X")*

Printed copy of record <i>(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)</i>	
Written or printed transcription of virtual images <i>(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)</i>	
Transcription of soundtrack <i>(written or printed document)</i>	
Copy of record on flash drive <i>(including virtual images and soundtracks)</i>	
Copy of record on compact disc drive <i>(including virtual images and soundtracks)</i>	
Copy of record saved on cloud storage server	

**MANNER OF ACCESS**  
*(Mark the applicable box with an "X")*

Personal inspection of record at registered address of public/private body <i>(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)</i>	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format <i>(including transcriptions)</i>	
E-mail of information <i>(including soundtracks if possible)</i>	
Cloud share/file transfer	
Preferred language <i>(Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available)</i>	

**PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED**

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

Indicate which right is to be exercised or protected	

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

<b>FEEES</b>	
a)	<i>A request fee must be paid before the request will be considered.</i>
b)	<i>You will be notified of the amount of the access fee to be paid.</i>
c)	<i>The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.</i>
d)	<i>If you qualify for exemption of the payment of any fee, please state the reason for exemption</i>
Reason	

You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication <i>(Please specify)</i>

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
**Signature of Requester / person on whose behalf request is made**

-----  
**FOR OFFICIAL USE**

Reference number:	
Request received by: <i>(State Rank, Name And Surname of Information Officer)</i>	
Date received:	
Access fees:	
Deposit (if any):	

\_\_\_\_\_  
**Signature of Information Officer**

**ANNEXURE 3: OUTCOME OF REQUEST AND FEES PAYABLE**



**FORM 3**  
**OUTCOME OF REQUEST AND OF FEES PAYABLE**  
 [Regulation 8]

Note:

1. If your request is granted the—
  - (a) amount of the deposit, (if any), is payable before your request is processed; and
  - (b) requested record/portion of the record will only be released once proof of full payment is received.
2. Please use the reference number hereunder in all future correspondence.

Reference number: \_\_\_\_\_

TO: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Your request dated \_\_\_\_\_, refers.

**1. You requested:**

Personal inspection of information at registered address of public/private body ( <i>including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form</i> ) is free of charge. You are required to make an appointment for the inspection of the information and to bring this Form with you. If you then require any form of reproduction of the information, you will be liable for the fees prescribed in Annexure B.	
---	--

**OR**

**2. You requested:**

Printed copies of the information ( <i>including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form</i> )	
Written or printed transcription of virtual images ( <i>this includes photographs, slides, video recordings, computer-generated images, sketches, etc</i> )	
Transcription of soundtrack ( <i>written or printed document</i> )	
Copy of information on flash drive ( <i>including virtual images and soundtracks</i> )	
Copy of information on compact disc drive ( <i>including virtual images and soundtracks</i> )	
Copy of record saved on cloud storage server	

**3. To be submitted:**

Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format ( <i>including transcriptions</i> )	
E-mail of information ( <i>including soundtracks if possible</i> )	
Cloud share/file transfer	
Preferred language: ( <i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available</i> )	

Kindly note that your request has been:

Approved

Denied, for the following reasons:

--

**4. Fees payable with regards to your request:**

Item	Cost per A4-size page or part thereof/item	Number of pages/items	Total
Photocopy			
Printed copy			
For a copy in a computer-readable form on:			
(i) Flash drive	R40.00		
• To be provided by requestor			
(ii) Compact disc	R40.00		
• If provided by requestor			
• If provided to the requestor	R60.00		
For a transcription of visual images per A4-size page	Service to be outsourced. Will depend on the quotation of the service provider		
Copy of visual images			
Transcription of an audio record, per A4-size	R24.00		
Copy of an audio record			
(i) Flash drive	R40.00		
• To be provided by requestor			
(ii) Compact disc	R40.00		
• If provided by requestor			
• If provided to the requestor	R60.00		
Postage, e-mail or any other electronic transfer:	Actual costs		
<b>TOTAL:</b>			

**5. Deposit payable (if search exceeds six hours):**

Yes

No

Hours of search	Amount of deposit (calculated on one third of total amount per request)

The amount must be paid into the following Bank account:

Name of Bank: \_\_\_\_\_  
 Name of account holder: \_\_\_\_\_  
 Type of account: \_\_\_\_\_  
 Account number: \_\_\_\_\_  
 Branch Code: \_\_\_\_\_  
 Reference Nr: \_\_\_\_\_  
 Submit proof of payment to: \_\_\_\_\_

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
 Information officer



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*



# **GIDS**

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**VIR DIE GEBRUIK VAN  
DIE WET OP BEVORDERING VAN TOEGANG  
TOT INLIGTING, WET 2 VAN 2000, SOOS GEWYSIG**

**AFRIKAANS**

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# PAIA GID

## VOORWOORD DEUR DIE VOORSITTER

Die Grondwet van die Republiek van Suid-Afrika, 1996<sup>1</sup> (“Grondwet”) bepaal dat Suid-Afrika 'n soewereine demokratiese staat is, wat gegrond is op die bevordering van menseregte en 'n verantwoordelike, responsiewe en deursigtige stelsel van bestuur as deel van sy waardes. Voordat Suid-Afrika 'n grondwetlike demokrasie met 'n afdwingbare Handves van Regte geword het, het die regeringstelsel in Suid-Afrika, onder andere, ontaard in 'n geheimsinnige en onresponsiewe kultuur in beide die openbare en private liggame, wat dikwels tot die misbruik van mag en die skendings van menseregte gelei het. Dit is in hierdie verband dat artikel 32(1) van die Handves van Regte in die Grondwet voorsiening maak vir die reg van toegang tot inligting wat deur die staat gehou word; en enige inligting wat deur 'n ander persoon gehou word wat nodig is vir die uitoefening of beskerming van enige regte. Artikel 32(2) van die Grondwet maak op sy beurt voorsiening vir die verordening van nasionale wetgewing om gevolg aan hierdie reg te gee, deur die respektering, beskerming, bevordering en vervulling van hierdie reg.

Die Wet op Bevordering van Toegang tot Inligting, no. 2 van 2000 (Hierna na verwys as “die **PAIA**”, of “die Wet” afgewissel), soos gewysig, is die nasionale wetgewing wat verorden is in ooreenstemming met bogenoemde artikel 32(2) van die Grondwet.

Die doel van die **PAIA**-wet, is om 'n kultuur van deursigtigheid en verantwoordbaarheid in openbare en private liggame te vestig. Dit word gedoen deur magtiging te verleen aan die reg van toegang tot inligting en bevorder aktief 'n samelewing waarin die mense van Suid-Afrika effektiewe toegang tot inligting geniet om hul in staat te stel om hul regte meer omvattend uit te oefen en beskerm en ook om Suid-Afrika se doelwitte van 'n oop en deelnemende demokrasie te verweselik.

Hierdie **PAIA**-gids is ontwikkel ter vervulling van die Inligtingsreguleerder (“Reguleerder”) se verpligting ingevolge artikel 10 van die **PAIA**-wet, wat vereis dat die Reguleerder die bestaande gids, wat opgestel is deur die Suid-Afrikaanse Menseregtekommissie, opdateer en beskikbaar maak.

Hierdie Gids is ontwerp om 'n leidende, gebruikersvriendelike en toeganklike meganisme te wees vir enige persoon wie beoog om enige reg wat in die **PAIA** en die Wet op Beskerming van Persoonlike Inligting, 2000, 2013, vervat word, uit te oefen.



**Adv Pansy Tlakula**

**DIE VOORSITTER VAN DIE INLIGTINGSRE GULEERDER**

<sup>1</sup> Grondwet van die Republiek van Suid-Afrika, Wet No.

## VRYWARINGSKENNISGEWING

Hierdie Gids verlos nie die gebruiker van die verantwoordelikheid om hul eie vaardigheid en sorg met betrekking tot die vereistes of verpligtinge opgelê deur enige wetgewing nie. Bowendien, voorsien hierdie Gids nie regsadvies nie en is nie bedoel om die **PAIA** of Regulasies wat kragtens die **PAIA** uitgereik is, te vervang nie. Die Reguleerder aanvaar geen verantwoordelikheid vir enige verlies wat gely mag word as gevolg van staat wat gemaak is op hierdie Gids nie.

### 1. LYS VAN AKRONIEME EN AFKORTINGS

<b>HUB</b>	Hoof-Uitvoerende Beampte
<b>HFB</b>	Hoof-Finansiële Beampte
<b>Grondwet</b>	Grondwet van die Republiek van Suid-Afrika, Wet No. 108 of 1996
<b>AIB</b>	Adjunk-inligtingsbeampte
<b>Doj &amp; CD</b>	Departement van Justisie en Grondwetlike Ontwikkeling
<b>IB</b>	Inligtingsbeampte
<b>Lede</b>	Lede van die Inligtingsreguleerder
<b>Minister</b>	Minister van Justisie en Korrektiewe Dienste
<b>PAIA</b>	Die Wet op Bevordering van Toegang tot Inligting, Wet 2 van 2000, soos gewysig
<b>PAJA</b>	Wet op Bevordering van Administratiewe Geregtigheid, 2000
<b>WOFB</b>	Wet op Bestuur van Openbare Finansies, No. 1 van 1999, soos gewysig
<b>POPI-WET</b>	Beskerming van Persoonlike Inligting, Wet No.4 van 2013
<b>Reguleerder</b>	Inligtingsreguleerder
<b>SAMRK</b>	Die Suid-Afrikaanse Menseregte Kommissie

### 2. NUTTIGE TERME OP 'N MAKLIK VERSTAANBARE VORM EN WYSE VERDUIDELIK

Term	Beskrywing
<b>Toegangsfooi</b>	Hierdie toegangsfooi word deur die aansoeker aan die liggaam vanwaar U die inligting aanvra, betaal. Dit is om die kostes verbonde aan die opsporing en kopiëring van die rekords wat U benodig te dek. Wat gedebiteer kan word, word deur die regulasie voorgeskryf.
<b>Administrateur</b>	Is 'n staatsorgaan of enige natuurlike of regspersoon wat administratiewe aksie neem.

Term	Beskrywing
<b>Administratiewe aksie</b>	<p>Is enige besluit wat geneem is, of enige versuim om 'n besluit te neem, deur</p> <p>(a) 'n staatsorgaan wanneer:</p> <p>(i) 'n mag uitgeoefen word kragtens die Grondwet of 'n provinsiale grondwet; of</p> <p>(ii) wanneer 'n openbare mag uitgeoefen word of 'n openbare funksie uitgevoer word kragtens enige wetgewing; of</p> <p>(b) deur 'n natuurlike- of regspersoon, anders as 'n staatsorgaan, wanneer 'n openbare mag uitoefen of 'n openbare funksie uitgevoer word ingevolge 'n bemaagtigende bepaling.</p> <p>wat die regte van enige persoon nadelig beïnvloed en wat 'n direkte, eksterne regsgevolg het.</p>
<b>Gemagtigde Persoon</b>	<p>Die gemagtigde persoon is die persoon wat 'n versoek namens iemand anders rig, en wie skriftelik behoorlik gemagtig is om dit te doen.</p>
<b>Outomaties Beskikbare Rekords</b>	<p>Dit is die rekords wat 'n openbare of privaat liggaam aan 'n versoeker beskikbaar sal maak sonder dat hulle 'n versoek hoef te rig. Hierdie rekords word in 'n 'vrywillige openbaarmakingskennisgewing' gelys, wat openbaar gemaak moet word.</p>
<b>Betrokkene</b>	<p>Is die persoon tot wie persoonlike inligting betrekking het.</p>
<b>Dae</b>	<p>Tensy aangedui as 'n 'werksdag' in 'n artikel in die <b>PAIA</b>-wet, word 'n dag as 'n kalender dag geag. Om die tydperk te bereken, word die dag waarop die versoek ontvang is, uitgesluit, en elke dag daarna word ingesluit, insluitende naweke en openbare vakansiedae totdat die finale dag getel word. Indien die laaste dag om 'n versoek te reageer op 'n Sondag of 'n openbare vakansiedag val, word die volgende dag as die laaste dag getel.</p>
<b>Vermeende Weiering</b>	<p>Indien geen respons ontvang is op 'n versoek binne die voorgeskrewe tyd, word dit as vermeende weiering geag.</p>
<b>Vorm 2</b>	<p>Hierdie vorm word volgens regulasie voorgeskryf en moet gebruik word om toegang tot inligting wat deur 'n openbare of privaat liggaam gehou word, aan te vra.</p>
<b>Vorm 4</b>	<p>Hierdie vorm word volgens regulasie voorgeskryf en moet gebruik word wanneer appèl aangeteken word teen 'n besluit wat deur 'n openbare liggaam geneem is met betrekking tot 'n versoek om toegang tot inligting.</p>

**Term****Beskrywing****GIDS**

Hierdie gids, gemaak ter nastrewing van Artikel 10 van die **PAIA**-wet, soos gewysig, het ten doel om 'n persoon te help wat beoog om enige reg uit te oefen wat in die **PAIA**-wet en die Beskerming van Persoonlike Inligting Wet, 2013 oorweeg is.

**Inligtingsbeampte**

Die Inligtingsbeampte is die persoon wat gemagtig is om **PAIA**-versoeke te hanteer. Die volgende is kategorieë van inligtingsbeamptes per spesifieke liggaam -

<b>Openbare liggaam of staatsorgaan</b> (soos omskryf in artikel 239 van die Grondwet)	Nasionale Departement	Direkteur-generaal of die persoon wat sodanig optree
	Provinsiale Administrasie	Die Hoof van die Departement of die persoon wat sodanig optree.
	Munisipaliteit	Munisipale bestuurder of die persoon sodanig optree
	Openbare instellings gelys in WOFB Bylae 1, 2, 3A en 3B, 3C en 3D	Hoof-uitvoerende beampte of die persoon wat sodanig optree
<b>Privaat liggaam</b>	Natuurlike persoon	Alleeneienaar wat enige bedryf, beroep of profesie beoefen, maar slegs in sodanige hoedanigheid en nie in sy persoonlike hoedanigheid nie
	Vennootskap	Enige vennoot van die vennootskap of enige persoon wat behoorlik gemagtig is deur die vennootskap.
	Politieke party	Die leier van die politieke party of enige persoon wat behoorlik gemagtig is deur daardie leier.

Term	Beskrywing	
<b>Inligtingsbeampte</b>		<p>Regspersoon</p> <p>Hoof- uitvoerende beampte of die besturende direkteur of ekwivalente beampte van die regspersoon of enige persoon wat behoorlik gemagtig is deur daardie beampte.</p> <p><b>NB:</b> Die Hoof- uitvoerende beampte of ekwivalente beampte mag enige natuurlike persoon as inligtingsbeampte van 'n privaatliggaam magtig.</p>
<b>Adjunk-inligtingsbeampte</b>	<p>Die Adjunk-Inligtingsbeampte is die aangewese persoon of gedeleger deur die Inligtingsbeampte van 'n openbare liggaam om die versoeker met hul inligtingsversoek te help, en aan wie die inligtingsbeampte <b>PAIA</b>-magte kan deleger.</p> <p><b>NB:</b> Terwyl slegs 'n openbare liggaam 'n Adjunk-Inligtingsbeampte(s), kragtens artikel 17(1) van die <b>PAIA</b>-wet mag aanstel of deleger, verleen die wet op Beskerming van Persoonlike Inligting, 2013 ("<b>POPI</b>-wet") magtiging aan die privaat liggaam om 'n Adjunk-inligtingsbeampte aan te wys kragtens Artikel 56(1) daarvan.</p>	
<b>Inligtings-reguleerder</b>	<p>Die kantoor van die Inligtingsreguleerder is gevestig, ingevolge artikel 39 van die <b>POPI</b>-wet om voldoening aan beide die <b>POPI</b>- en <b>PAIA</b>-wet af te dwing en te monitor. In hierdie Gids word die Kantoor van die Inligtingsreguleerder of die Inligtingsreguleerder na verwys as die Reguleerder.</p>	
<b>Interne Appèl</b>	<p>'n Interne appèl is die proses om 'n beslissing wat ingevolge 'n <b>PAIA</b>-versoek aan 'n openbare liggaam uit te daag, dit moet voltooi wees voordat 'n wraking aan die Reguleerder of 'n hof met jurisdiksie gerig kan word.</p>	
<b>Privaat Liggaam</b>	<p>'n Privaat liggaam is 'n persoon, maatskappy of ander soort regspersoon wat 'n ambag, besigheid of beroep bestuur, insluitend 'n politieke party.</p>	

Term	Beskrywing
<b>Openbare Liggaam</b>	Desnieteenstaande, met betrekking tot interne appèl, is enige verwysing na 'n "openbare liggaam" verander na "Regering", ten einde enige verwarring te vermy ten opsigte openbare liggame waarop die appèl nie van toepassing is nie.
<b>Rekord</b>	'n Rekord is enige opgetekende inligting, ongeag die vorm, met inbegrip van, byvoorbeeld, geskrewe dokumente, oudio-, digitale- en video opnames. 'n Rekord wat versoek word van 'n openbare of privaat liggaam verwys na 'n rekord wat in daardie liggaam se besit is, ongeag of daardie liggaam die rekord geskep het.
<b>Regulasies</b>	Die <b>PAIA</b> -wet maak voorsiening vir die Minister om regulasies wat die Wet aanvul uit te reik, dit moet in die Staatskoerant gepubliseer word, en kwessies soos die vorms moet gebruik moet word en foie wat hef kan word vir sekere prosesse, dek.
<b>Relevante Owerheid</b>	Die <b>PAIA</b> -wet gebruik die term 'betrokke owerheid' om die persoon binne 'n Nasionale, Provinsiale en Plaaslike Regering te definieer, aan wie 'n interne appèl gerig moet word, wat algemeen die politieke hoof van die betrokke liggaam is (hierdie funksie kan amptelik gedelegeer word).

### 3. KONTAKBESONDERHEDE VAN DIE REGULEERDER

#### Inligtingsbeampte

**Hoof-Uitvoerende Beampte:**

Mr. Mosalanyane Mosala

**Kontakpersoon:**

Me. Ntombizodwa Harrieth Rikhotso

**Tel No:**

+27 (0) 10 023 5207

**E-pos:**

[NtoRikhotso@justice.gov.za](mailto:NtoRikhotso@justice.gov.za)

**Adjunk-inligtingsbeampte:**

Me. Varsha Sewlal

**Tel No:**

+27 (0) 10 023 5214

**E-pos:**

[VarSewlal@justice.gov.za](mailto:VarSewlal@justice.gov.za)

**Fisiese adres:**

JD House, 27 Stiemens Street  
Braamfontein  
Johannesburg  
2001

**Posadres:**

POSBUS 31533  
Braamfontein  
Johannesburg  
2017

**Telefoon:**

010 023 5200

## 4. DOEL VAN HIERDE PAIA-GIDS

- 4.1 Die doel van hierdie gids is om inligting te verskaf wat benodig word deur enige persoon wat beoog om enige reg uit te oefen wat in die Wet op Bevordering van Toegang tot inligting van 2000 (**PAIA-wet**) en Die Beskerming van Persoonlike Inligting, 2013 ("**POPI-wet**") vervat word. Enige persoon ongeag van burgerskap, kan aansoek doen om toegang tot inligting ingevolge die **PAIA-wet**.
- 4.2 Hierdie gids sal 'n persoon, wat ook na verwys word as 'n betrokkene, help oor hoe om toegang tot sy / haar persoonlike inligting kragtens artikel 23 van die **POPIA-wet** te verkry. Onder die **POPI-wet**, het 'n persoon of betrokkene die reg om -
- 4.2.1 'n verantwoordelike party te versoek om gratis, te bevestig of die verantwoordelike party persoonlike inligting oor hulle besit of nie, en
- 4.2.2 om van 'n verantwoordelike party die rekord of 'n beskrywing van die persoonlike inligting oor die betrokkene wat deur die verantwoordelike party gehou word aan te vra, waaronder inligting oor die identiteit van alle derde partye, of kategorieë van derde partye, wat toegang tot die inligting het of reeds gehad het;
- 4.2.3 'n verantwoordelike party versoek om -
- (a) persoonlike inligting oor die betrokkene in sy besit of onder sy beheer wat verkeerd, irrelevant, oormatig, verouderd, onvolledig, misleidend of onwettig verkry is te korrigeer of uit te wis; of
- (b) om 'n rekord wat persoonlike inligting oor die betrokkene bevat wat die verantwoordelike party nie meer gemagtig is om te behou nie, te vernietig of uit te wis.
- 4.3 Hierdie Gids sal ook enige persoon help oor hoe om aansoek te doen om toegang tot rekords ingevolge die **PAIA-wet** te verkry. Die gids sal Versoekers ook help om:
- 4.3.1 die **PAIA-wet**, sy voordele en agtergrond te verstaan;
- 4.3.2 die stapsgewyse proses waardeur 'n versoek gerig word en bykomende wenke wat die proses vergemaklik te leer;
- 4.3.3 die soorte inligting wat deur die gebruik van die **PAIA-wet** bekom kan word, te leer;
- 4.3.4 begrip te hê van die proses waardeur 'n versoeker 'n beslissing wat in verband met hul versoek gemaak is, te daag;

4.3.5 vergewissing van die veranderinge wat in die **PAIA**-wet sal plaasvind sodra die **POPIA**-wet ten volle in werking tree.

4.4 Hierdie gids sal ook mense help om te verstaan hoe om die verlening van toegang tot hul rekords te daag of hoe om deel te neem aan die proses om toegang tot hul rekords te verkry.

## 5. OOR PAIA

5.1 Die reg op toegang tot inligting is "een van die mees effektiewe wyses waarop die grondwetlike waardes van deursigtigheid en openheid, deelname en aanspreeklikheid gehandhaaf word".<sup>2</sup> Die bogenoemde grondwetlike waardes kan nie bereik word indien die regering 'n monopolie het op die inligting wat sy aksies en besluite dryf, het nie. Dus, is toegang tot inligting nie net fundamenteel tot 'n behoorlik funksionerende, deelnemende demokrasie nie, maar dit verhoog ook die openbare vertroue in die regering en verskerp die regmatigheid daarvan. Ander voordele van die reg op toegang tot inligting is byvoorbeeld dat dit bedrog en korrupsie, onsekerheid en ander onbehoorlike regeringsoptredes ontmoedig.

5.2 Toe die Suid-Afrikaanse Grondwet in die tydperk na die val van Apartheid in die 1990's opgestel is, het verskillende organisasies en individue veldtogte geloods vir die insluiting vir 'n reg van toegang tot inligting. Daar is gehoop dat die insluiting van hierdie reg in die Handves van Regte sou verseker dat gruweldade soos Apartheid nooit weer sou kon plaasvind nie, aangesien die staat en privaat maatskappye verplig sou wees om op 'n verantwoordbare en deursigtige wyse op te tree deur die voorsiening van toegang tot inligting, en sou dus nie kon wegkruip agter die dekmantel van geheimhouding nie. Dit was beskou as 'n noodsaaklike stap om te help om 'n kultuur van regverdiging te skep, wat sou lei tot regverdiger verhoudings tussen mense, en diegene in gesagsposisies. In een van die vroegste sake wat handel oor hoe om die vraag te hanteer of 'n beskuldigde geregtig is op toegang tot al die inligting vervat in die polisie akte, het<sup>3</sup> Jones J die belangrikheid daarvan in hierdie terme erken:

***“Die doel ... is om die ewigdurendheid van die ou administrasiesetel uit te sluit, 'n stelsel waarin dit moontlik was vir die regering aanspreeklikheid te ontsnap deur te weier om inligting te openbaar, selfs al het dit betrekking gehad op die uitoefening of beskerming van die regte van die individu. Dit is die misstand wat dit ontwerp is om te verhoed [...] Aantoonbare eerlikheid en openheid bevorder openbare vertroue in die administrasie van openbare sake oor die algemeen. Hierdie vertroue is een van die kenmerke van die demokraties regerende samelewing waarvoor die Grondwet hom beywer”.***

<sup>2</sup> Hoexter Administratiewe Wet 94

<sup>3</sup> 1994 (1) SACR 635 (E)

- 5.3 Artikel 32 van die Grondwet verskans die reg van toegang tot inligting wat gehou word deur beide openbare en private liggame. Artikel 32 bepaal ook dat wetgewing verorden moet word om uitvoering te gee aan die reg van toegang tot inligting deur oor die maniere waarop inligting verkry van openbare en privaat liggame kan verkry word, en deur die verskaffing van gronde waarop 'n openbare en private liggaam kan weier om toegang tot inligting.
- 5.4 Die **PAIA**-wet is uitgevaardig in reaksie op die bogenoemde grondwetlike mandaat, en groot deel daarvan is in Maart 2001 in werking gestel. Die aanhef erken die "geheimsinnige en onresponsiewe kultuur" van die pre-demokratiese era, en beweer dat een van die oogmerke van die **PAIA**-wet is om "'n kultuur van deursigtigheid en verantwoordbaarheid in openbare en privaat liggame te kweek."
- 5.5 Die **PAIA**-wet het ten doel uitvoering te verleen aan 'n persoon se regte op toegang tot inligting en aanspreeklikheid. Dit is ontwerp om mense te bemagtig om die wet te gebruik, en op die wyse help dit om toegang tot inligting op verskillende wyses te versoek. 'n Mens hoef nie 'n prokureur aan te stel om 'n versoek om toegang tot inligting ingevolge die **PAIA**-wet te rig nie.

## 6. DIE OOGMERKE VAN DIE PAIA-WET

- 6.1 Die oogmerke van die **PAIA**-wet is nie om die grondwetlike reg te vervang nie, maar is om die regte in artikel 32 ten uitvoering te bring, onderhewig aan verdedigbare verjaringstermyne, en op so 'n wyse al die ander regte vervat in die Grondwet te help balanseer. Dit beoog om 'n kultuur van menseregte en maatskaplike geregtigheid vir die mense, die openbare sektor en die private sektor te bevorder. Die **PAIA**-wet beoog om deursigtigheid, verantwoordingspligtigheid en doeltreffende bestuur van alle instansies (beide openbaar en privaat) te bevorder deur die bemagtiging van mense hul regte tot toegang tot inligting te verstaan, daarvolgens op te tree en om besluite wat hulle raak te ondersoek en oorweeg.
- 6.2 Die reg van toegang tot inligting is 'n baie kragtige grondwetlike reg, omdat dit mense help om hul ander regte te verwesenlik. 'n Persoon kan dit gebruik om die lewering van regeringsdienste te help monitor en assesseeer, of om toegang te verkry tot historiese rekords wat van belang kan wees.
- 6.3 Die oogmerke van die **PAIA**-wet is -
- 6.3.1 om grondwetlike regte ten uitvoering te bring om
    - 6.3.1.1 enige inligting wat deur die staat gehou word; en
    - 6.3.1.2 enige inligting wat deur 'n ander persoon gehou word en wat nodig is vir die uitoefening of beskerming van enige regte.

- Die vereiste met betrekking tot die beskerming van regte is beperk tot inligting wat in private hande geberg word. Private liggame is dus onderhewig aan 'n lakser deursigtigheidstandaard as openbare liggame. Met ander woorde, die privaat sektor is daarop geregtig om die inligting vir homself te hou, tensy daardie inligting benodig word vir die beskerming van die regte.
- Die **PAIA**-wet erken, kragtens artikel 8(1) daarvan dat 'n liggaam "openbaar" of "privaat" mag wees vir die doeleindes van die Wet, afhangend van of die rekord ter sprake "verband hou met die uitoefening van 'n mag of die verrigting van 'n funksie as 'n openbare liggaam of privaatliggaam."

### 6.3.2 om uitvoering te gee aan daardie reg -

6.3.2.1 onderhewig aan verdedigbare verjaringstermyne, met inbegrip van, maar nie beperk tot, die verjaringstermyne wat gemik is op die regverdige beskerming van privaatheid, kommersiële vertroulikheid en doeltreffende, effektiewe en goeie regering; en

6.3.2.2 op 'n wyse wat daardie reg met enige ander regte, insluitend die regte vervat in die Handves van Regte in Hoofstuk 2 van die Grondwet balanseer;

6.3.3 uitvoering te gee aan die grondwetlike verpligtinge van die staat om 'n menseregtekultuur en sosiale geregtigheid te bevorder, deur openbare liggame by die omskrywing van 'aansoeker' in te sluit, en hulle onder meer toe te laat om toegang tot inligting van privaatliggame te verkry na voldoening aan die vier vereistes in hierdie Wet, insluitend 'n bykomende verpligting vir sekere openbare liggame in sekere gevalle om in die openbare belang op te tree;

6.3.4 om vrywillige en verpligte meganismes of prosedures in te stel om daardie reg uit te voer op 'n wyse wat persone in staat stel om so vinnig, goedkoop en moeiteeloos as redelikerwys toegang tot rekords van openbare en private liggame te verkry; en

6.3.5 om oor die algemeen deursigtigheid, aanspreeklikheid en effektiewe bestuur van alle openbare en private liggame te bevorder deur, insluitend maar nie beperk nie tot, die bemagtiging en opvoeding van almal -

6.3.5.1 om hul regte met betrekking tot hierdie Wet te verstaan ten einde hul regte met betrekking tot openbare en private liggame uit te oefen;

6.3.5.2 om die funksies en werking van openbare liggame te verstaan; en

6.3.5.3 om besluitneming deur openbare liggame wat hul regte beïnvloed, effektief te ondersoek en daaraan deel te neem.

#### 6.4 Die Bevordering van Toegang tot Inligting Wysigingswet, 2019

- 6.4.1 In die saak van ***My Vote Counts NPC v Minister of Justice and Correctional Services and Another [2018] ZACC 17***, het die Konstitusionele Hof voorgehou dat die Staat 'n verpligting het wat voortspruit uit lees van artikels 32, 19 en 7(2) van die Grondwet en is onderhewig daaraan om als redelik moontlik te doen om die reg om toegang tot inligting en die reg om te stem verwesenlikbaar te maak. Die meerderheid het verder voorgehou dat dit so is omdat die reg om te stem 'n ingeligte keuse moet wees, en daar 'n kern verband is tussen die behoorlike uitoefening van die reg om te stem en die reg om toegang tot inligting is. En "sonder toegang tot inligting, word die vermoë van burgers om verantwoordelike politieke besluite te neem en op 'n betekenisvolle wyse in die samelewing deel te neem, ondermyn. Die Konstitusionele Hof het die bevel van grondwetlike ongeldigheid bevestig en die Parlement beveel om die **PAIA**-wet te wysig en enige ander stappe wat dit nodig ag te neem om te voorsien vir die beskerming van rekords en om redelikerwyse toegang tot inligting oor die private befondsing van politieke party en onafhanklike kandidate binne 'n periode van 18 maande te fasiliteer.
- 6.4.2 In ooreenstemming met die bogenoemde beslissing van die Konstitusionele Hof, het die President op 3 Junie 2019, die Wet op Bevordering van Toegang tot Inligting, 2019, (**PAIA**-wysigingswet 2019), bekragtig.<sup>4</sup> Die **PAIA**-wysigingswet 2019, sluit 'n politieke party in die definisie van 'n privaat liggaam in, wat uiteindelik beteken dat die leier van 'n politieke party of enige persoon wat behoorlik gemagtig is deur daardie leier, 'n Inligtingsbeampte of hoof is. Die **PAIA**-wysigingswet 2019 verleen nou ook die reg om toegang tot enige rekords van die politieke party.
- 6.4.3 Die gewysigde Wet maak voorsiening vir inligting oor die privaat befondsing van politieke partye en onafhanklike kandidate om genotuleer, bewaar en beskikbaar gemaak te word.
- 6.4.4 Kragtens Artikel 52A van die **PAIA**-wysigingswet 2013, moet die hoof van 'n politieke party rekords skep en hou van enige skenkings wat die voorgeskrewe drempel van **R100 000.00** oorskry, wat aan die politieke party in enige gegewe finansiële jaar gemaak is asook die identiteite van die persone of entiteite wat sulke skenkings gemaak het. Die hoof van 'n politieke party word ook verplig om dié rekords op 'n kwartaallikse basis beskikbaar te maak, soos voorgeskryf; en die rekords vir 'n periode van minstens vyf jaar nadat die betrokke rekords geskep is, te hou.

<sup>4</sup> Bevordering van Toegang tot Inligting Wysigingswet, No. 31 van 2019

6.4.5 Dit beteken dat terwyl die Politieke Partye Befondsingswet voorsiening maak vir die verpligte bekendmaking aan die Verkiesingskommissie, verleen die **PAIA**-wysigingswet die reg van toegang tot rekords, tot die rekords van enige skenking aan die politieke party wat **R100 000.00** oorskry, aan enige persoon.

## 6.5 Ander wetgewing wat die reg van toegang tot inligting beskerm

Die **PAIA**-wet bestaan binne 'n hele regsomgewing, waar dit ontwikkel is om 'n "kultuur van verantwoording" te skep. Ter herkenning hiervan, stel die **PAIA**-wet dat enige ander wet wat dit moontlik maak om die inligting om 'n makliker wyse te bekom, eerder gebruik mag word.<sup>5</sup>

### 6.5.1 Maatskappyewet 71 van 2008

6.5.1.1 Artikel 26(1) van die Maatskappyewet bied aan 'n persoon wat 'n voordelige belang het in of sekuriteite wat deur 'n winsmaatskappy uitgereik word, of wat 'n lid is van 'n maatskappy sonder winsoogmerk, en het die reg om dit te inspekteer en te kopieer, sonder enige heffing vir sodanige inspeksie of teen betaling van nie meer as die voorgeskrewe maksimum koste vir sodanige eksemplaar nie, die inligting vervat in die rekords van die maatskappy.

6.5.1.2 Kragtens Artikel 26(7)(b) van die Maatskappyewet, is "die regte om toegang tot inligting wat in hierdie artikel uiteengesit is, ter aanvulling en nie as vervanging van enige regte wat 'n persoon mag hê tot toegang tot inligting nie, kragtens die Bevordering van Toegang tot Inligting Wet, 2000 (Wet No. 2 van 2000)".

### 6.5.2 Die Wet op die Befondsing van Politieke Partye, 2018 (Wet No.6 van die 2018)

6.5.2.1 Die Wet op die Befondsing van Politieke Partye stel 'n streng reguleringsraamwerk in vir die privaat befondsing van alle geregistreerde politieke partye, hetsy in die nasionale en provinsiale wetgewers verteenwoordig word of nie. Dit sluit in die stel van perke vir die bron, grootte en gebruik van geskenkte fondse deur politieke partye.

6.5.2.2 Om deursigtigheid en aanspreeklikheid te verseker, moet politieke partye elke drie maande (sowel as voor die algemene verkiesing) alle donasies wat bo die openbaarmakingsdrempel van **R100 000.00** ontvang word, bekend maak.

<sup>5</sup> Artikel 2 (1) van die PAIA-wet

- 6.5.2.3 Enige persoon of organisasie wat 'n skenking maak aan 'n politieke party wat **R100 000.00** per jaar afsonderlik of kumulatief oorskry, moet die skenking binne 30 dae na die skenking aan die verkiesingskommissie rapporteer, of binne 30 dae nadat die kumulatiewe skenkings meer as **R100 000.00** was.
- 6.5.2.4 Laastens lê die Wet op die Befondsing van Politieke Party 'n verpligting op die Verkiesingskommissie om elke drie maande die donasies wat deur politieke partye gerapporteer is, bekend te maak en jaarliks aan die Parlement verslag te doen oor alle donasies wat gedurende die jaar aan politieke partye gemaak is.
- 6.5.3 Wet op Beskerming van Persoonlike Inligting, 2013(Wet No.4 van 2013)
- 6.5.3.1 Artikel 23 van **POPI**-wet bied aan die betrokke die reg op toegang tot persoonlike inligting wat deur die verantwoordelike party gehou word, insluitend inligting oor die identiteit van alle derde partye, of kategorieë van derde partye, wat toegang tot die inligting het, of gehad het.
- 6.5.3.2 Dit beteken dat hoewel toegang tot 'n rekord wat persoonlike inligting oor 'n aansoeker bevat, uitgesluit is van **PAIA**-wet ingevolge Artikel 11 (2) daarvan, kan die betrokke versoek om -
- 6.5.3.2.1 toegang tot sy/haar persoonlike inligting te verkry; en/of
- 6.5.3.2.2 die identiteit van alle derde partye, en / of kategorieë van derde partye, toegang tot die inligting het of gehad het.
- 6.5.3.2.3 regstelling of verwydering van persoonlike inligting oor die betrokke in sy besit of onder sy beheer wat onakkuraat, irrelevant, buitensporig, verouderd, onvolledig, misleidend of onwettig verkry is;
- 6.5.3.2.4 die rekord van sy/haar persoonlike inligting wat die verantwoordbare party nie meer gemagtig is om te hou nie, vernietig of uitgewis moet word.
- 6.5.3.3 'n Verantwoordelike party kan weier om enige persoonlike inligting bekend te maak, in ooreenstemming met die gronde vir die weiering van toegang tot rekords, soos uiteengesit in paragraaf 19.4 hieronder.

## 6.5.4 Wet op Bevordering van Administratiewe Geregtigheid 3 van 2000

- 6.5.4.1 'n Ander belangrike wet wat u moet onthou wanneer u toegang tot inligting oorweeg, is die Wet op die Bevordering van Administratiewe Geregtigheid (**PAJA**). Die **PAJA**-wet gee uitvoering aan die reg tot administratiewe optrede wat wettig, redelik en prosedureel billik is en aan die reg tot skriftelike redes vir administratiewe optrede soos oorweeg in artikel 33 (2) van die Grondwet.<sup>6</sup>
- 6.5.4.2 Ingevolge artikel 5 (1) van die **PAJA**-wet kan enigiemand wie se regte wesenlik en nadelig beïnvloed is deur administratiewe optrede en wat nie redes vir die aksie gegee is nie, binne 90 dae na die datum waarop daardie persoon van die optrede of redelikerwys sou verwag word dat hy van die optrede bewus geword het, die betrokke administrateur versoek om skriftelike redes vir die aksie te verskaf. Die administrateur aan wie die versoek gerig is, moet daardie persoon binne 90 dae na ontvangs van die versoek voldoende **skriftelike rede gee vir die administratiewe optrede.**

## 7. VESTIGING VAN DIE INLIGTINGSREGULEERDER

- 7.1 Om die bevordering en verbetering van die **PAIA**-doelstellings te verseker, wat die reg op toegang tot inligting moet bewerkstellig op so 'n wyse dat dit mense in staat stel om so vinnig en goedkoop as redelikerwys toegang tot rekords van openbare en private liggame te verkry, is die Inligtingsreguleerder (“Die Reguleerder”) ingestel ingevolge artikel 39 van **POPI**-wet.
- 7.2 Om te verseker dat ongekompliseerde en goedkoop administratiewe prosedures volg wanneer 'n versoek om toegang tot inligting gerig word, moet klagtes by die Reguleerder en hofaansoeke die uitsondering eerder as die reël wees.
- 7.3 Die **POPI**-wet wysig die rol van die SAMRK in verband met die **PAIA**-mandaat. Met ingang van 30 Junie 2021 sal al die funksies van die SAMRK, soos uiteengesit in **PAIA**-wet, hanteer word deur die Reguleerder, wat ook addisionele handhawingsbevoegdhede het. Die **POPI**-wet wysig die rol van die SAMRK met betrekking tot die **PAIA**-wet se mandaat.
- 7.4 Terwyl die SAMRK steeds sy breër grondwetlike verpligtinge sal handhaaf om die regte soos vervat in die Handves van Menseregte te bevorder, te beskerm en te monitor, sal die SAMRK en die Reguleerder nou saamwerk.

<sup>6</sup> Elkeen wie se regte nadelig geraak is deur administratiewe optrede het die reg tot die verskaffing van skriftelike redes.

## 8. DIE ROL VAN DIE INLIGTINGSREGULEERDER

- 8.1 Die Reguleerder het 'n baie belangrike rol ten opsigte van die **PAIA**-wet. Die Reguleerder het 'n mandaat van die **PAIA**-wet in Deel 4, Hoofstuk 1A en deel 5 en ander afdelings om:
- 8.1.1 Die reg van toegang tot inligting te bevorder en om die publiek te help met die gebruik van die **PAIA**-wet waar redelikerwys moontlik is om dit te doen.
  - 8.1.2 Die **PAIA**-wet te monitor en die implementering daarvan te bevorder in openbare en privaat liggame (wat ook die bevordering van doeltreffende wyses om inligting tydig beskikbaar te maak, insluit)
  - 8.1.3 Aanbevelings te maak om die **PAIA**-wet te versterk, en
  - 8.1.4 jaarliks aan die Parlement verslag te doen.
- 8.2 Artikel 77C (1) en (2) van die **PAIA**-wet maak voorsiening vir die volgende magte, pligte en funksies van die reguleerder, om -
- 8.2.1 'n klagte wat op die voorgeskrewe wyse aan die Reguleerder gerig is, te ondersoek;
  - 8.2.2 die klag na die Afdwingingskomitee, ingestel ingevolge artikel 50 van die **POPI**-wet, te verwys; of
  - 8.2.3 in ooreenstemming met artikel 77D te beslis om geen aksie op die klagte of te neem nie, of na gelang van die geval, geen verdere optrede verlang ten opsigte van die klagte; en
  - 8.2.4 waar toepaslik, as bemiddelaar op te tree met betrekking tot sodanige klagte op die voorgeskrewe wyse.
- 8.3 Die Reguleerder kan, ingevolge artikel 77H (1) van die **PAIA**-wet, en op eie inisiatief, of op versoek van of namens 'n inligtingsbeampte of hoof van 'n private liggaam of enige ander persoon, 'n beoordeling doen, hetsy 'n openbare of private liggaam voldoen gewoonlik aan die bepalings van **PAIA**, vir sover dit sy beleid en implementeringsprosedures betref.
- 8.4 Die Reguleerder is gemagtig om, ingevolge artikel 77F van **PAIA**, sy beste poging aan te wend om 'n klag te besleg, indien dit blyk uit die klag, of enige skriftelike antwoord wat daarop gerig is dat dit moontlik is om die klag te besleg. Dit beteken dat die Reguleerder slegs kan probeer om partye te help om hul geskille te besleg, indien daar 'n klag by die Reguleerder ingedien word, tensy hy op eie inisiatief besluit het om 'n beoordeling uit te voer, soos uiteengesit in paragraaf 8.3 hierbo.

## 9. VERSOEK OM 'N REKORD RIG

Verwys asseblief na die stapsgewyse prosesvloeddiagram in Paragraaf 27 hieronder oor hoe om aansoek te doen om toegang tot die rekords te verkry.

### 9.1 Om mee te begin: **Die PAIA-handleiding**

- 9.1.1 Alhoewel hierdie gids gepubliseer is om die publiek uit alle vlakke van die samelewing te help om hul grondwetlike reg op toegang tot inligting te handhaaf, is daar ander bronne van inligting wat 'n persoon ook kan help om 'n versoek tot toegang tot rekords te rig. **PAIA** vereis dat alle openbare liggame en private liggame 'n **PAIA**-handleiding opstel en beskikbaar stel.<sup>7</sup>
- 9.1.2 Voordat iemand stappe doen om toegang te verkry tot die inligting of rekords van 'n bepaalde liggaam, is die **PAIA**-gids die eerste instrument om te lees.
- 9.1.3 Die **PAIA**-gids is op sy mees basiese manier nuttig vir iemand om:
  - 9.1.3.1 die aard van die rekords wat reeds beskikbaar is, na te gaan sonder om 'n formele **PAIA**-versoek in te dien;
  - 9.1.3.2 'n begrip hê van hoe u 'n versoek kan rig om toegang tot inligting wat deur 'n bepaalde liggaam bewaar word;
  - 9.1.3.3 toegang te verkry tot alle relevante kontakbesonderhede van die persoon wat die publiek sal help met die rekords waarvoor iemand toegang wil verkry;
  - 9.1.3.4 te weet wat al die beskikbare middele by die instansie waartoe toegang tot die rekords gevra word is, voordat u die Reguleerder of die Howe nader;
  - 9.1.3.5 die beskrywing van die dienste vanaf die liggaam wat aan lede van die publiek beskikbaar is, te ken en hoe om toegang tot daardie dienste te verkry;
  - 9.1.3.6 weet of die liggaam persoonlike inligting sal verwerk, die doel van die verwerking van persoonlike inligting en die beskrywing van die kategorieë van die betrokke en van die inligting of kategorieë van inligting wat daarmee verband hou;
  - 9.1.3.7 weet of die liggaam beplan het om 'n persoon se persoonlike inligting oor te dra of te verwerk buite die Republiek van Suid-Afrika; en

<sup>7</sup> Artikel 14 en artikel 51 van die PAIA-wet

- 9.1.3.8 weet of die liggaam toepaslike veiligheidsmaatreëls het om die vertroulikheid, integriteit en beskikbaarheid van die inligting wat verwerk gaan word, te verseker.

## 9.2 Waar om PAIA-Gids te vind?

### 9.2.1 PAIA-GIDS van openbare liggame

- 9.2.1.1 Alle openbare liggame moet die **PAIA**-gids gereadlik beskikbaar maak in ten minste drie amptelike tale.<sup>8</sup>

- 9.2.1.2 Op die aller minste word hulle genoop om 'n kopie van 'n **PAIA**-gids vrylik beskikbaar te stel, tensy 'n gedrukte kopie aangevra word -

9.2.1.2.1 op die webtuiste van die openbare liggame;

9.2.1.2.2 by die hoof kantoor van die openbare liggame vir openbare besigtiging gedurende normale besigheidsure;

9.2.1.2.3 indien 'n persoon 'n harde kopie wil hê, moet die openbare liggame 'n afskrif maak, maar dit mag 'n fooi hef vir die lewering van gegewe afskrif; en

9.2.1.3.4 op versoek aan die Reguleerder.

### 9.2.2 PAIA-gids van privaatliggame

- 9.2.2.1 Privaat liggame word ook verplig om 'n **PAIA**-gids saam te stel, maar daar is geen vereiste om dit in meer as een taal of in 'n spesifieke taal saam te stel nie, hoewel dit aanbeveel word dat die **PAIA**-gids van privaat liggame ten minste in Engels moet wees.<sup>9</sup> Indien 'n spesifieke liggame dienste lewer aan 'n meerderheid mense wat nie formele onderrig het nie, beveel die Reguleerder aand dat die gids van daardie liggame ook in enige ander amptelike taal beskikbaar moet wees.

- 9.2.2.2 Op die aller minste word privaat liggame verplig om 'n kopie van 'n **PAIA**-gids vrylik beskikbaar te stel, tensy 'n gedrukte kopie aangevra word -<sup>10</sup>

9.2.2.2.1 op die webtuiste van die privaat liggame;

9.2.2.2.2 by die hoof sakeperseel van die privaat liggame vir openbare besigtiging gedurende normale werksure;

<sup>8</sup> Artikel 14 (1) van die PAIA-wet

<sup>9</sup> Kragtens artikel 51 van die PAIA-wet

<sup>10</sup> Artikel 51(3) van die PAIA-wet

9.2.2.2.3 indien 'n persoon 'n harde kopie verlang, moet die privaat liggaam 'n afskrif maak, maar mag aandrang op betaling van 'n billike fooi vir die voorsiening van die harde kopie en

9.2.2.2.4 op versoek aan die Reguleerder.

9.2.3 Die Minister van Justisie en Korrektiewe Dienste het die magte om sekere privaat liggame of kategorieë van privaat liggame vry te stel van die verpligting om 'n gids saam te stel.<sup>11</sup> Tans, en tot en met **31 Desember 2021**, het die Minister alle privaat liggame vrygestel, met die uitsondering van enige maatskappy wat<sup>12</sup> -

- (a) nie 'n privaat maatskappy, soos omskryf in Artikel 1 van die Maatskappywet, 2008 (Wet No 71 van 2008) is nie; en
- (b) 'n privaat maatskappy is soos omskryf in Artikel 1 van die Maatskappywet, 2008 (Wet No 71 van 2008) wat handel in enige van die sektore genoem in kolom 1 van die skedule tot hierdie kennisgewing en -
  - (i) 50 of meer werknemers in diens het; of
  - (ii) 'n totale jaarlikse omset het wat gelykstaande of oorskrydend is aan die toepaslike bedrag genoem in kolom 2 van die onderstaande tabel.

van die samestelling van die gids oorweeg in Artikel 51(1) van die eersgenoemde Wet vir 'n periode van ses (6) maande vanaf **1 Julie 2021** tot **31 Desember 2021**: -

Sektor	Jaarlikse omset
Landbou	R6 miljoen
Mynbou en Steengroefwerk	R22.5 miljoen
Nywerheid	R30 miljoen
Elektrisiteit, gas en water	R30 miljoen
Konstruksie	R15 miljoen
Handel en Motorhandel en hersteldienste	R45 miljoen
Groothandel, kommersiële agente en verwante dienste	R75 miljoen
Spyseniering, Akkommodasie en ander handel	R15 miljoen
Vervoer, opberging en kommunikasie	R30 miljoen
Finansiële- en Skakeldienste	R30 miljoen
Gemeenskaps-, spesiale en persoonlike dienste	R15 miljoen

<sup>11</sup> Artikel 51(4) van die PAIA-wet

<sup>12</sup> Staatskoerant No: 39504, 11 Desember 2015

9.2.4 Vanweë die belangrikheid van die wetlike vereiste vir die samestelling van die **PAIA**-handleiding, veral die wysiging van artikel 51 van die **PAIA**-wet (wat op 30 Junie 2021 in werking tree), ingevolge waarvan die omvang van die inligting wat die gids moet dek, verbreed is om aangeleenthede rakende die **POPI**-wet in te sluit, sal privaat liggame nie meer vrygestel word van die verpligting om die **PAIA**-gids saam te stel nie<sup>13</sup>. Daarom word elke privaat en openbare liggaam verplig om vanaf **1 Januarie 2022** hul **PAIA**-handleiding beskikbaar te hê, soos voorgeskryf in paragraaf 9.2.2.2 hierbo.

9.2.5 Die vrystelling van privaat maatskappye van die verpligting om die **PAIA**-handleiding saam te stel, stel die privaat ondernemings nie vry van nakoming van die **PAIA**-wet nie. Dit beteken dat enige persoon steeds 'n versoek om toegang tot inligting aan die vrygestelde privaat liggaam kan indien. Die vrystelling beteken net dat daardie private ondernemings nie 'n **PAIA**-gids hoef op te stel nie.

9.2.6 Onthou ook dat nie alle privaat liggame maatskappye is nie, want die omskrywing van privaat liggaam sluit natuurlike persoon, eenmansaak en vennootskap in. Dit kan egter steeds die moeite werd wees om hul webtuiste na te gaan, aangesien sommige maatskappye 'n **PAIA**-handleiding opstel ongeag die aantal werknemers of hul jaarlikse omset.

### 9.3 Vrywillige openbaarmaking en outomatiese beskikbaarheid van sekere rekords

9.3.1 Outomaties beskikbare rekords is rekords wat 'n openbare of privaat liggaam sal verskaf sonder dat die versoeker 'n **PAIA**-versoek hoef in te dien (met ander woorde, iemand kan dit net aanvra sonder om die **PAIA**-vorm 2 in te vul).

9.3.2 Die inligtingsbeampte van 'n openbare liggaam moet ingevolge artikel 15 (1) van **PAIA** 'n lys of kategorieë rekords beskikbaar stel wat outomaties beskikbaar is, soos voorgeskryf in paragraaf 9.3.4 hieronder.

9.3.3 Outomaties beskikbare rekords van 'n privaat liggaam kan ook beskikbaar gestel word ingevolge artikel 52 (1) van die **PAIA**-wet, maar op 'n vrywillige basis, ooreenkomstig met paragraaf 9.3.4 hieronder.

9.3.4 'n Beskrywing van die kategorieë van rekords wat outomaties beskikbaar gestel moet word -

(a) aan die Inligtingsreguleerder;

(b) op die webwerf van die liggaam; en

(c) vir inspeksie by die kantore van die betrokke liggaam gedurende normale kantoorure.

<sup>13</sup> Artikel 110 van die POPI-wet

- 9.3.5 Let asseblief daarop dat die reguleerder die beskrywing van outomaties beskikbare rekords van 'n openbare liggaam op sy webtuiste sal laai.
- 9.3.6 Hierdie lys sluit die rekords in wat nodig mag wees om beskikbaar gestel te word deur ander wette, en enige ander rekords wat daardie liggaam kies om in te sluit. Om die formaliteit van die nakoming van die **PAIA**-versoekproses te vermy, word 'n versoeker aangeraai om die **PAIA**-handleiding van die betrokke openbare of privaat liggaam na te gaan. Indien 'n persoon toegang wil verkry tot rekords wat binne die liggaam se lys van outomaties beskikbare rekords val, kan die persoon bloot toegang daartoe versoek sonder om **PAIA**-vorm 2 in te vul.
- 9.3.7 Die Wet op die Befondsing van Politieke Partye 6 van 2018 stel 'n paar veranderinge bekend deur middel van die **PAIA**-wet, waarvolgens die hoofde van politieke partye rekords van private skenkings moet opneem en bewaar, wat openbaar moet word sonder dat iemand 'n **PAIA**-versoek hoef in te dien.

## 10. KONTAKBESONDERHEDE VAN INLIGTINGSBEAMPTES

- 10.1 Hoewel dit vereis word dat die kontakbesonderhede van die inligtingsbeamptes van elke openbare liggaam in elke telefoongids gepubliseer moet word, kragtens artikel 16 van die **PAIA**-wet, het die Reguleerder spesifieke kontakbesonderhede van alle Inligtingsbeamptes (insluitend adjunkinligtingsbeamptes, wat ingevolge artikel 17 en 56 van die **PAIA**- en **POPI**-wet onderskeidelik, aangestel is) ingevolge artikel 55 (2) van die **POPI**-wet by hom geregistreer is.
- 10.2 Hoewel die verkryging van die regte kontakbesonderhede dikwels 'n baie uitdagende deel kan wees van die rig van 'n **PAIA**-versoek, aangesien rolle in die openbare sektor gereeld verander en die **PAIA**-handleiding nie noodwendig op datum is nie, moet die eerste plek om kontakbesonderhede te vind die **PAIA**-handleiding van die liggaam wees. As 'n aanvrager egter nie die gids kan vind nie, kan dit ook help om die skakelbord van die liggaam te skakel om die tersaaklike besonderhede aan te vra.
- 10.3 Vir munisipaliteite, plaas die Suid-Afrikaanse Vereniging vir Plaaslike Regering (**SALGA**) die kontakbesonderhede vir alle munisipaliteite by hierdie skakel:  
<http://www.salga.org.za/Municipalities%20MCD.html>
- 10.4 Regeringskommunikasie voorsien nasionale en provinsiale kontakte sowel as die besonderhede van ondernemings wat in staatsbesit is onder in hierdie skakel:  
<https://www.gov.za/about-government/contact-directory>. Onthou altyd dat die definisie van die Inligtingsbeampte help om te identifiseer wie se kontakbesonderhede nodig is om die inligtingsbeampte te identifiseer.

## 11. PROSES OM 'N VERSOEK OM INLIGTING TE RIG

### 11.1 Die versoekvorms

- 11.1.1 'n versoek om toegang tot inligting kan aan beide openbare en private liggame gerig word.
- 11.1.2 Die **PAIA**-wet vereis dat indien u so 'n versoek wil rig, moet u so 'n versoek op die voorgeskrewe vorm rig (hierdie vorms word voorgeskryf deur Regulasies). Daar is twee vorms wat gebruik kan word in die uitvoering tot reg op toegang tot inligting:

Vorm 2	Vorm 4
Hierdie vorm kan slegs gebruik word indien u 'n versoek om toegang tot die rekords van 'n openbare of privaat liggaam wil rig.	Hierdie vorm kan slegs gebruik word indien u 'n interne appèl wil aanteken teen die beslissings van die Inligtingsbeamptes of die Adjunk-inligtingsbeamptes of die van 'n nasionale, provinsiale of plaaslike sfeer van regering tot wie 'n interne appèl van toepassing is.

- 11.1.3 Hierdie vorms kan verkry word op die reguleerder se webtuiste by <https://www.justice.gov.za/infoereg/>

### 11.2 Die bepaling om vas te stel of 'n versoek betrekking het tot inligting wat gehou word deur 'n private of openbare liggaam

- 11.2.1 'n Openbare liggaam verrig 'n openbare funksie, soos die voorsiening van elektrisiteit of water aan die publiek. Dus, is 'n openbare liggaam nie net 'n nasionale, provinsiale of plaaslike regeringsdepartement nie – dit sou ook ondernemings in staatsbesit of staatsinstellings soos die Reguleerder, Eskom, of PRASA insluit. Daar moet egter 'n onderskeid gemaak word ten opsigte van 'n openbare liggaam vir die doel van interne appèl, wat slegs verwys na die nasionale, provinsiale of plaaslike regering.
- 11.2.2 'n private liggaam verrig 'n private funksie. So 'n liggaam (wat 'n persoon kan wees) handel 'n bedryf, beroep of professie. Dit is baie belangrik om daarop te let dat wanneer 'n **PAIA**-versoek by 'n privaat liggaam ingedien word, moet 'n persoon staaf watter reg hy beskerm of uitoefen deur om hierdie inligting aan te vra. Met betrekking tot enige inligting wat deur 'n ander persoon gehou word, het Streicher JA die posisie soos volg opgesom, in die **Kaapse Metropolitaanse Raad v Metro Inspection Services (Western Cape) CC en Andere**<sup>14</sup>

<sup>14</sup> 2001 (3) SA 1013 (SCA) par 28 by 1026f – G.

*“Inligting kan slegs vereis word vir die uitoefening of beskerming van 'n reg as dit van hulp sal wees in die uitoefening of beskerming van 'n reg. Dit volg dat, ten einde 'n saak om toegang tot inligting ingevolge artikel 32 te stel, moet 'n aansoeker staaf wat die reg is wat hy wil uit te oefen of beskerm, wat die inligting wat vereis word is en hoe daardie inligting hom sal ondersteun in die uitoefening of beskerming van daardie reg”.*

11.2.3 Soms kan die vraag of 'n rekord 'n openbare of private rekord is ingewikkeld wees en die publiek word aangeraai om regsadvies te soek. Byvoorbeeld, indien 'n openbare liggaam 'n privaat liggaam aanstel om sekere dienste aan sy ontwil te lewer, soos die installasie van watermeters in sekere gemeenskappe, toegang tot die nommers van geïnstalleerde meters, selfs indien sodanige inligting deur 'n privaat liggaam gehou word, word dit as die inligting van 'n openbare liggaam hanteer.

11.3 Hoe verduidelik 'n persoon die reg wat hy beoog om uit te oefen of te beskerm?

11.3.1 Wanneer 'n reg gestaaf moet word wat 'n mens beoog om te beskerm of uit te oefen in die versoek om inligting van 'n privaat liggaam, kan mens nie die reg om toegang tot inligting staaf nie. 'n Mens moet verduidelik hoe die rekord wat aangevra word redelikerwys nodig is vir die persoon om 'n ander reg te beskerm of uit te voer. Dit kan regte wat nie net grondwetlike regte is nie, insluit.

11.3.2 'n Mens kan byvoorbeeld die meester planne van 'n maatskappy aanvra wat die potensiaal het om 'n besoedelingsimpak in 'n gemeenskap te hê, ten einde te help om 'n mens se reg tot die omgewing te beskerm deur die monitering van sy werksaamhede. Of 'n mens kan rekords aanvra, wat sal help om te bepaal of 'n mens die reg het om 'n Siviele eis teen 'n entiteit in te stel. Dis is dus nodig dat mens:

11.3.2.1 Die reg wat hy wil uitoefen of beskerm identifiseer en dan

11.3.2.2 Duidelik verduidelik waarom die rekord wat hy aanvra redelikerwys benodig word om te help met daardie reg.

11.3.3 In kontras hiermee, wanneer 'n **PAIA**-versoek aan 'n openbare liggaam gerig word, hoef mens nie 'n rede vir die versoek om inligting te hê nie.

## 12. WIE KAN 'N PAIA-VERSOEK RIG?

12.1 Enige persoon, hetsy dit 'n Suid-Afrikaner of nie-Suid-Afrikaner, word toegelaat om 'n versoek kragtens die **PAIA**-wet te rig. Die versoeker kan 'n natuurlike persoon of 'n regspersoon wees.

- 12.2 'n openbare liggaam word as 'n regspersoon geag en mag 'n versoek om toegang tot rekords gehou deur privaatliggame rig, maar slegs indien die openbare liggaam -
- 12.2.1 in die belange van die publiek optree, en
  - 12.2.2 Indien die rekords nodig is vir die vervulling of beskerming van enige regte anders as dié van die openbare liggaam.
- 12.3 Kragtens die **PAIA**-wet, mag 'n versoeker nie 'n versoek om toegang tot 'n rekord van die openbare liggaam, wat persoonlike inligting oor die versoeker bevat, rig nie, maar die versoeker of betrokke kan, in ingevolge Artikel 23(1)(b) van die **POPI**-wet, die rekord van 'n verantwoordelike party aanvra of 'n beskrywing van die persoonlike inligting oor die betrokke wat deur die verantwoordelike party gehou word.<sup>15</sup> Dit beteken dat enige persoon nou kan toegang versoek tot hulle persoonlike inligting wat deur die openbare of privaat liggaam gehou word, ten tyde van vertoning van genoegsame bewys van identiteit. Die persoonlike inligting wat 'n aansoeker kan versoek van die verantwoordelike liggaam kan inligting oor die identiteit van alle derde partye, of kategorieë van derde partye insluit wat toegang tot die inligting het of gehad het.
- 12.4 Ingevolge Artikel 50(1) van **POPI**-wet, kan enige persoon toegang versoek tot 'n rekord van 'n privaat liggaam, wat persoonlike inligting oor die versoeker bevat of die persoon namens wie die versoek gerig word.

### 13. AAN WIE KAN 'N VERSOEK GERIG WORD?

- 13.1 Die inligtingsbeampte van 'n openbare liggaam is verplig om 'n Adjunk-inligtingsbeampte(s) aan te wys, wat moet verseker dat toegang tot die rekords van die openbare liggaam redelikerwys toeganklik as moontlik gemaak word. Hoewel dit nie 'n vereiste was met betrekking tot die privaat liggaam kragtens die **PAIA**-wet nie, mag 'n privaat liggaam die bogenoemde Adjunk-inligtingsbeampte aanwys, kragtens Artikel 56 van **POPI**-wet.
- 13.2 Die versoek om toegang tot inligting, hoewel dit aan die inligtingsbeampte gerig mag word, kan ingedien word by die adjunk-inligtingsbeampte. Besonderhede van adjunk-inligtingsbeampte(s) kan verkry word in die **PAIA**-gids van daardie spesifieke liggaam of van die Reguleerder.

### 14. HOE OM DIE VORM TE VOLTOOI

- 14.1 Vorm 2 - versoek om toegang tot 'n rekord vanaf 'n openbare of privaat liggaam:
- 14.1.1 Ten einde die **PAIA**-vorm te voltooi, moet 'n persoon genoegsame besonderhede verskaf om sodoende die Inligtingsbeampte en Adjunk-inligtingsbeamptes in staat te stel om die verlangde rekords op te spoor.

<sup>15</sup> Artikel 11(2) van die PAIA-wet

- 14.1.2 Die **PAIA**-regulasies spesifiseer die vorm wat gebruik moet word, wat aan die Inligtingsbeampte of Adjunk-inligtingsbeampte van die liggaam gestuur moet word.
- 14.1.3 Versoekers wat nie kan lees of skryf nie, kan mondelinge versoeke aan die Inligtingsbeampte of die Adjunk-Inligtingsbeampte van 'n openbare liggaam rig, wie dan verantwoordelik is vir die voltooiing van vorm 2 namens die versoeker. Die huidige vorm vereis dat u die volgende afdelings voltooi:

Inligting wat vereis word	Beskrywing
<b>Besonderhede van openbare / private liggaam</b>	Hierdie afdeling moet e-posadres en faksnommer van die Inligtingsbeampte en / of Adjunk-inligtingsbeampte bevat.
<b>Besonderhede van persoon wat toegang tot rekords versoek</b>	Dit behoort genoeg inligting oor die versoeker te bevat om die versoeker redelik maklik te identifiseer, met inbegrip van die besonderhede van die aansoeker: posadres, e-pos, faks en / of telefoonnommer in Suid-Afrika. Dit vra ook vir u identiteitsnommer om u identiteit te waarmerk. Indien u 'n versoek om inligting namens iemand anders rig, moet bewys van die hoedanigheid waarin u die versoek rig, voorsien word (soos die 'gemagtigde persoon').
<b>Besonderhede van die rekord wat versoek word</b>	Voorsien volle besonderhede van die rekord waarop toegang versoek word, met inbegrip van die verwysingsnommer indien dit bekend is, ten doel die rekord op te spoor. (Indien die gegewe spasie onvoldoende is, gaan asseblief op 'n aparte bladsy voort en heg dit aan die vorm. Alle addisionele bladsye moet geteken word.
<b>Tipe rekord</b>	Dit behoort genoeg inligting te bevat oor die rekord om dit redelik maklik om te identifiseer. Indien die inligting wat vereis word, nie in die gegewe ruimte in die vorm pas nie, mag 'n addisionele handgeskrewe of getikte bladsy gebruik word om meer besonderhede oor die versoek te verskaf, solank elke addisionele bladsy onderteken word en aan die

Inligting wat vereis word	Beskrywing
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	aansoekvorm geheg word. U kan byvoorbeeld, 'n uittreksel uit 'n verslag of nuusberig insluit wat betrekking het tot die rekord waarna u soek. Dit maak voorsiening om 'n verwysingsnommer vir die rekord in te sluit, indien dit van toepassing is.
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<b>Foie</b>	<p>Die liggaam aan wie 'n versoeker van plan is om 'n versoek om toegang tot 'n rekord te rig, met inbegrip van 'n rekord wat persoonlike inligting bevat oor hom- of haarself, kan versoek dat u 'n versoekfooi (toegangsfooi) of 'n deposito betaal, maar daardie bedrag mag nie buitensporig wees nie, omdat die foie gehef word vir die redelike tyd nodig om te soek vir die rekord en dit voor te berei. Die Minister kan deur middel van 'n kennisgewing in die Staatskoerant, die betaling van foie soos gelys in paragraaf 51.1 hieronder, vrystel.</p> <p>'n Ruimte is beskikbaar vir die versoeker om aan te dui waarom hy glo hy of sy moet vrygestel word om enige foie te betaal. Die rede kan insluit, byvoorbeeld, dat hy of sy werkloos is.</p>
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<b>Vorm van toegang tot 'n rekord</b>	Hierdie afdeling laat u toe om met 'n " x " u voorkeure aan te dui vir die vorm van toegang tot die rekord wat voorsien word, hetsy 'n gedrukte afskrif van 'n rekord en/of op 'n flitsaandrywer en/of op 'n kompakskyf.
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<b>Wyse van toegang</b>	<p>In hierdie afdeling word daar van u vereis om u voorkeure te merk met betrekking tot watter taal die rekord moet wees (dit mag dalk nie moontlik wees met betrekking tot alle rekords nie, maar u moet steeds u voorkeur aandui).</p> <p>Die wyse van toegang tot die rekord kan bydra tot 'n weiering van toegang as gevolg van hoër tariewe.</p>
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## Inligting wat vereis word

## Beskrywing

Byvoorbeeld, indien 'n versoeker 'n dokument in u voorkeurtaal wil hê, mag fooie vir die verandering van die dokumente na jou voorkeurtaal betaalbaar word. Indien die rekord nie beskikbaar is in die taal wat u verkies nie, mag toegang verleen word in die taal waarin die rekord beskikbaar is. Die wyse van toegang tot 'n rekord mag die volgende insluit: persoonlike besigtiging van 'n rekord, 'n rekord per e-pos of faks of koerier of per pos.

### **Kennisgewing van 'n besluit met betrekking tot 'n versoek om toegang**

'n Spasie word gebied vir die versoeker om die wyse waarop hy verlang om ingelig te word oor die besluit om die versoek toestaan of weier. Die versoeker kan byvoorbeeld aandui dat hy eerder deur e-pos of per telefoon ingelig wil word, of die respons kan na hom gepos word of per koerier gestuur word.

### **Besonderhede van die reg wat uitgeoefen of beskerm word**

Wanneer inligting van 'n privaat liggaam versoek word, is 'n versoeker verplig om die "besonderhede van die reg wat uitgeoefen of beskerm word" te beskryf. Hier moet hy die reg waarop hy staat maak stel (soos sy reg op 'n gesonde omgewing) en hoe die rekord wat hy aanvra sal help om die reg uit te oefen of te beskerm. Hy moet 'n verband tussen die rekord wat hy aanvra en die uitoefening of beskerming van die reg staaf.

Ongelukkig, in teenstelling met die versoek om toegang tot 'n rekord van 'n openbare liggaam, kan hy nie toegang tot 'n rekord van die privaat liggaam bekom nie, tensy hy die reg(te) wat hy wil beskerm of uitoefen staaf, sou toegang tot inligting verleen word. Dit kan die feit insluit dat, nadat hy toegang tot rekords verleen is, hy dan sy reg op gelyke beskerming en voordeel van die reg sal uitoefen deur die liggaam te dagvaar vir skade wat hy moontlik kon gely het.<sup>16</sup>

<sup>16</sup> Artikel 9(1) van die Grondwet van die Republiek van Suid-Afrika, Wet No. 108 van 1996

14.1.4 Indien sy versoek om enige rede nie voldoen aan die vereistes wat hierbo gelys is nie, mag die inligtingsbeampte nie die versoek weier nie, tensy hy die versoeker in kennis stel dat hy van voornemens is om die versoek te weier, en die redes vir weiering verskaf word. Die Inligtingsbeampte moet ook die versoeker in kennis stel dat hy hom sal help of aan hom 'n geleentheid sal bied om die fout te wysig.

## 15. DIE KOSTES BETROKKE

15.1 Oor die algemeen, moet die fooie betaal word vir beide vir die rig van 'n versoek en ook om die koste van die voorsiening van toegang tot rekords in ten opsigte van 'n versoek te dek. Daar is egter 'n paar uitsonderings. Indien die versoeker toegang tot die rekords wat hy of sy versoek het toegestaan is en hy of sy nie van die betaling van enige fooie, soos aangedui in paragraaf 15.2 hieronder, vrygestel is nie, mag die Inligtingsbeampte of Adjunk-inligtingsbeampte die voorgeskrewe fooie hef, soos volg-

**NB: Die fooi-struktuur ten opsigte van betaalbare fooie aan die Openbare en Private liggame kan op die Reguleerder se webtuiste gevind word.**

Item	Beskrywing
1	Die versoekfooie, betaalbaar deur elke versoeker
2	Fotostaat van A4-grootte bladsy
3	Gedrukte afskrif van A4-grootte bladsy
4	Vir 'n kopie in 'n rekenaar-leesbare formaat op: (i) Flitsaandrywer (voorsien deur die versoeker) (ii) Kompakskyf <ul style="list-style-type: none"><li>• Indien voorsien deur die versoeker</li><li>• Indien voorsien aan die versoeker</li></ul>
5	Vir 'n transkripsie van visuele beelde per A4-grootte bladsy
6	Afskrif van visuele beelde
7	Transkripsie van 'n oudiorekord, per A4-grootte bladsy
8	Kopie van 'n oudiorekord: (i) Flitsaandrywer (voorsien deur die versoeker) (ii) Kompakskyf <ul style="list-style-type: none"><li>• Indien voorsien deur die versoeker</li><li>• Indien voorsien aan die versoeker</li></ul>
9	Om 'n rekord op te spoor en voor te berei vir bekendmaking, vir elke uur of deel van 'n uur, uitsluitend die eerste uur, redelijkerwys nodig vir welke soektog en voorbereiding. Om nie oorskrydend te wees aan 'n totale koste van
10	Deposito: Indien soektog 6 ure oorskry
11	Posgeld, e-pos of enige ander elektroniese oordrag

15.2 Die versoeker hoef nie 'n toegangsfooi<sup>17</sup> aan 'n openbare liggaam te betaal nie, indien:-

15.2.1 Hy 'n enkel persoon is wie se jaarlikse inkomste, na die toelaatbare aftrekkings soos **LBS** en **WVF**, minder as **R14 712.00** 'n jaar is, of

15.2.2 Hy getroud is en die gesamentlike inkomste met sy gade, na toelaatbare aftrekkings soos **LBS** en **WVF**, minder as **R27 192.00** per jaar beloop.

15.3 Let asseblief daarop dat die openbare of privaat liggaam, in Vorm 4 tot die regulasies, 'n deposito van die versoeker mag eis, maar slegs indien hulle glo dat die inligting of rekords wat versoek word meer as ses (6) ure sal neem om te soek, maar die deposito bedrag mag nie meer as een-derde van die voorgeskrewe fooi wees nie.

## 16. SAL DIE INLIGTINGSBEAMPTTE DIE VERSOEKER HELP OM 'N PAIA-VERSOEK TE RIG?

16.1 Die rol van die Inligtingsbeamptes en/of Adjunk-Inligtingsbeamptes van beide openbare en private liggame is om, in soverre dit betrekking het tot die verwerking van versoeke om toegang tot rekords is om:

16.1.1 die **PAIA**- of **POPI**-versoek te ontvang;

16.1.2 die verwerking van die versoek binne die liggaam te koördineer;

16.1.3 'n beslissing maak om toegang toe te staan of te weier tot die rekords wat aangevra word;

16.1.4 te skakel met die aansoeker (bv. hulle mag dalk die versoeker vir meer besonderhede vra, of hulle mag dalk nodig hê om te vra vir 'n verlenging van die tydperk om die versoek te af te handel, ens.)

16.1.5 die versoeker in kennis te stel van die uitkoms van hul **PAIA**-versoek, waarvan die kennisgewing so spoedig redelik moontlik gegee moet word, maar **binne 30 dae** na ontvangs van die versoek. Die aanvanklike tydperk van 30 dae mag eenmaal verleng word vir 'n verdere tydperk van nie meer as 30 dae, indien die versoeker instem op die verlenging of indien die versoek 'n soeke na rekords vereis wat nie redelik afgehandel kan word binne die oorspronklike tydperk nie;

16.1.6 verstrek redes aan die versoeker vir die beslissing om toegang te weier. Dit is baie belangrik dat die redes wat verstrek word vir 'n weiering duidelik en volledig en omvattend is, en moet verwys na die spesifieke artikels van die **PAIA**-wet (sien paragraaf 19.4 hieronder met betrekking tot die gronde vir weiering van toegang tot rekords)<sup>18</sup>

<sup>17</sup> volgens Goewermentskennisgewing R991 van 14 Oktober 2005

<sup>18</sup> Artikel 33 tot 46 van die PAIA-wet

- 16.1.7 lig relevant derde party in deur die derde party-kennisgewingsproses ingevolge artikel 47 van **PAIA**; en
- 16.1.8 indien toegang tot die rekord toegestaan word, verskaf 'n kopie van die rekord aan die versoeker.
- 16.2 Wanneer die versoeker ingelig word van die besluit, lig hul ook in van die moontlike verhaal beskikbaar asook die relevante tydlyne daarvan .
- 16.3 Die bykomende rolle en verantwoordelikhede van die Inligtingsbeamptes en/ of die Adjunk-inligtingsbeamptes word omvat in die Riglyn vir Inligtingsbeamptes en Adjunk-inligtingsbeamptes en dié Riglyn kan bekom word by <https://www.justice.gov.za/inforeg/docs.html>
- 16.4 Die rol van die Inligtingsbeampte en/ of die Adjunk-inligtingsbeampte is om die versoek na inligting te fasiliteer, en dus beteken dit hul het 'n verskeidenheid van pligte teenoor diegene wat 'n versoek rig.
- 16.5 Die Inligtingsbeamptes en/ of Adjunk-inligtingsbeamptes moet hierdie hulp gratis verskaf.
- 16.6 Die Inligtingsbeamptes en/ of Adjunk-inligtingsbeamptes van 'n openbare liggaam het die volgende spesiale take:

Pligte van Inligtingsbeamptes	Beskrywing
<b>Help om die vorm te voltooi</b>	Die Inligtingsbeampte moet redelike hulp verleen aan die versoeker om hul <b>PAIA</b> -vorm te voltooi, en mag ook nie weier om 'n vorm te aanvaar wat nie behoorlik voltooi is behalwe as hul reeds die hulp verleen het, of hulp aangebied het en die hulp is van die hand gewys.
<b>Verskaf relevante inligting</b>	Die Inligtingsbeampte moet, waar redelik moontlik, relevante inligting aan die versoeker verskaf, al word dit nie spesifiek versoek nie.
<b>Oordrag van die versoek</b>	Hierdie is 'n baie belangrike plig. Wanneer 'n <b>PAIA</b> -versoek aan die verkeerde openbare liggaam gerig word, moet die Inligtingsbeampte die versoek aan die korrekte openbare liggaam oordra binne 14 dae vanaf

## Pligte van Inligtingsbeamptes

## Beskrywing

die versoek ontvang is, en die versoeker moet op skrif daarvan ingelig word. Die Inligtingsbeamptes moet, sodra dit oorgedra is, binne 30 dae met 'n besluit na vore kom.

### Uitstel van vrystelling

Die Inligtingsbeampte mag besluit om die vrystelling van 'n rekord aan 'n versoeker uit te stel as die rekord binne 90 dae gepubliseer gaan word of as dit deur die wet bepaal word om gepubliseer te word maar dit is nog nie.

- 16.7 Die Inligtingsbeampte moet, vir albei private en openbare liggame, as hul nie die spesifieke rekords kan opspoor wat versoek is nie of as hul glo die rekords bestaan nie, 'n omvattende beëdigde verklaring of bevestiging<sup>19</sup> aan die versoeker bied waarmee hul kennis gee dat dié rekords nie bestaan of nie gevind kan word nie, maar waarby die stappe wat hul kan neem om dit op te spoor aangedui word.

## 17. BYSTAND VERLEEN DEUR DIE INLIGTINGSREGULEERDER KRAGTENS DIE PAIA- EN POPIA-WET

- 17.1 Dit is die Inligtingsbeampte van 'n openbare liggaam se plig om redelike, gratis hulp te verleen waar nodig<sup>20</sup>, om te verseker dat die versoeker of betrokkene voldoen aan die wyse van toegang soos bepaal in artikels 18 van die **PAIA**-wet en artikel 23 van die **POPIA**-wet.
- 17.2 Maar, as die Inligtingsbeampte faal om sy pligte uit te voer, soos na verwys in paragraaf 17.1 hier bo, mag 'n versoeker of betrokkene 'n klagte by die Reguleerder loods en die Reguleerder mag, na verdere ondersoek, 'n afdwingingsbevel uitreik wat die Inligtingsbeampte aanspreek om die redelike bystand te lewer.
- 17.3 Waar dit redelik moontlik is, mag die Reguleerder per versoek enige persoon bystaan om hul regte uit te oefen, soos bepaal in **PAIA** en **POPIA**<sup>21</sup>, en dit sluit redelike hulp, gratis, soos benodig deur die versoeker of betrokkene om te voldoen aan die wyse van toegang soos bepaal in artikels 18 en 53 van die **PAIA**-wet en artikel 23 van die **POPIA**-wet.
- 17.4 Die bogenoemde sluit in bystand oor hoe om 'n versoek ter rig vir toegang of oor hoe om 'n vorm te voltooi namens 'n ongeletterde of blinde persoon.

<sup>19</sup> Artikel 23(1) en 51(1) van PAIA

<sup>20</sup> Artikel 19(1) van PAIA

<sup>21</sup> Artikel 83(3)(c) van PAIA

## 18. KAN DIE INLIGTINGSBEAMPTTE DIE BETROKKE TYDLYNE VERLENG?

- 18.1 'n Oorsig van die proses en die sleutel tydlyne betrokke word in die diagram van die PAIA-versoekproses in paragraaf 27 hieronder omskryf. Die gebruik van spesifieke tydlyne is 'n belangrike deel van **PAIA**, dit kweek die effektiewe bestuur van versoeke vir toegang tot rekords.
- 18.2 Ter herinnering, sodra u korrekte versoek ingedien word by die Inligtingsbeampte of die Adjunk-inligtingsbeampte, aan wie die versoek gerig is of oorgedra is, moet hul binne 'n redelike tydperk of **binne 30 dae**<sup>22</sup> beantwoord. Nietemin, die Inligtingsbeampte van 'n openbare of private liggaam mag aansoek doen om 'n enkele **30 dae verlenging**<sup>23</sup>, maar net as:
- 18.2.1 die versoek is vir 'n groot aantal rekords of vereis 'n groot aantal rekords wat deursoek moet word en, sonder die verlenging, sal die soektog inmeng met die normale aktiwiteite van die liggaam;
- 18.2.2 die versoek vereis 'n soektog deur rekords in 'n kantoor van die liggaam wat nie in dieselfde stad of dorp is nie en kon dus nie **binne die 30 dae** voltooi word nie; en/of
- 18.2.3 dit verg 'n vlak van konsultasie om op te tree teenoor die versoek, wat nie redelik **binne net 30 dae** voltooi kon word nie.
- 18.3 Die Inligtingsbeampte moet die versoeker inlig van haar of sy voorneme om die aanvangsperiode te verleng, en om ook die periode van die verlenging aan te dui, die rede vir die verlenging, en om die versoeker in te lig van haar of sy reg om te -
- 18.3.1 Appelleer by die aangewese owerheid;
- 18.3.2 klagte te rig aan die Reguleerder; of
- 18.3.3 regstappe te volg in die hof teen die verlenging.
- 18.4 Die Inligtingsbeampte moet ook die versoeker in die kennis stel van elk van die prosesse van die bogenoemde regte<sup>24</sup>.

## 19. ANTWOORDE TOT 'N VERSOEK OM INLIGTING

- 19.1 **PAIA** gee die publiek die reg om toegang tot rekords vanaf enige openbare of private liggaam te versoek. Dit word gereeld beskryf as die wet wat die burgers ingelig hou oor hul regering. Openbare liggame moet inligting wat versoek word onder **PAIA** beskikbaar maak behalwe as dit onder een van die **twaalf (12) vrystelling**

<sup>22</sup> Artikel 25(1) van PAIA

<sup>23</sup> Artikel 26(1) van PAIA

<sup>24</sup> artikel 26(3) van PAIA - die verlengingskennisgewing moet meld dat die versoeker 'n interne appèl mag aanteken, 'n klag by die Inligtingsreguleerder of 'n aansoek by 'n hof kan indien, soos die geval mag wees, teen die verlenging, en die prosedure (insluitende die tydperk) vir die indiening van die interne appèl, klag aan die Inligtingsreguleerder of aansoek, na gelang van die geval.

val of redes hoekom toegang tot rekords van 'n openbare liggaam toegestaan moet word of nie<sup>25</sup> en **sewe (7) vrystellings** of redes hoekom toegang tot rekords van 'n private liggaam toegestaan moet word of nie.<sup>26</sup> Die negentien (19) vrystellings wat in **PAIA** voorkom, is in die belang van die beskerming van persoonlike privaatheid, nasionale sekuriteit, en wetstoepassing.

19.2 Die onderliggende rigsnoer van die administrasie van **PAIA** is die oopheid vermoede. Dit beteken dat enige rede vir die beperking van hierdie oopheid moet geregverdig wees. Openbare liggame moet ook oorweeg of die gedeeltelike openbaring van inligting moontlik sal wees en waar daar bepaal word dat volle openbaring nie moontlik is nie, moet die inligting wat nie openbaar kan word nie gesny of geredigeer word en die res moet geopenbaar word.

### 19.3 Tipes antwoorde op versoeke

19.3.1 Wanneer 'n versoek om toegang tot 'n rekord gemaak word, moet die Inligtingsbeampte of Adjunk-inligtingsbeampte die versoeker in kennis stel, of die versoek om toegang toegestaan of geweier is, van -

- (a) sy of haar besluit; en
- (b) die betaalbare fooie, soos van toepassing is,

op 'n vorm wat wesenlik aansluit by **Vorm 3** van Aanhangsel A van die Regulasies:

19.3.2 Nietemin, **PAIA** verskaf 'n lys van redes of gronde (vrystellings) (sien paragrawe 19.4 en 19.6 hieronder) hoekom die versoek kan of moet geweier word. Dit is belangrik, want die versoek kan alleenlik geweier word op gronde van een van die gelyste gronde vir weiering van toegang tot rekords.

19.3.3 Ten spyte van die bogenoemde redes vir die weiering van toegang tot rekords, moet die Inligtingsbeampte die versoek vir toegang tot 'n rekord van die liggaam toestaan as die openbare belang van die vrystelling van die rekord die skade wat oorweeg word in die lys van redes vir weiering oorskry<sup>27</sup>. Dit beteken die versoeker kan staat maak op openbare belang wanneer enige van die gronde vir weiering van toegang tot rekords beroep word.

19.3.4 Kortliks, die redes hoekom inligting nie vrygestel kan word nie het te make met of die openbaring van inligting meer skade sal doen as wat die nie-openbaring sal. Daar is twee verskillende tipes gronde wat gelys word vir die weiering van toegang tot rekords van 'n liggaam:

<sup>25</sup> Hoofstuk 4 van PAIA - gronde vir weiering van toegang tot rekords (artikel 34-45 van PAIA)

<sup>26</sup> Hoofstuk 4 van PAIA - gronde vir weiering van toegang tot rekords (artikel 63-69 van PAIA)

<sup>27</sup> Artikel 46 van PAIA

## 19.4 Lasgewende gronde van weiering (gronde van vrystelling)

19.4.1 Die Inligtingsbeampte of die Adjunk-inligtingsbeampte moet wanneer dit te make het met lasgewende gronde, die versoek weier want dit het te doen met die rekord.

19.4.2 Daar is meer lasgewende gronde as diskresionêre gronde. Die volgende is die lasgewende gronde van weiering, en die inligtingsbeampte of die Adjunk-inligtingsbeamptes moet die aansoek weier want dit het te make met die rekord -

### 19.4.2.1 **Lasgewende beskerming van die privaatheid van 'n derde party wie 'n natuurlike persoon is;**

Die Inligtingsbeampte van 'n openbare of private liggaam mag nie toelaat dat 'n versoeker toegang kry tot die persoonlike inligting van 'n ander persoon as dit geag kan word as "'n onredelike openbaring" nie. Die afdelings dui self 'n paar redes aan wanneer dit nie van toepassing is nie, soos wanneer die rekords reeds algemeen bekend is, of as 'n persoon toestemming gegee het. Die toestemming kwessie is veral belangrik want dit sluit aan by 'n ander deel van die proses waarvan die versoeker bewus moet wees, dit hou verband met derde party kennisgewings, kragtens hoofstuk 5 van **PAIA**.

### 19.4.2.2 **Lasgewende beskerming van sekere rekords van die Suid-Afrikaans Inkomstediens;**

Die Inligtingsbeampte van SAID mag nie toelaat dat 'n versoeker toegang kry tot rekords wat verkry of behou word deur SAID vir die invordering van inkomste nie. Nietemin, rekords wat verkry of behou word deur SAID mag nie geweier word as 'n versoek gerig word deur 'n persoonlike versoeker of die persoon namens wie die versoek gemaak word nie.

### 19.4.2.3 **Lasgewende beskerming van kommersiële inligting van 'n derde party;**

Die Inligtingsbeampte van 'n liggaam mag nie toelaat dat 'n versoeker toegang kry tot die kommersiële inligting van 'n ander persoon nie (in ander woorde, wie nie die versoeker is nie). Dit sluit inligting soos bedryfsgeheime, of wat die derde party se kommersiële belange in gevaar stel. Byvoorbeeld, KFC maak gebruik van sekere resepte, insluitend bestanddele vervaardig deur 'n derde party, wat bedryfsgeheime is van die derde party en die openbaring daarvan kan die kommersiële belange van die derde party in gevaar stel.

19.4.2.4 **Lasgewende beskerming van sekere konfidensiële inligting, en die beskerming van sekere ander konfidensiële inligting, van 'n derde party;**

Die Inligtingsbeamptes van albei openbare en private liggame mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die vrystelling daarvan sal veroorsaak dat daar 'n verbreking van 'n vertrouensplig wat geskuld word aan 'n derde party kragtens 'n ooreenkoms of kontrak.

19.4.2.5 **Lasgewende beskerming van die veiligheid van individue, en die beskerming van eiendom;**

Die Inligtingsbeampte van albei 'n openbare of private liggaam mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die vrystelling daarvan die veiligheid van 'n individu in gevaar kan stel nie. In dieselfde afdelings meld dit ook dat die Inligtingsbeampte van 'n liggaam mag toegang weier as dit moontlik die veiligheid van 'n gebou of eiendom kan benadeel.

19.4.2.6 **Lasgewende beskerming van polisie dossiere in borgtog verrigtinge, en die beskerming van wetstoepassende- en regsverrigtinge;**

Die Inligtingsbeampte van 'n openbare liggaam mag nie toelaat dat 'n versoeker toegang kry tot rekords soos borgtog verrigtinge wat reeds deur artikel 60 van die Strafproseswet beskerm word nie. In dieselfde afdeling word daar ook gemeld dat die Inligtingsbeampte van 'n openbare liggaam mag toegang tot rekords van wetstoepassing weier as dit die metodes, tegnieke, prosedures vir die voorkoming van misdaad, of die vervolging van misdade, as ook sekere ander rekords relevant tot regsgeding wat plaasvind bevat.

19.4.2.7 **Lasgewende beskerming van geprevilegieerde rekords van regsgeding;**

Die Inligtingsbeampte van 'n private liggaam mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die rekord geprivilegieerd is in regsgeding nie, behalwe as die persoon wie die privilegie van toepassing op is afstand daarvan gedoen het.

19.4.2.8 **Lasgewende beskerming van navorsingsinligting van 'n derde party, en die beskerming van navorsingsinligting van 'n openbare of private liggaam.**

Die Inligtingsbeampte van 'n liggaam mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die rekord verband hou met navorsing wat reeds, of sal onderneem word deur die liggaam en die vrystelling daarvan kan die navorser, die derde party of die kwessie wat nagevors word ernstige benadeel nie.

19.4.3 Dra asseblief kennis dat die bogenoemde lasgewende gronde vir weiering van toegang tot rekords is redelik dieselfde vir openbare en private liggame, behalwe vir die lasgewende beskerming van sekere rekords van die Suid-Afrikaanse Inkomstediens, polisie dossiere in borgtog verrigtinge, van wetstoepassing en van regsgeding, wat net van toepassing is op openbare liggame.

19.4.4 As net 'n deel van die rekord gekoppel is aan 'n vrystellingsgrond, is die Inligtingsbeampte of Adjunk-inligtingsbeampte van albei openbare en private liggame verplig om te oorweeg of die gedeeltelike openbaring van inligting moontlik is wanneer hulle bepaal dat die volle openbaring nie moontlik is nie en hul moet redelike stappe neem om die deel wat nie aan die versoeker verskaf kan word nie te sny of te redigeer en om toegang aan die res van die rekord te bied.

## 19.5 Vermeende weiering van versoek<sup>28</sup>

19.5.1 'n Mislukking om die versoek behoorlik te beantwoord binne die korrekte tydslyn word geag as 'n 'vermeende weiering'. Dit is belangrik, want **PAIA** laat toe dat die versoeker 'n besluit kan uitdaag wanneer geen besluit geneem is nie en die versoek geïgnoreer is. Die versoeker kan net by die interne appel stel dat geen antwoord ontvang is nie.

19.5.2 Die versoek na toegang tot rekords word geag as geweier na die verval van 30 dae of enige verlengde periode waarby die openbare of private liggaam versuim om te beantwoord.

## 19.6 Diskresionêre gronde van weiering

19.6.1 Met diskresionêre gronde, mag 'n inligtingsbeampte of adjunk-inligtingsbeampte dit oorweeg om 'n versoek te weier of nie, omdat die gronde vir die aangevraagde rekord geldig is. Aangesien dit 'n diskresie is, moet die Inligtingsbeampte hom/haar objektief in die besluit verdiep wanneer die verskillende gronde oorweeg word, naamlik:

19.6.1.1 **Suid-Afrika se verdediging, veiligheid en internasionale betrekkinge:** Die Inligtingsbeampte kan toegang weier as redelikerwys verwag kan word dat die bekendmaking van die inligting die verdediging of veiligheid van die land sal bedreig. Dit kan ook van toepassing wees indien die bekendmaking van die inligting Suid-Afrika se betrekkinge met 'n ander land kan benadeel, soos die openbaarmaking van rekords wat vertroulik verskaf word.

19.6.1.2 **Ekonomiese, finansiële en kommersiële belange:** Die Inligtingsbeampte kan toegang weier as die vrylating daarvan nadelig sal wees vir die ekonomiese en finansiële status van die Republiek;

<sup>28</sup> Artikel 27 en 58 van PAIA

- 19.6.1.3 **Bedrywighede van openbare liggame:** Die inligtingsbeampte van 'n openbare liggaam kan toegang weier as die bekendmaking van die inligting redelikerwys die bedrywighede kan belemmer, byvoorbeeld as dit probeer om beleide te formuleer, of oor 'n kwessie te beraadslaag;
- 19.6.1.4 **Klaarblyklik ligsinnige of lastige versoeke:** Die Inligtingsbeamptes kan 'n versoek om inligting weier as hulle van mening is dat die verwerking van versoeke onredelik tydrowend sal wees en tot 'n vermorsing van hulpbronne sal lei. Daarbenewens kan hulle toegang tot 'n rekord weier as hulle glo die versoeker dit aanvra om onnodig te irriteer of uit te lok.

## 20. MANDATORY DISCLOSURE OF RECORDS IN THE PUBLIC INTEREST

- 20.1 Al bestaan 'n diskresionêre of verpligte weieringsgrond in verband met 'n versoek om toegang tot rekords van openbare of privaat liggame, is daar altyd die moontlikheid dat die openbare belang in die openbaarmaking van die rekord belangriker is as die skade wat die vrystelling van die rekord sal hê.
- 20.2 Waar die belangrikheid van openbare belang bestaan soos hierbo uiteengesit, en die bekendmaking van die rekord bewys sou kon lewer van 'n wesenlike oortreding van, of versuim om die wet na te kom; of 'n dreigende en ernstige openbare veiligheids- of omgewingsrisiko, moet die Inligtingsbeampte van 'n liggaam 'n versoek toestaan vir toegang tot 'n rekord, ondanks die bestaan van die bogenoemde vrystellingsgronde.

## 21. DERDE PARTY KENNISGEWINGSPROSES<sup>29</sup>

- 21.1 'n Inligtingsbeampte of adjunk-inligtingsbeampte van 'n liggaam word ingevolge artikels 47 en 71 van **PAIA** verplig om alle redelike stappe te neem om 'n derde party in kennis te stel oor 'n versoek om sy of haar inligting wat 'n rekord kan wees wat persoonlike inligting bevat,
- 21.1.1 'n SAID rekord;
- 21.1.2 handelsgeheime;
- 21.1.3 inligting waarvan die vrylating gronde kan vorm vir 'n aksie vir die verbreking van 'n vertrouenspilig; of navorsingsinligting wat iemand of die navorsingsmateriaal aan ernstige skade kan blootstel.
- 21.2 Die kennisgewing aan die derde party wie se rekords of inligting onderhewig is aan die versoek, moet die derde party nooit om -

<sup>29</sup> Artikel 47 en 71 van PAIA

- 21.2.1 skriftelike of mondelinge verhoë tot die Inligtingsbeampte rig waarom die versoek om toegang geweier moet word; of
- 21.2.2 skriftelike toestemming gee vir die openbaarmaking van die rekord aan die versoeker.
- 21.3 Meer belangrik vir die versoeker, **PAIA** stel dat die skriftelike kennisgewings binne 21 dae na ontvangs van die versoek aan die derde party gestuur moet word, en dat die Inligtingsbeampte of Adjunk-inligtingsbeampte die versoeker in kennis moet stel dat 'n kennisgewing aan die derde party gestuur is.
- 21.4 Sodra die kennisgewing gestuur is, moet die Inligtingsbeampte of Adjunk-inligtingsbeampte dan 'n finale besluit neem om die rekords binne 30 dae nadat die kennisgewing gestuur is, bekend te maak of nie.
- 21.5 Die derde party moet in kennis gestel word van die besluit wat geneem is en voldoende redes vir die toestaan van die versoek moet ook verstrekkend word. Die derde party moet ook ingelig word oor die reg en die prosedure om die beslissing te betwis, soos aangedui in paragraaf 22 hieronder.

## **22. REGSMIDDELE BESKIKBAAR TEEN 'N BESLUIT OF VERSUIM OM 'N BESLUIT TE NEEM DEUR DIE INLIGTINGSBEAMPTTE OF ADJUNK-INLIGTINGSBEAMPTTE**

- 22.1 Stappe om te neem sodra 'n besluit oor 'n versoek geneem is
- 22.1.1 'n Versoeker kan skriftelik 'n opvolgaksie neem op die hangende besluit van 'n inligtingsbeampte of adjunk-inligtingsbeampte. Dit word aangemoedig dat alle korrespondensie tussen 'n versoeker en die inligtingsbeampte of adjunk-inligtingsbeampte skriftelik moet wees vir toekomstige verwysingsdoeleindes.
- 22.1.2 Daar is verskillende prosesse vir openbare en private liggame, veral met betrekking tot interne appèlle. Met betrekking tot 'n versoek om toegang tot 'n rekord van 'n openbare liggaam, moet die versoeker byvoorbeeld eers 'n interne appèl indien voordat hy die Reguleerder of die Hof nader. Daar is egter geen interne appèl teen 'n beslissing (hetsy die toegang tot rekords toegestaan of geweier is) of vermeende weiering van toegang tot die rekords van 'n privaat liggaam nie.
- 22.1.3 In hierdie afdeling word die regsmiddele uiteengesit wat beskikbaar is vir versoekers wat sulke beslissings wil betwis, waaronder interne appèlle, die indiening van 'n klag by die Reguleerder en aansoeke by die hof. Sien ook diagram van **PAIA**-versoekvloei, in paragraaf 27 hieronder.

22.1.4 'n Versoeker kan onder andere die volgende beslissing van 'n privaat en/of openbare liggaam betwis -

22.1.4.1 die betaalmiddel of betaling van die versoekfooie;

22.1.4.2 die betaalmiddel of betaling van 'n deposito;

22.1.4.3 die toegangsfooie betaalbaar is buitensporig;

22.1.4.4 die vorm van toegang wat verleen word;

22.1.4.5 die weiering van die versoek;

22.1.4.6 die prosedure (met inbegrip van die tydperk) vir die indiening van die Interne appèl;

22.1.4.7 ontoepaslike tyd uitstel is geneem om te reageer op 'n versoek om toegang;

22.1.4.8 versuim om rekords bekend te maak;

22.1.4.9 die toestaan van 'n versoek om toegang tot 'n rekord;

22.1.4.10 weiering om sodanige versoek toe te staan om fooie oor te sien;

## 22.2 Interne regsmiddele

22.2.1 Hoe teken 'n versoeker intern appèl aan teen 'n openbare liggaam se beslissing?

22.2.1.1 'n Interne appèl kan slegs ingevolge artikel 74 van **PAIA** by die betrokke owerheid van die nasionale of provinsiale regeringsfeer of enige munisipaliteit in die plaaslike regeringsfeer, na gelang van die geval, ingedien word.<sup>30</sup>

22.2.1.2 Die Stad Johannesburg is 'n voorbeeld van 'n plaaslike regeringsfeer waarteen 'n interne appèl ingedien kan word. Die Padongelukkefonds of die Reguleerder is 'n voorbeeld van 'n openbare liggaam wat nie deel uitmaak van die nasionale, provinsiale of plaaslike regeringsfeer soos dit deur wetgewing ingestel is nie, en daarom kan 'n interne appèl nie daarteen ingestel word nie.

<sup>30</sup> Artikel 74(1) van PAIA

22.2.1.3 Indien 'n versoeker of 'n derde party ontevrede is met 'n besluit geneem deur die Inligtingsbeampte of Adjunk-inligtingsbeampte van 'n nasionale, provinsiale of plaaslike regeringsfeer, het die versoeker of 'n derde party die reg om 'n interne appèl in te dien ingevolge artikel 74(1) of (2) van **PAIA**. Die proses om 'n appèl aanhangig te maak, word voorgeskryf in die PAIA-gids van die betrokke instansie en die wyse waarop 'n interne appèl aangeteken kan word, word ook hieronder uiteengesit.

22.2.1.4 Indien die antwoord van die nasionale, provinsiale of plaaslike regeringsfeer 'n vermeende weiering is, met ander woorde, hy nie binne 30 dae of enige verlengde tydperk op 'n versoek reageer nie, kan die versoeker 'n interne appèl indien volgens die prosesse hierin uiteengesit, voordat die versoeker die Reguleerder of 'n Hof mag nader.

## 22.3 **Bewaring van rekords totdat 'n finale beslissing oor die versoek finaal bepaal is**

22.3.1 Die Inligtingsbeampte van 'n nasionale, provinsiale of plaaslike regeringsfeer waarop 'n interne appèl van toepassing is, word ingevolge artikel 21 van PAIA vereis om toepaslike stappe te neem wat redelikerwys nodig is om die rekord te bewaar en mag geen versoekte rekord verwyder of vernietig totdat alle of enige verrigtinge in 'n interne appèl of 'n klag by die Reguleerder of 'n aansoek by die hof finaal beslis word nie.

22.3.2 Dit beteken dat die Inligtingsbeampte nie die inligting wat gevra word, kan verwyder of vernietig nie, hangende enige proses wat in paragraaf 22.3.1.1 hierbo voorgeskryf word.

## 22.4 **Aan wie moet die interne appèl gerig word?**

22.4.1 Alhoewel die appèl deur die betrokke owerheid oorweeg sal word, moet 'n interne appèl gelewer of gestuur word aan die Inligtingsbeampte van die nasionale, provinsiale of plaaslike regeringsfeer, na gelang van die geval, na sy adres, faksnommer of elektroniese posadres, waarvan die kontakbesonderhede in die **PAIA**-gids gevind kan word of soos by die Reguleerder verkrygbaar is.

22.4.2 Die Inligtingsbeampte van die nasionale, provinsiale of plaaslike regeringsfeer, na gelang van die geval, het 'n spesifieke verpligting ingevolge artikel 75 (4) van **PAIA** om die appèl aan die Appèlowerheid voor te lê, tesame met sy redes vir

<sup>31</sup> Artikel 75(1)(b) van PAIA

die besluit onder appèl. Die indiening van die appèl by die betrokke owerheid moet binne 10 werksdae na ontvangs van die appèl geskied.

## 22.5 Wie is die betrokke owerheid?

22.5.1 Die betrokke owerheid, hierna "appèlowerheid" genoem, is oor die algemeen die politieke hoof van die betrokke liggaam (hoewel hierdie funksie amptelik gedelegeer kan word) en verwys spesifiek na die volgende persoon -

<b>Openbare Liggaam ("Regering")</b>	<b>Relevante Owerheid ("Appèlowerheid")</b>
<b>Kantoor van die President</b>	Die persoon wat skriftelik deur die President aangewys is, indien enige, anders sal die President die appèlowerheid wees.
<b>Nasionale Departement</b>	Minister verantwoordelik vir daardie Departement, of die persoon wat skriftelik deur die Minister aangewys is.
<b>Kantoor van die Premier</b>	Die persoon wat skriftelik deur die Premier aangewys is.
<b>Provinsiale Departement</b>	Lid van die Uitvoerende Raad (LUR) wat verantwoordelik is vir daardie Provinsiale Departement of die persoon wat skriftelik deur die LUR aangewys is;
<b>Munisipaliteit</b>	Die Burgemeester, die Speaker of enige ander persoon wat skriftelik deur die Munisipale Raad van daardie munisipaliteit aangewys is;

22.5.2 In enige ander geval, waar dit nie die kantoor van die Premier is nie: die lid van die uitvoerende gesag wat verantwoordelik is vir daardie openbare liggaam of die persoon wat skriftelik deur daardie lid aangewys is.

22.5.3 Indien die appèlowerheid die besluit van die Inligtingsbeampte goedkeur, word die interne appèl geweier en die oorspronklike besluit van die Inligtingsbeampte volstaan. Sou die appèlowerheid egter nie saamstem met die besluit van die Inligtingsbeampte nie, dan word die appèl toegestaan en word die oorspronklike besluit omvergewerp.

22.5.4 decision of the Information Officer stands. However, should the appeal authority disagree with the Information Officer's decision, then the appeal is granted and the original decision is overturned.

## 22.6 Wie kan 'n interne appèl aanteken?

22.6.1 Enige versoeker wie se **PAIA**-versoek om toegang tot die rekords van die nasionale, provinsiale of plaaslike regeringsfeer, na gelang van die geval, geweier is, en van mening is dat een van die appèlgronde in paragraaf 22.2.4 hierbo van toepassing op hul versoek is, het die reg om 'n interne appèl aan te teken.

22.6.2 Derde partye kan ook interne appèlle aanteken teen die besluit wat 'n Inligtingsbeampte geneem het om toegang te verleen tot 'n rekord wat hulle betref. As die interne appèl 'n derde party betrek, moet die appèlowerheid wat die interne appèl ontvang het, daardie derde partye in kennis stel (die verantwoordelikheid skuif dus van die Inligtingsbeampte na die appèlowerheid).

## 22.7 Periode waarin appèl aangeteken moet word

22.7.1 'n Interne appèl moet aangeteken word - -

22.7.1.1 binne **60 dae**<sup>32</sup> nadat die besluit geneem is;

22.7.1.2 binne **30 dae**<sup>33</sup> nadat kennisgewing aan die derde party gegee is van die geappelleerde beslissing

22.7.2 Die aanteken van appèl na bogenoemde tydperk (laat) kan moontlik nie toegelaat word nie, tensy 'n geldige rede vir laat wees aan die appèlowerheid verskaf word. Byvoorbeeld, om langer as 60 dae in die hospitaal opgeneem te word, kan as geldige redes om laat te wees aanvaar word.

22.7.3 Sou die appèlowerheid nie die laat indiening van 'n interne appèl aanvaar nie, moet dit aan u redes verstrek waarom die appèl van die hand te gewys is en moet dit ook leiding bied van enige addisionele inligting, indien nodig, om die appèl te aanvaar. Die appèlowerheid moet u ook adviseer oor die proses om 'n klag teen hul beslissing by die Reguleerder of 'n hof in te dien.

<sup>32</sup> Artikel 75(1)(a)(i) van PAIA

<sup>33</sup> Artikel 75(1)(a)(ii) van PAIA

22.7.4 Soos hierbo aangedui, moet u appèl binne 10 werksdae na ontvangs van 'n interne appèl<sup>34</sup> deur die Inligtingsbeampte by die appèlowerheid ingedien word.

## 22.8 Kennisgewing van appèl deur appèlowerheid aan die versoeker of derde party

22.8.1 Die appèlowerheid moet so gou as wat dit redelik moontlik is, maar in elk geval binne 30 dae na ontvangs van die interne appèl<sup>35</sup>, daarvan kennis gee aan -

22.8.1.1 die derde party aan wie die rekord onder appèl behoort, of

22.8.1.2 die versoeker oor die interne appèl teen die toestaan van 'n versoek om toegang.

22.8.2 'n Versoeker of 'n derde party aan wie kennisgewing gegee word, kan binne 21 dae nadat die kennisgewing gegee is, skriftelik vertoë aan die appèlowerheid rig waarom die versoek om toegang toegestaan moet word of nie.

## 22.9 Beslissing oor die interne appèl en kennisgewing daarvan<sup>36</sup>

22.9.1 Die appèlowerheid moet die interne appèl so spoedig moontlik redelikerwys beslis, maar in elk geval binne 30 dae:

22.9.1.1 nadat die Inligtingsbeampte van 'n liggaam die interne appèl ontvang het;

22.9.1.2 nadat 'n derde party in kennis gestel is, soos aangedui in paragraaf 22.3.6.1 hierbo.

22.9.2 Die beslissing van die appèlowerheid moet aan die appellant, derde party en die versoeker meegedeel word. Die beslissing van die appèlowerheid moet gepaard gaan met voldoende redes vir die beslissing, insluitend die voorsiening van **PAIA** of **POPIA** waarop gesteun word.

22.9.3 Indien die appèlowerheid versuim om binne 30 dae kennis te gee van die beslissing oor 'n interne appèl, word die appèl geweier vermeen en kan die versoeker voortgaan om 'n klag by die Reguleerder in te dien of die hof te nader vir toepaslike verligting.<sup>37</sup>

<sup>34</sup> Artikel 75(4) van PAIA

<sup>35</sup> Artikel 76(2)(a) van PAIA

<sup>36</sup> Artikel 77 van PAIA

<sup>37</sup> Artikel 77(7) van PAIA

## 22.10 Voltooiing van die interne appèl - Vorm 4

- 22.10.1 Ten einde enige beslissing van 'n nasionale, provinsiale of plaaslike regeringsfeer te appelleer, moet die versoeker sy interne appèl aanteken deur Vorm 4 in te vul. Vorm 4 moet ingedien word by die Inligtingsbeampte van die betrokke regeringsfeer, wie dan verplig word om dit aan die appèlowerheid te stuur, soos hierbo vermeld.
- 22.10.2 Vorm 4 is beskikbaar op die Reguleerder se webblad, <https://www.justice.gov.za/inforeg/>, sowel as die webwerf van die betrokke regeringsfeer.
- 22.10.3 Die Inligtingsbeampte of Adjunk-inligtingsbeampte van die betrokke regeringsfeer is nie uitdruklik verplig om die versoeker te help om die interne appèlvorm in te vul nie; die versoeker kan egter steeds die inligtingsbeampte versoek om hom in hierdie verband te help.
- 22.10.4 Hieronder is die stapsgewyse proses om die interne appèl vorm te voltooi -

Vereiste Inligting	Beskrywing
<b>Besonderhede van openbare liggaam</b>	Hierdie afdeling moet die naam van die betrokke nasionale, provinsiale of plaaslike regeringsfeer bevat en die Inligtingsbeampte se naam en van.
<b>Besonderhede van die appellant wat die interne appèl aanteken</b>	Hierdie afdeling moet deur die appellant voltooi word, hetsy in verteenwoordigende hoedanigheid al dan nie. Die volle naam en van, identiteitsnommer en die hoedanigheid waarin 'n interne appèl namens 'n ander persoon ingestel moet word, indien van toepassing, moet verstrek word. Indien die appèl in 'n persoonlike hoedanigheid aangeteken word, moet sodanige hoedanigheid aangeteken word. Addisionele inligting wat vereis word, sluit in die besonderhede van die versoeker:

Vereiste Inligting	Beskrywing
	<p>posadres, e-pos, faks en/of telefoonnommer. Hierdie inligting moet dieselfde wees as in die oorspronklike versoek. Indien die persoon wat die vorm in vul, die verteenwoordiger van die versoeker is, moet bewys van die hoedanigheid waarin die appèl ingedien word by hierdie vorm aangeheg word.</p>
<p><b>Besonderhede van die persoon namens wie die versoek gerig word (Indien deur 'n derde party gerig)</b></p>	<p>Hierdie gedeelte hoef slegs voltooi te word deur iemand wat inligting vir 'n ander persoon vra. Indien die persoon wat die interne appèl indien nie die persoon is wat aanvanklik die inligting aangevra het nie, moet net die besonderhede van die versoeker hierin verstrekkend word. As die versoek in 'n persoonlike hoedanigheid is, hoef hierdie afdeling nie voltooi te word nie.</p>
<p><b>Die besluit waarteen die interne appèl aangeteken word</b></p>	<p>Die vorm bied ruimte vir die versoeker om met 'n 'x' aan te dui watter van die genoemde appèlgronde op die appèl van toepassing is.</p>
<p><b>Gronde vir appèl</b></p>	<p>Onder hierdie afdeling, word die versoeker vereis om 'n omvattende beskrywing te gee waarom hy meen dat die gronde vir appèl van toepassing is. Hy word vereis om redes(s) te gee waarom hy meen dat die besluit van die Inligtingsbeampte nie korrek is nie. Hy moet ook enige dokumente wat die appèl ondersteun, aanheg. Die lys van redes waarom die appèl ondersteun word, kan op 'n aparte bladsy in meer besonderhede uiteengesit word as die spasie in die vorm nie voldoende is nie. Die addisionele bladsye wat ingedien word, moet onderteken word.</p>

## Vereiste Inligting

## Beskrywing

Daar moet voldoende redes wees en ondersteunende inligting om die appèlowerheid in staat te stel om 'n ingeligte besluit te neem. Daarom moet u ook 'n uiteensetting van alles wat gebeur het in die aanloop tot die interne appèl insluit. 'n Mens kan op 'n aparte bladsy verwys na spesifieke afdelings van **PAIA** as 'n grondslag vir die appèl.

### Kennisgewing van die beslissing op die appèl

'n Ruimte word gegee vir 'n beskrywing van die wyse waarop die beslissing gestuur moet word, byvoorbeeld deur die pos, faks of e-pos of per koerier. Kies asseblief die verkose wyse van kennisgewing.

22.10.5 Alhoewel daar geen verbod is op die verkryging van 'n prokureur in enige stadium van die versoek om inligting nie, is die verskillende **PAIA**-prosesse bedoel om gebruikersvriendelik te wees, wat die behoefte aan 'n prokureur en die aangaan van regs-kostes verwyder.

## 23. KLAGTE AAN DIE INLIGTINGSREGULEERDER

- 23.1 'n Versoeker of derde party mag slegs 'n klag by die Reguleerder indien nadat die versoeker of derde party die interne appèl-prosedure teen 'n beslissing van die Inligtingsbeampte van 'n nasionale, provinsiale of plaaslike regeringsfeer uitgeput het. Dit beteken dat 'n mens 'n klag teen 'n bepaalde regeringsfeer slegs by die Reguleerder kan indien in die geval dat u ontevrede is met die beslissing van die appèlowerheid. Die Reguleerder sal die klag van die hand wys indien 'n appèl-proses na die betrokke regeringsfeer nie afgehandel is nie.
- 23.2 Hoewel, ten opsigte van 'n openbare liggaam (waarvoor 'n interne appèl nie van toepassing is nie) en 'n privaat liggaam, kan 'n versoeker of derde party egter 'n klag by die Reguleerder indien, indien dit nie tevrede is met die beslissing van die betrokke liggaam nie.
- 23.3 'n Klag aan die Reguleerder deur 'n versoeker of derde party moet binne 180 dae na ontvangs van die beslissing van die liggaam ingedien word.

23.4 'n Versoeker kan 'n klag indien by die Reguleerder, indien ontevrede met -

23.4.1 Die uitslag van 'n interne appèl by die appèlowerheid van enige regeringsfeer;

23.4.2 'n beslissing van die appèlowerheid om nie laat aantekening van 'n interne appèl toe te staan nie;

23.4.3 'n besluit van die Inligtingsbeampte van 'n openbare liggaam wat nie deel is van 'n sfeer van regering om -

23.4.3.1 'n versoek om toegang te weier; of

23.4.3.2 die tydperk om met die versoek te handel te verleng; of

23.4.3.3 toegang in 'n bepaalde vorm toe te staan.

23.4.4 'n besluit van die hoof van 'n privaat liggaam om -

23.4.4.1 'n versoek om toegang te weier; of

23.4.4.2 betaling te eis vir die versoek fooi, of 'n deposito van die toegangsfooi; of

23.4.4.3 die tydperk om met die versoek te handel te verleng; of

23.4.4.4 toegang in 'n bepaalde vorm toe te staan.

23.5 'n Derde party kan 'n klag by die Reguleerder indien, indien nie gelukkig met -

23.5.1 die uitslag van 'n interne appèl by die appèlowerheid van die betrokke regeringsfeer;

23.5.2 'n besluit van die Inligtingsbeampte van 'n openbare liggaam wat nie deel is van 'n sfeer van die regering om 'n versoek om toegang; of

23.5.3 'n besluit van die hoof van 'n privaat liggaam om toegang te verleen tot inligting van daardie liggaam,

## 23.6 Hoe kla mens by die Reguleerder?

- 23.6.1 'n Klagte aan die reguleerder moet skriftelik gerig word en 'n klagvorm moet voltooi word, hetsy met die hand of aanlyn. 'n Klagvorm, Vorm 5 kan van die Reguleerder se webtuiste afgelaai word, <https://www.justice.gov.za/inforeg/>
- 23.6.2 Dit beteken dat die Reguleerder nie 'n klagte telefonies sal aanvaar nie; daar word egter van die Reguleerder verwag om redelike hulp te verleen aan enige persoon wat 'n klag wil indien en dit sluit hulp in met die invul van 'n klagvorm.
- 23.6.3 As u die beslissing van die Inligtingsbeampte van 'n private liggaam betwis, moet u voldoende bewyse lewer om te bewys dat die aangevraagde rekord benodig word vir die uitoefening of beskerming van enige ander reg(te). Toegang tot die rekords van 'n privaat liggaam kan slegs verleen word as u kan bewys dat u van plan is om enige ander reg(te) uit te oefen of te beskerm met die gevraagde rekord.

## 23.7 Wat gebeur na ontvangs van die klagte

23.7.1 By ontvangs van 'n klagte moet die reguleerder -

23.7.1.1 Die klag ondersoek en sy bevindinge aan die Afdwingingskomitee verwys vir 'n beslissing; of

23.7.1.2 Geen aksie op die klag neem te wyte aan die feit dat -

23.7.1.2.1 die klagte nie binne die tydperk van 180 dae ingedien is nie en daar is geen redelike gronde is om die laat indiening van 'n klagte toe te laat nie.

23.7.1.2.2 die klagte is nietig of kwelsugtig of nie te goeder trou nie; of

23.7.1.2.3 met inagneming van al die omstandighede van die geval, is enige verdere optrede onnodig of onvanpas. Die aangevraagde inligting is byvoorbeeld in die openbaar beskikbaar gestel.

23.7.1.3 waar toepaslik, die beste probeer om so 'n skikking te bewerkstellig of die partye te help om hul geskil (le) te besleg; en

23.7.1.4 die klaer en die Inligtingsbeampte, op wie die klagte betrekking het, in kennis te stel van die aksie wat gevolg moet word.

## 23.8 **Reguleerder se eerste mededeling aan die klaer en Inligtingsbeampte rakende die klag wat ingedien is**

23.8.1 As die Reguleerder besluit om nie verder op te tree teen die klagte nie, sal die Reguleerder die versoeker in kennis stel van die besluit en die redes waarom hy nie verder opgetree het nie.

23.8.2 As die Reguleerder besluit om 'n klag te ondersoek, sal die versoeker 'n brief ontvang waarin hy in kennis gestel word dat die Reguleerder besluit het om 'n ondersoek te doen.

23.8.3 Na ontvangs van 'n klagte sal die Reguleerder die besonderhede van die klagte aan die Inligtingsbeampte van die betrokke liggaam stuur, en hom versoek om 'n skriftelike antwoord op die klag by die Reguleerder in te dien.

## 23.9 **Ondersoekende bevoegdhede van die reguleerder**

23.9.1 Die Reguleerder het, ingevolge artikel 77G (2) van **PAIA**, die bevoegdheid om -

23.9.1.1 sy beste pogings aanwend om sodanige skikking te beveilig;

23.9.1.2 mense dagvaar om voor die Reguleerder te verskyn en dit af te dwing;

23.9.1.3 hulle verplig om mondelinge of geskrewe getuienis onder eed te lewer en om enige rekords op te lewer;

23.9.1.4 ontvang en aanvaar enige bewyslewering en ander inligting, hetsy onder eed of deur beëdigde verklaring;

23.9.1.5 enige perseel wat deur die verantwoordelike party beset word te betree en visenteer;

23.9.1.6 'n persoonlike onderhoud te voer met enige persoon op enige perseel wat betree word; en

23.9.1.7 voer enige navrae wat die Reguleerder gepaslik vind op daardie persele.

## 23.10 Evaluering van voldoening aan die bepalings van PAIA

- 23.10.1 Die Reguleerder kan 'n assessering uitvoer of 'n openbare of private liggaam in die algemeen aan die bepalings van **PAIA** voldoen.
- 23.10.2 Die Reguleerder kan willekeurig 'n nakomingsbeoordeling op 'n liggaam doen, uit eie wil, maar die Reguleerder kan die nakomingsbeoordeling ook op versoek deur of namens die Inligtingsbeampte van 'n liggaam of enige ander persoon uitvoer. Dit beteken dat enige persoon die Reguleerder kan versoek om nakomingsbeoordeling op 'n liggaam te doen. 'n Persoon kan ook 'n anonieme versoek indien om 'n nakomingsbeoordeling uit te voer deur aan te dui dat hy of sy versoek om anoniem te bly.
- 23.10.3 Die Reguleerder sal die persoon wat die assessering aangevra het, die assesseringsverslag en 'n aanbeveling van die aksie, indien enige, voorsien.

## 23.11 Inligtingskennisgewing

Die Reguleerder kan die Inligtingsbeampte van 'n instansie met 'n Inligtingskennisgewing dien wat van die party vereis om die Reguleerder te voorsien met die inligting wat in die kennisgewing gespesifiseer word. Byvoorbeeld, as 'n klag wat by die Reguleerder ingedien word, betrekking het op die weiering van toegang gebaseer op enige van die vrygestelde gronde, kan die Reguleerder in 'n Inligtingskennisgewing afskrifte van die rekords waartoe toegang geweier is, versoek om te bepaal of die redes vir weiering geldig is al dan nie.

## 23.12 Vestiging van die Afdwingingskomitee

- 23.12.1 Die Reguleerder word verplig om 'n Afdwingingskomitee<sup>38</sup> te vestig, wat bevoegd hede het om -
- 23.12.1.1 alle aangeleenthede wat die Reguleerder in terme van **PAIA** daarna verwys, oorweeg en 'n bevinding daarvoor maak; en
- 23.12.1.1 enige aanbevelings te maak aan die Reguleerder rakende enige stappe wat teen die Inligtingsbeampte van 'n liggaam geneem moet word.

## 23.13 Afdwingingskennisgewing

- 23.12.1 Die Reguleerder kan, na oorweging van die aanbevelings van die afdwingingskomitee, die Inligtingsbeampte van 'n liggaam dien met 'n afdwingingskennisgewing -

<sup>38</sup> Artikel 50 van POPI

23.13.1.1 bevestiging, wysiging of tersydestelling van die beslissing waaroor die klag betrekking het; of

23.13.1.1 vereis dat die Inligtingsbeampte sodanige stappe moet neem of dat hy nie die stappe sal neem soos die Inligtingsreguleerder in die kennisgewing bepaal nie.

#### 23.14 **Wat is die gevolge vir die verontagsaming van afdwingingskennisgewings?**

23.14.1 'n Inligtingsbeampte van 'n liggaam wat weier om aan 'n afdwingingskennisgewing te voldoen, is skuldig aan 'n misdryf en is op skuldigbevinding onderhewig aan 'n boete of tot gevangenisstraf van hoogstens drie jaar of aan beide 'n boete en gevangenisstraf.

23.14.2 Artikel 77K van **PAIA** dui op die belangrikheid van die reg op toegang tot inligting of rekords. Hierdie afdeling versterk ook die belangrikheid van die Reguleerder vir die bevordering van die reg op toegang tot inligting.

## 24. AANSOEK BY DIE HOF

### 24.1 **Wie kan 'n aansoek teen die beslissing by die hof indien?**

24.1.1 'n Versoeker of derde party mag slegs in die volgende omstandighede by die hof aansoek doen om toepaslike verligting ingevolge artikel 82:

24.1.1.1 Nadat die versoeker of derde party die interne appèlproses waarna in paragraaf **22.3** hierbo verwys word, uitgeput het; of

24.1.1.2 nadat die versoeker of derde party die klagteprosedure waarna in artikel 77A verwys word, uitgeput het.

24.1.2 Ingevolge artikel 78 (1) van **PAIA** het 'n versoeker of 'n derde party twee opsies, óf om 'n beslissing in paragrawe 22.2.4, 23.4 en 23.5 hierbo na die Reguleerder of die hof te verwys. Alhoewel u nie verplig is om die Reguleerder te nader voordat u die hof nader nie, is dit raadsaam om te oorweeg om die Reguleerder te nader, aangesien die Reguleerder uitgebreide en vinnige meganismes vir dispuutoplossing het, teenoor die hof.

24.1.3 Vir die hof om egter die saak te beredder, moet 'n versoeker of 'n derde party -

24.1.3.1 gegrief wees deur een van die besluite, gelys in paragraaf 22.2.4, 23.4 of 23.5 hierbo; of

24.1.3.2 die klagteprosedure met die Reguleerder uitgeput het of die klag by die Reguleerder terugtrek. Dit beteken dat 'n mens nie die hof kan nader as die klag nog by die Reguleerder aanhangig is nie.

24.1.4 As u die beslissing van 'n Inligtingsbeampte van 'n private liggaam betwis, moet u voldoende bewyse lewer om te bewys dat die aangevraagde rekord vereis word vir die uitoefening of beskerming van enige ander reg(te) is.

## 24.2 Wanneer kan 'n mens 'n aansoek aanhangig maak teen die beslissing van 'n liggaam of Reguleerder?

24.2.1 'n Aansoek by die hof deur 'n versoeker of derde party, wat óf onsuksesvol was in 'n interne appèl tot die appèlowerheid van die betrokke regeringsfeer óf gegrief is deur 'n beslissing van die Inligtingsbeampte van 'n liggaam (gelys in 22.2.4, 23.4 of 23.5 hierbo) of die van die Reguleerder moet binne 180 dae vanaf die datum van die betrokke gebeurtenis ingedien word.

24.2.2 Die Inligtingsbeampte van 'n liggaam of appèlowerheid van 'n regering, na gelang van die geval, gegrief deur 'n beslissing van die Reguleerder, kan binne 180 dae by die hof aansoek doen om toepaslike verligting ingevolge artikel 82.<sup>39</sup>

24.2.3 'n Versoeker, derde party, of 'n liggaam, kan by die hof aansoek doen om die beslissings waaroor hulle gegrief word, deur die hof te laat hersien.

24.2.4 'n Aansoek by die hof ingevolge **PAIA** word deur middel van 'n siviele prosedure gedoen en moet as 'n laaste uitweg gebruik word.

24.2.5 Sake vir toegang tot inligting kan voor die landdroshowe aangehoor word, as 'n hof van eerste aanleg, en die hooggeregshof wat jurisdiksie het.<sup>40</sup>

24.2.6 Versuim om die aansoek binne 'n tydperk van 180 dae in te dien, kan deur die hof goedgekeur word as dit blyk dat die belange van

<sup>39</sup> Artikel 78(4) van PAIA

<sup>40</sup> Artikel 91A van PAIA en die Bevordering van toegang tot inligting, Reëls, 2019

geregtigheid dit vereis. As die rekords waartoe toegang gevra word, u sal help om aansoek te doen vir 'n appèl teen gevangenisstraf, of iemand help om verdere mediese aandag te kry, sal die hof waarskynlik kondonasië in hierdie verband verleen.

24.2.7 'n Aansoek kan ingedien word volgens die prosedure uiteengesit in reël 53 van die Hooggeregshofreëls of kragtens reël 55 van die Landdroshofreëls indien geen of 'n onvolledige rekords deur die administrateur verstrek is.

24.2.8 As die rekord reeds verstrek is, moet die aansoek ingedien word ingevolge reël 55, Landdroshofreëls, met dien verstande dat indien die applikant rede het om te glo dat die administrateur nie die volledige rekord van die verrigtinge verskaf het nie, die versoeker kan volgens die prosedure soos uiteengesit in Reël 53 van die Hooggeregshofreëls, tydens sy verkiesing voortgaan, maar moet in sy funderende eedsverklaring aandui waarom daar rede is om te glo dat die volledige rekord nie verskaf is nie.

### 24.3 **Wat is die regstatus van die Reguleerder se beslissing hangende die beslissing van die Hof?**

Die bevoegdheid van die Reguleerder is hoofsaaklik afkomstig van die Grondwet, **POPIA** en **PAIA**. Gevolglik het die afdwingingskennisgewing wat deur die Reguleerder uitgereik is, regsgevolge en is dit dus bindend tot tyd en wyl die hof anders beslis het. Die beslissings van die Reguleerder is dus effektief en afdwingbaar, tensy die betrokke hof anders bepaal.

### 24.4 **Wat is die bevel wat die hof kan verhoor?**

24.4.1 Die hof (landdros-of hooggeregshof) wat 'n aansoek verhoor, kan die volgende bevel maak: -

24.4.4.1 die besluit van die Inligtingsbeampte, of die appèlowerheid of Inligtingsreguleerder, bevestig, wysig of tersyde stel;

24.4.4.2 van die Inligtingsbeampte of appèlowerheid vereis om sodanige stappe te neem of om nie sodanige stappe te neem soos wat die hof nodig ag binne 'n tydperk wat in die bevel genoem word nie;<sup>41</sup>

24.4.4.3 'n interdik, tussentydse of spesifieke verligting, 'n verklarende bevel of 'n bevel tot vergoeding toestaan;

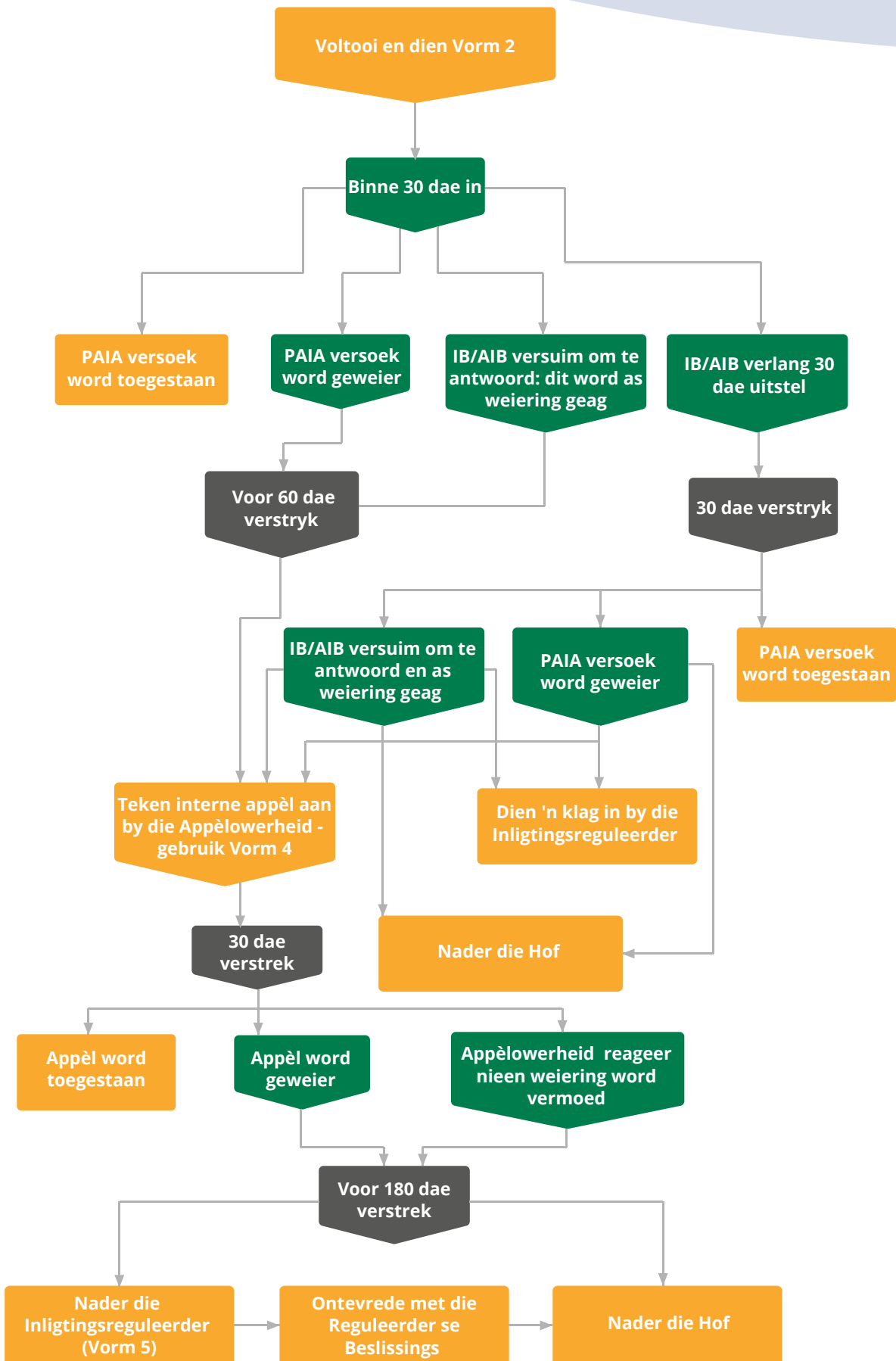
<sup>41</sup> Reël 4 Bevordering van toegang tot inligting, Reëls, 2019

24.4.4.4 'n kostebevel teen enige party maak;

24.4.4.5 In die belang van geregtigheid moet u die nie-nakoming van die tydperk van 180 dae waarbinne u aansoek kan indien, goedkeur. Soos hierbo aangedui, moet voldoende redes vir die versuim om die voorgeskrewe tydperk na te kom in die meegaande aansoek om kondonasië volledig uiteengesit word.

## **25. DIAGRAM VAN DIE PAIA VERSOEKPROSES**

Raadpleeg die stapsgewyse vloeï van die prosesvloeikaart oor die prosesse wat gevolg moet word wanneer u die reg op toegang tot inligting uitoefen.



## 26. REGULASIES KRAGTENS ARTIKEL 92 VAN PAIA

- 26.1 In ooreenstemming met artikel 92(1) en 92(4) van **PAIA**, het die Minister regulasies uitgevaardig met betrekking tot die Bevordering van Toegang tot Inligting, wat die volgende aangeleenthede dek
- 26.1.1 Verpligtinge van die Inligtingsreguleerder (**regulasie 2**);
  - 26.1.2 Verpligtinge van Inligtingsbeamptes (**regulasie 3**)
  - 26.1.3 Outomatiese beskikbaarheid van sekere rekords van openbare liggame (**regulasie 4**)
  - 26.1.4 Vrywillige openbaarmaking en outomatiese beskikbaarheid van sekere rekords van 'n privaat liggame (**regulasie 5**)
  - 26.1.5 Versoek om toegang tot inligting wat deur openbare en private liggame bewaar word (**regulasie 6**)
  - 26.1.6 Uitkoms van die versoek en fooie betaalbaar (**regulasie 7**)
  - 26.1.7 Interne appèl teen 'n beslissing deur 'n openbare liggaam (**regulasie 8**)
  - 26.1.8 Klagrigting aan die Inligtingsreguleerder (**regulasie 9**)
  - 26.1.9 Die prosedure vir die ondersoek van 'n klagte (**regulasie 10**)
  - 26.1.10 Skikking van aangeleenthede (**regulasie 11**)
  - 26.1.11 Konsiliëring van die saak (**regulasie 12**)
  - 26.1.12 Voldoeningsassessering deur die Inligtingsreguleerder in reaksie op 'n versoek (**regulasie 13**)
  - 26.1.13 Misdrywe en strawwe (**regulasie 14**)
  - 26.1.14 **Electronic communication (Regulation 15)**
  - 26.1.15 **Offences and penalties (Regulation 16)**
- 26.2 Ingevolge artikel 79 (1) van **PAIA**, het die Reëlraad vir Howe met die goedkeuring van die Minister reëlins vir die prosedure gemaak vir -
- 26.2.1 'n hof ten opsigte van aansoeke ingevolge artikel 78 van **PAIA**; ingevolge artikel 79 (1) van **PAIA**, het die Reëlraad vir Howe met die goedkeuring van die Minister reëlins vir die prosedure gemaak vir -
  - 26.2.2 'n hof om ex parte verhoë oorgebring op artikel 80(3)(a) te ontvang.

## 27. SLEUTELWETGEWINGS, REGULASIES , KENNISGEWINGS EN ERKENNING

### Wette wat van tyd tot tyd gewysig kan word

Wet op Bevordering van Toegang tot Inligting, Wet 2 van 2000

Wet op Bevordering van Administratiewe Geregtigheid, Wet 3 van 2000

Wet op Bevordering van Toegang tot Inligting Wysigingswet, Wet 54 van 2002

Wet op Beskerming van Persoonlike Inligting, Wet 4 van 2013

Wet op Bevordering van Toegang tot Inligting, Wet 31 van 2019

Wet op die Befondsing van Politieke Partye, Wet 6 van 2018

### Regulasies en Kennisgewings

Goewermentskennisgewing	Datum van publikasies	Onderwerp en beskrywing
<b>Goewermentskennisgewing R.757 in SK No 45057</b>	27 Augustus 2021	Wet op Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000): regulasies met betrekking tot die bevordering van toegang tot inligting, 2020
<b>Goewermentskennisgewing R.991 in GG 28107</b>	14 Oktober 2005	Regulasies wat die gronde voorskryf waarop iemand vrygestel is van die betaling van fooie.
<b>Goewermentskennisgewing 397 in SK No 44785</b>	30 Junie 2021	Vrystelling van die saamstel van 'n <b>PAIA</b> -handleiding vir sekere privaat liggame.
<b>Goewermentskennisgewing 1217 in GG 42717</b>	19 September 2019	Aanwysing van landdroshowe as beskikkend oor die vermoë om <b>PAIA</b> -aangeleenthede aan te hoor.
<b>Goewermentskennisgewing R. 1284 in GG 42740</b>	4 Oktober 2019	Reëls van prosedure vir aansoeke wat gemaak moet word ingevolge <b>PAIA</b> voor die Hooggeregshof of Landdroshof.

## **ERKENNING**

Hierdie bygewerkte gids oor hoe om die **PAIA**-wet te gebruik, was oorspronklik opgestel deur die Suid-Afrikaanse Menseregtekommissie (SAMRK) en die Reguleerder erken hiermee die oorspronklike werk van die SAMRK, met inbegrip van al sy bronne.

Uitgereik deur

**INLIGTINGSREGULEERDER**



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*



## **GUIDE**

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**ON HOW TO USE THE  
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF  
2000, AS AMENDED**

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# PAIA GUIDE

## FOREWORD BY THE CHAIRPERSON

The Constitution of the Republic of South Africa, 1996<sup>1</sup> (“Constitution”) states that South Africa is a sovereign and democratic state that is founded on the advancement of human rights and an accountable, responsive and transparent system of governance as part of its values. Before South Africa became a constitutional democracy with an enforceable Bill of Rights, the system of Government in South Africa amongst others, resulted in a secretive and unresponsive culture in both public and private bodies which often led to the abuse of power and human rights violations. It is in this regard that section 32(1) of the Bill of Rights in the Constitution, provides for the right of access to information held by the state; and any information held by another person that is required for the exercise or protection of any rights. Section 32(2) of the Constitution in turn provides for the enactment of national legislation that will give effect to this right, by respecting, protecting, promoting and fulfilling this right.

The Promotion of Access to Information Act, No. 2 of 2000 (hereinafter referred to as “**PAIA**”, or “the Act” interchangeably), as amended, is the national legislation which was enacted in accordance with the above-mentioned section 32(2) of the constitution.

The aim of **PAIA**, is to foster a culture of transparency and accountability in public and private bodies. It does that by giving effect to the right of access to information and actively promoting a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights and also to realise South Africa’s goals of an open and participatory democracy.

This **PAIA** Guide has been developed in fulfilment of the Information Regulator’s (“Regulator”) obligation under Section 10 of the **PAIA**, which requires the Regulator to update and make available the existing Guide that has been compiled by the South African Human Rights Commission.

This Guide has been designed to be a guiding, user-friendly and accessible tool for any person who wishes to exercise any right contemplated in **PAIA** and the Protection of Personal Information Act, 2013.



**Adv Pansy Tlakula**  
**CHAIRPERSON OF THE INFORMATION REGULATOR**

<sup>1</sup> Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)

## DISCLAIMER

*This Guide does not relieve the user from the responsibility to exercise their own skill and care in relation to the requirement or obligations imposed by any legislation. Furthermore, this Guide does not provide legal advice and is not intended to replace **PAIA** or Regulations issued under **PAIA**. The Regulator accepts no liability for any loss that may be suffered as a result of reliance on this Guide.*

## 1. LIST OF ACRONYMS AND ABBREVIATIONS

<b>CEO</b>	Chief Executive Officer
<b>CFO</b>	Chief Financial Officer
<b>Constitution</b>	Constitution of the Republic of South Africa, Act No. 108 of 1996
<b>DIO</b>	Deputy Information Officer
<b>Doj &amp; CD</b>	Department of Justice and Constitutional Development
<b>IO</b>	Information Officer
<b>Members</b>	Members of the Information Regulator
<b>Minister</b>	Minister of Justice and Correctional Services
<b>PAIA</b>	Promotion of Administrative Justice Act, 2000
<b>PFMA</b>	Public Finance Management Act No. 1 of 1999 as amended
<b>POPIA</b>	Protection of Personal Information Act No. 4 of 2013
<b>Regulator</b>	Information Regulator
<b>SAHRC</b>	South African Human Rights Commission

## 2. USEFUL TERMS EXPLAINED IN AN EASILY COMPREHENSIBLE FORM AND MANNER

Term	Description
<b>Access Fee</b>	This access fee is paid by the requester to the body from which you are requesting the information, to cover the costs of finding and copying the records you require. What can be charged is prescribed by regulation.
<b>Administrator</b>	Is an organ of state or any natural or juristic person taking administrative action.

Term	Description
<b>Administrative Action</b>	<p>Is any decision taken, or any failure to take a decision, by</p> <ul style="list-style-type: none"> <li>(a) an organ of state, when:               <ul style="list-style-type: none"> <li>(i) exercising a power in terms of the Constitution or a provincial constitution; or</li> <li>(ii) exercising a public power or performing a public function in terms of any legislation; or</li> </ul> </li> <li>(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision.</li> </ul> <p>which adversely affects the rights of any person and which has a direct, external legal effect.</p>
<b>Authorised Person</b>	<p>The authorised person is the person who is making a request on behalf of someone else, and who has been properly authorised in writing to do so.</p>
<b>Automatically Available Records</b>	<p>These are records that a public or private body will provide to a requester without them needing to file a request. These records are listed in a 'voluntary disclosure notice', which should be made public.</p>
<b>Data Subject</b>	<p>Is the person to whom personal information relates.</p>
<b>Days</b>	<p>Unless specified as a 'working day' in a section in <b>PAIA</b>, a day is considered to be a calendar day. To calculate time period, the day on which the request is received is excluded, and every day thereafter is included including weekends and public holidays until the final day is counted. If the final day for responding to a request falls on a Sunday or public holiday, the next day is counted as the final day.</p>
<b>Deemed Refusal</b>	<p>If not response is received to a request within the prescribed time, this is defined as a 'deemed refusal'.</p>
<b>Form 2</b>	<p>This form is prescribed by regulation and should be used to request access to information held by a public or private body.</p>
<b>Form 4</b>	<p>This form is prescribed by regulation and should be used when appealing a decision made by a public body in relation to a request for access to information.</p>

**Term****Description****Guide**

This Guide, made in pursuance of section 10 of **PAIA**, as amended which seeks to assist a person who wishes to exercise any right contemplated in **PAIA** and the Protection of Personal Information Act, 2013.

**Information Officer**

The information Officer is the person authorised to handle **PAIA** requests. The following are categories of Information Officers per specific Body -

<b>Public Body or Organ of State</b> (as defined in section 239 of the Constitution)	National Department	Director-General or the person who is acting as such.
	Provincial Administration	Head of Department or the person who is acting as such.
	Municipality	Municipal Manager or the person who is acting as such.
	Public Institutions listed in PFMA Schedule 1, 2, 3A, 3B, 3C & 3D	Chief Executive Officer or the person who is acting as such.
<b>Private Body</b>	Natural Person	Sole proprietor who carries on any trade business or profession, but only in such capacity and not in his personal capacity.
	Partnership	Any partner of the partnership or any person duly authorised by the partnership.
	Political Party	Leader of the political party or any person duly authorised by that leader.

Term	Description	
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<b>Information Officer</b>	<b>Private Body</b>	Juristic Person	<p>Chief Executive Officer or the Managing Director or equivalent officer of the juristic person or any person duly authorised by the leader.</p> <p><b>NB:</b> The Chief Executive Officer or equivalent officer may authorise any natural person as information Officer of a Private Body.</p>
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**Deputy Information Officer**

The Deputy Information Officer is the person designed or delegated by the Information Officer of a public body to assist the requester with their information request, and to whom the Information Officer can delegate other **PAIA** powers to.

**NB:** Whilst only a public body can designate or delegate a Deputy Information Officer(s), in terms of Section 17(1) of **PAIA**, the Protection of Personal Information Act 2013 ("**POPIA**") extends the power to designate a Deputy Information Officer to the private body in terms of section 56(1) thereof.

**Information Regulator**

The Office of the Information Regulator has been established, in terms of section 39 of **POPIA**, to monitor and enforce compliance with both **POPIA** and **PAIA**. In this Guide the Office of the Information Regulator or the information Regulator is referred to as the Regulator.

**Internal Appeal**

An internal appeal is the process for challenging a decision made in terms of a **PAIA** request to a public body, which must be completed before a challenge can be made to the Regulator or to a court having jurisdiction.

**Private Body**

A private body is a person, company or other kind of juristic entity that carries on trade, business or profession, including a political party.

Term	Description
<b>Public Body</b>	A private body means a government department or other functionary or institution, which is performing a public function. However, with regard to internal appeal, any reference to “public body” has been changed to “Government”, in order to avoid confusion in respect of public bodies in which appeal is not applicable.
<b>Record</b>	A record is any recorded information regardless of the form, including, for example, written documents, audio, digital and video materials. A record requested from a public or private body refers to a record that is in that body’s possession regardless of whether that body created the record.
<b>Regulations</b>	<b>PAIA</b> allows the Minister to issue regulations that supplement the Act, which must be published in the Government Gazette, and covers issues like the forms to be used and fees that may be charged for certain processes.
<b>Relevant Authority</b>	<b>PAIA</b> uses the term the ‘relevant authority’ to define the person within a National, Provincial and Local Government to whom an internal appeal must be lodged, which is generally the political head of the body concerned (this function can be officially delegated).

### 3. CONTACT DETAILS OF THE REGULATOR

#### Information Officer

**Chief Executive Officer:**

**Contact Person:**

**Email:**

Mr. Mosalanyane Mosala

Ms. Pfano Nenweli

[PNenweli@justice.gov.za](mailto:PNenweli@justice.gov.za)

**Deputy Information Officer:**

**Email:**

Ms. Varsha Sewlal

[VarSewlal@justice.gov.za](mailto:VarSewlal@justice.gov.za)

#### Physical Address:

JD House, 27 Stiemens Street  
Braamfontein  
Johannesburg  
2001

#### Postal Address:

P.O. Box 31533  
Braamfontein  
Johannesburg  
2017

**Telephone:**

010 023 5200

## 4. PURPOSE OF THIS PAIA GUIDE

- 4.1 The purpose of this Guide is to provide information that is needed by any person who wishes to exercise any right contemplated in the Promotion of Access to Information Act of 2000 (**PAIA**) and Protection of Personal Information Act, 2013 ("**POPIA**"). Any person, irrespective of citizenship, can apply for access to information under **PAIA**.
- 4.2 This Guide will specifically assist a person, also called a data subject, on how to access his/her personal information in terms of section 23 of **POPIA**. Under **POPIA**, person or data subject has the right to -
  - 4.2.1 request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about them, and
  - 4.2.2 request from a responsible party the record or a description of the personal information about the data subject held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information;
  - 4.2.3 request a responsible party to -
    - (a) correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or
    - (b) destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain.
- 4.3 This guide will also assist any person on how to request access to records under **PAIA**. The Guide will also assist requesters in:
  - 4.3.1 understanding **PAIA**, its benefits and background;
  - 4.3.2 learning the step-by-step process by which to make a request and additional tips for making that process easier;
  - 4.3.3 learning the types of information which can be requested using **PAIA**;
  - 4.3.4 understanding the process by which a requester can challenge a decision taken in relation to their request;

- 4.3.5 being introduced to the changes that will occur to **PAIA** once **POPIA** is fully operational.
- 4.4 This guide will also assist people in understanding how to challenge the granting of access to their records or how to participate in the process of accessing their records.

## 5. ABOUT PAIA

- 5.1 The right to access to information is "one of the most effective ways of upholding the constitutional values of *transparency, openness, participation and accountability*<sup>2</sup>. The above-mentioned constitutional values cannot be attained if the government has a monopoly on the information that informs its actions and decisions. Therefore, access to information is not only fundamental to a properly functioning participatory democracy, but it also increases public confidence in government and enhances its legitimacy. Other benefits of the right to access to information are for instance, that it discourages fraud and corruption, uncertainty and other improper governmental conduct.
- 5.2 When the South African Constitution was being drafted in the period following the fall of Apartheid in the 1990s, various organisations and individuals campaigned for the inclusion of a right of access to information. It was hoped that the inclusion of this right in the Bill of Rights would ensure that atrocities such as Apartheid could never again take place, as the state and private corporations would be obliged to act in an accountable and transparent manner by providing access to information, and therefore, would be unable to hide behind the veil of secrecy. It was seen as a necessary step for helping to create a culture of justification that would lead to fairer relations between people, and those in power. In one of the earliest cases<sup>3</sup> to deal with the question whether an accused person is entitled to access to all the information contained in the police docket. Jones J acknowledged its importance in these terms:

***“The purpose ... is to exclude the perpetuation of the old system of administration, a system in which it was possible for government to escape accountability by refusing to disclose information even if it had bearing upon the exercise or protection of rights of the individual. This is the mischief it is designed to prevent [...] Demonstrable fairness and openness promotes public confidence in the administration of public affairs generally. This confidence is one of the characteristics of the democratically governed society for which the Constitution strives”.***

<sup>2</sup> Hoexter *Administrative Law* 94

<sup>3</sup> 1994 (1) SACR 635 (E)

- 5.3 Section 32 of the Constitution enshrines the right of access to information held by both public and private bodies. Section 32 also states that legislation must be enacted to give effect to the right of access to information by detailing the ways in which information from public and private bodies can be accessed, and by providing grounds on which a public and private body could refuse access to information.
- 5.4 **PAIA** was enacted in response to the above-mentioned constitutional mandate, and came into force in large part in March 2001. Its preamble acknowledges the "secretive and unresponsive culture" of the pre-democratic era, and asserts that one of the objects of **PAIA** is to "foster a culture of transparency and accountability in public and private bodies."
- 5.5 **PAIA** is meant to give effect to a person's rights of access to information and accountability. It is designed to empower people to use the law, and so helps to facilitate requesting access to information in different ways. One does not need a lawyer to make a request for access to information in terms of **PAIA**.

## 6. THE OBJECTS OF PAIA

- 6.1 The objects of **PAIA** are not to replace the constitutional right, but to give effect to the right in section 32 subject to justifiable limitations, and in a way which helps balance all the other rights contained in the Constitution. It hopes to promote a human rights culture and social justice for people, the public sector and the private sector. **PAIA** seeks to promote transparency, accountability and effective governance of all institutions (both public and private) by empowering people to understand their access to information rights, act on them, and both scrutinise, and engage with, decision-making that affects them.
- 6.2 The right of access to information is a very powerful constitutional right, as it helps people realise other rights. A person can use it to help monitor and assess the delivery of government services, or to access historical records that might be of interest.
- 6.3 The objectives of **PAIA** are -
- 6.3.1 to give effect to the constitutional right of access to
    - 6.3.1.1 any information held by the State; and
    - 6.3.1.2 any information that is held by another person and that is required for the exercise or protection of any rights.

- The requirement relating to the protection of rights is confined to information held in private hands. Private bodies are thus subjected to a less stringent standard of transparency than public bodies. The private sector, in other words, is entitled to keep its information to itself, unless that information is needed to protect rights.
- **PAIA** recognises, in terms of Section 8(1) thereof, that a body may be "public" or "private" for the purposes of the Act depending on whether the record in question "relates to the exercise of a power or the performance of a function as a public body or as a private body."

6.3.2 to give effect to that right -

6.3.2.1 subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and

6.3.2.2 in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution;

6.3.3 to give effect to the constitutional obligations of the State in promoting a human rights culture and social justice, by including public bodies in the definition of 'requester', and allowing them, amongst others, to access information from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest;

6.3.4 to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and

6.3.5 generally, to promote transparency, accountability and effective governance of all public and private bodies by, including but not limited to, empowering and educating everyone -

6.3.5.1 to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

6.3.5.2 to understand the functions and operation of public bodies; and

6.3.5.3 to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

#### 6.4 The Promotion of Access to Information Amendment Act, 2019

- 6.4.1 In the matter of ***My Vote Counts NPC v Minister of Justice and Correctional Services and Another [2018] ZACC 17***, the constitutional court held that *“the State is under an obligation that flows from a proper reading of sections 32, 19 and 7(2) of the Constitution to do everything reasonably possible to give practical and meaningful expression to the right of access to information and the right to vote. The majority further contended that this is so because the exercise of the right to vote must be an informed choice, and there is a vital connection between the proper exercise of the right to vote and the right of access to information. And “without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined”.* The Constitutional Court confirmed the order of constitutional invalidity and ordered Parliament to amend **PAIA** and take any other measure it deems appropriate to provide for the recordal, preservation and facilitation of reasonable access to information on the private funding of political parties and independent candidates within a period of 18 months.
- 6.4.2 In accordance with the above-mentioned constitutional court judgment, the President has, on 3rd June 2019, assented to the Promotion of Access to Information Amendment Act, 2019 (**PAIA amendment Act 2019**)<sup>4</sup>. The **PAIA** amendment Act 2019 includes a political party in the definition of a private body, which effectively means that the leader of the political party or any person duly authorised by that leader is an information officer or head. The **PAIA** amendment Act 2019 now extends the right of access to any records of the political party.
- 6.4.3 The amendment Act provides for information on the private funding of political parties and independent candidates to be recorded, preserved and made available.
- 6.4.4 In terms of section 52A of the **PAIA** amendment Act 2019, the head of a political party must create and keep records of any donation exceeding the prescribed threshold, of **R100 000.00**, that has been made to that political party in any given financial year and the identity of the persons or entities who made such donations. The head of a political party is also required to make the records available on a quarterly basis, as prescribed; and keep the records for a period of at least five years after the records concerned have been created.

<sup>4</sup> Promotion of Access to Information Amendment Act, No. 31 of 2019

6.4.5 This means that whilst the Political Party Funding Act makes provision for mandatory disclosure to the Electoral Commission, the **PAIA** amendment Act 2019 now extends the right of access, to the records of any donation exceeding **R100 000.00**, to any person, that has been made to that political party.

## 6.5 Other legislation that protects the right of access to information

**PAIA** also exists within a whole legal environment, which is designed to create a “culture of justification”. In recognition of this, **PAIA** states that any other law that gives a person an avenue for accessing information that is less onerous than **PAIA**, can be used instead<sup>5</sup>.

### 6.5.1 Companies Act 71 of 2008

6.5.1.1 Section 26(1) of the Companies Act provides a person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the company.

6.5.1.2 In terms of section 26(7)(b) of the Companies Act, “the rights of access to information set out in this section are in addition to, and not in substitution for, any rights a person may have to access information in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)”.

### 6.5.2 The Political Party Funding Act, 2018 (Act No. 6 of 2018)

6.5.2.1 The Political Funding introduces a strict regulatory framework for the private funding of all registered political parties, whether represented in the national and provincial legislatures or not. This includes setting limits for the source, size and use of donated funds by political parties.

6.5.2.2 To ensure transparency and accountability, political parties are required to disclose all donations received above the disclosure threshold of **R100 000.00** to the Electoral Commission regularly every three months (as well as ahead of general elections).

<sup>5</sup> Section 2(1) of PAIA

- 6.5.2.3 Any person or organisation making a donation to a political party which individually or cumulatively exceeds **R100 000.00** per year must report that donation to the Electoral Commission within 30 days of making the donation or within 30 days of when the cumulative donations exceeded **R100 000.00**.
- 6.5.2.4 Lastly, the Political Party Funding Act places an obligation on the Electoral Commission to make public every three months the donations reported by political parties and to report annually to Parliament on all donations made to political parties during the year.
- 6.5.3 Protection of Personal Information Act, 2013 (Act No. 4 of 2013)
- 6.5.3.1 Section 23 of **POPIA** provides the data subject with the right of access to personal information held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.
- 6.5.3.2 This means that whilst access to a record containing personal information about a requester is excluded from **PAIA** in terms Section 11(2) thereof, data subject can request –
- 6.5.3.2.1 access to his/her personal information; and/or
- 6.5.3.2.2 identity of all third parties, and/or categories of third parties, who have, or have had, access to the information.
- 6.5.3.2.3 correction or deletion of personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or
- 6.5.3.2.4 the record of his/her personal information that the responsible party is no longer authorised to retain to be destroyed or deleted.
- 6.5.3.3 A responsible party may refuse to disclose any personal information requested, in accordance with the grounds for refusal of access to records, as set out in paragraph 19.4 below.

## 6.5.4 The Promotion of Administrative Justice Act 3 of 2000

- 6.5.4.1 Another important law to remember when considering access to information is the Promotion of Administrative Justice Act (**PAJA**). **PAJA** gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33(2) of the Constitution<sup>6</sup>.
- 6.5.4.2 In terms of section 5(1) of **PAJA**, any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned to furnish written reasons for the action. The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reason in writing for the administrative action.

## 7. ESTABLISHMENT OF THE INFORMATION REGULATOR

- 7.1 To ensure the promotion and enhancement of the **PAIA** objectives, which are to give effect to that right of access to information in a manner which enables persons to obtain access to records of public and private bodies as swiftly and inexpensively as reasonably possible, the Information Regulator (“the Regulator”) was established in terms of section 39 of **POPIA**.
- 7.2 In order to ensure that uncomplicated and inexpensive administrative procedures follow when a request for access to information is made, complaints to the Regulator and court applications should be the exception rather than the rule.
- 7.3 **POPIA** amends the role of the **SAHRC** in relation to the **PAIA** mandate. Effective from 30 June 2021, all the functions of the **SAHRC**, as enumerated in **PAIA**, will be handled by the Regulator, which also has additional enforcement powers.
- 7.4 Whilst the **SAHRC** will still maintain its broader constitutional obligations to promote, protect and monitor the rights enshrined in the Bill of Rights, the **SAHRC** and the Regulator will work closely alongside one another.

<sup>6</sup> Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

## 8. THE ROLE OF THE INFORMATION REGULATOR

- 8.1 The Regulator has a very important role in relation to **PAIA**. The Regulator is mandated by **PAIA**, under Part 4, Chapter 1A and Part 5 and other sections, to:
  - 8.1.1 promote the right of access to information and assist the public in using **PAIA** where reasonably possible to do so,
  - 8.1.2 monitor and further the implementation of **PAIA** by public and private bodies (which includes promoting effective ways to make information timeously available),
  - 8.1.3 make recommendations to strengthen **PAIA**, and
  - 8.1.4 report annually to Parliament.
- 8.2 Section 77C (1) and (2) of **PAIA** makes provision for the following powers, duties and functions of the Regulator, to -
  - 8.2.1 investigate a complaint made to the Regulator in the prescribed manner;
  - 8.2.2 refer the complaint to the Enforcement Committee established in terms of section 50 of the **POPIA**; or
  - 8.2.3 decide, in accordance with section 77D, to take no action on the complaint or, as the case may be, require no further action in respect of the complaint; and
  - 8.2.4 act, where appropriate, as conciliator in relation to such complaint in the prescribed manner.
- 8.3 The Regulator may, in terms of section 77H(1) of **PAIA**, and on its own initiative, or at the request by or on behalf of information officer or head of a private body or any other person conduct an assessment whether a public or private body generally complies with the provisions of **PAIA**, insofar as its policies and implementation procedures are concerned.
- 8.4 The Regulator is empowered, in terms of section 77F of **PAIA**, to use its best endeavours to secure a settlement of a complaint, if it appears from the complaint, or any written response made in relation thereto that it may be possible to settle the complaint. This means that the Regulator can only try to assist parties to settle their disputes, if there is a complaint lodged with the Regulator, unless it has decided, on its own initiative, to conduct an assessment, as stipulated in paragraph 8.3 above.

## 9. MAKING A REQUEST FOR A RECORD

Please refer to the step-by step process chart flow in paragraph 27 below, on how to request access to the records.

### 9.1 Getting started: **PAIA Manuals**

9.1.1 While this Guide has been published to assist the public from all walks of life to uphold their constitutional right to access to information, there are other sources of information that can also assist a person in making a request to access to records. **PAIA** requires that all public bodies, and private bodies, compile and make available a **PAIA** manual<sup>7</sup>.

9.1.2 Before any person takes steps to access the information or records of a particular body, the **PAIA** Manual is the first tool to read.

9.1.3 At its most basic, the **PAIA** manual is useful for a person to:

9.1.3.1 check the nature of the records which may already be available without the need for submitting a formal **PAIA** request;

9.1.3.2 have an understanding of how to make a request for access to information held by a particular body;

9.1.3.3 access all the relevant contact details of the person who will assist the public with the records any person intends accessing;

9.1.3.4 know all the remedies available from the body to which access to the records is being requested, before approaching the Regulator or the Courts;

9.1.3.5 know the description of the services available to members of the public from the body and how to gain access to those services;

9.1.3.6 know if the body will process personal information, the purpose of processing of personal information and the description of the categories of data subjects and of the information or categories of information relating thereto;

9.1.3.7 know if the body has planned to transfer or process a person's personal information outside the Republic of South Africa; and

<sup>7</sup> Section 14 and section 51 of PAIA

- 9.1.3.8 know whether the body has appropriate security measures to ensure the confidentiality, integrity and availability of the information which is to be processed.

## 9.2 Where to find PAIA manuals?

### 9.2.1 PAIA Manual of public bodies

- 9.2.1.1 All public bodies must make the **PAIA** Manual easily available in at least three official languages<sup>8</sup>.

- 9.2.1.2 At the very least, they are required to make a copy of a **PAIA** Manual freely available, except if a printed hard copy is requested

- 9.2.1.2.1 on the web site of the public body;

- 9.2.1.2.2 at the head office of the public body for public inspection during normal business hours;

- 9.2.1.2.3 if a person wants a hard copy, the public body must make a copy, but it may request payment of a reasonable fee for the provision of a hard copy; and

- 9.2.1.3.4 to the Regulator upon request.

### 9.2.2 PAIA Manual of private bodies

- 9.2.2.1 Private bodies are also required to compile a **PAIA** manual<sup>9</sup>, but there is no requirement to compile it in more than one language or in a specific language, although it is recommended that the **PAIA** Manuals of private bodies should be at least in English. If a specific body is providing services to majority of people without formal education, the Regulator recommends that the manual of that body may also be in any other official language.

- 9.2.2.2 At the very least, the private bodies are required to make a copy of a **PAIA** Manual freely available<sup>10</sup>, except if a printed hard copy is requested -

- 9.2.2.2.1 on the web site of the private body;

- 9.2.2.2.2 at the principal place of business of the private body for public inspection during normal business hours;

<sup>8</sup> Section 14(1) of PAIA

<sup>9</sup> in terms of section 51 of PAIA

<sup>10</sup> Section 51(3) of PAIA

9.2.2.2.3 if a person wants a hard copy, the private body must make a copy, but it may request the payment of a reasonable fee for the provision of the hard copy; and

9.2.2.2.4 to the Regulator upon request.

9.2.3 The Minister of Justice and Correctional Services has powers to exempt<sup>11</sup> certain private bodies or category of private bodies from the obligation to compile a manual. Currently, and until 31 December 2021, the Minister has exempted<sup>12</sup> all private bodies, except any company which -

- (a) (is not a private company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); and
- (b) is a private company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008) which operates within any of the sectors mentioned in column one of the schedule to this Notice and -
  - (i) has 50 or more employees in their employment; or
  - (ii) has a total annual turnover that is equal to or more than the applicable amount mentioned in column 2 of below table,

from compiling the manual contemplated in section 51(1) of the first mentioned Act for a period of six (6) month from **1 July 2021** to **31 December 2021**: -

Sector	Annual Turnover
Agriculture	R 6 million
Mining and Quarrying	R 22.5 million
Manufacturing	R 30 million
Electricity, Gas and Water	R 30 million
Construction	R 15 million
Retail and Motor Trade and Repair Services	R 45 million
Wholesale Trade, Commercial Agents and Allied Services	R 75 million
Catering, Accommodation and other Trade	R 15 million
Transport, Storage and Communications	R 30 million
Finance and Business Services	R 30 million
Community, Special and Personal Services	R 15 million

<sup>11</sup> Section 51(4) of PAIA

<sup>12</sup> Government Gazette no: 39504, 11 December 2015

9.2.4 Due to the significance of the legislative requirement for compiling the **PAIA** Manual, especially the amendment<sup>13</sup> of section 51 of **PAIA** (which come into operation on 30 June 2021), in terms of which the scope of the information that the manual must cover has been widened to include matters relating **POPIA**, private bodies will no longer be exempted from the obligation to compile **PAIA** manual. Therefore, from, 1st January 2022, every private and public body will be required to have their **PAIA** Manual available, as prescribed in paragraph 9.2.2.2 above.

9.2.5 The exemption of private companies from the obligation to compile **PAIA** manual does not exempt those private companies from compliance with **PAIA**. This means that any person can still submit a request for access to information to exempted private body. The exemption just means that those private companies don't have to compile a **PAIA** manual.

9.2.6 Remember too, that not all private bodies are companies, as the definition of private body includes natural person, sole proprietor and partnership. However, it may still be worthwhile checking their website, as some Companies create a **PAIA** manual regardless of the number of their employees or their annual turnover.

### 9.3 Voluntary disclosure and automatic availability of certain records

9.3.1 Automatically available records are those that a public or private body will provide without the need for a requester to submit a **PAIA** request (in other words, a person can just request it without completing the **PAIA** Form 2).

9.3.2 The Information Officer of a public body is required, in terms of section 15(1) of **PAIA**, to make available a list or categories of records that are automatically available, as prescribed in paragraph 9.3.4 below.

9.3.3 Automatically available records of a private body may also be made available, in terms of section 52(1) of **PAIA**, but on a voluntary basis in accordance with paragraph 9.3.4 below.

9.3.4 A description of the categories of automatically available records must be made available -

- (a) to the Information Regulator;
- (b) on the website of a body; and
- (c) for inspection, at the offices of a body concerned during normal office hours.

<sup>13</sup> Section 110 of POPIA

- 9.3.5 Please note that the Regulator will upload the description of automatically available records of a public body on its website.
- 9.3.6 This list includes records that might be required to be made available by other laws, and any other records that a body chooses to include. In order to avoid the formality of complying with the **PAIA** request process, a requester is advised to check the **PAIA** Manual of the public or private body concerned. Should a person wish to access records that fall within the body's list of automatically available records, that person may merely request access to them without needing to complete **PAIA** Form 2.
- 9.3.7 Political Party Funding Act 6 of 2018 introduces some changes through **PAIA**, in terms of which the heads of political parties are required to record and preserve records of private donations, which will need to be made public without a person having to file a **PAIA** request.

## 10. CONTACT DETAILS OF INFORMATION OFFICERS

- 10.1 Although the contact details of the Information Officers of every public body are required to be published in every telephone directory, in terms of section 16 of **PAIA**, the Regulator has specific contact details of all Information Officers (including Deputy Information Officers, designated in terms of section 17 and 56 of **PAIA** and **POPIA** respectively) registered with it in terms of section 55(2) of **POPIA**.
- 10.2 Whilst getting the correct contact details may often be a very challenging part of making a **PAIA** request, as roles change frequently in the public sector and **PAIA** manual may not necessarily be up-to-date, the first place to find contact details should be the body's **PAIA** Manual. However, if a requester cannot find the manual, calling the switchboard of the body to ask for the relevant details may also assist.
- 10.3 For Municipalities, the South African Local Government Association (**SALGA**) places the contact details for all Municipalities at this link:  
<http://www.salga.org.za/Municipalities%20MCD.html>
- 10.4 Government communication also provides national and provincial contacts as well as the contact details of State-Owned Enterprises under this link:  
<https://www.gov.za/about-government/contact-directory>. Always remember that the definition of the Information Officer helps to identify whose contact details are needed to identify the Information Officer.

## 11. PROCESS FOR MAKING A REQUEST FOR INFORMATION

### 11.1 The forms of request

- 11.1.1 A request for access to information can be made to both public and private bodies.
- 11.1.2 **PAIA** requires that if you want to make such a request, you have to submit the request on the required form (these forms are prescribed by Regulations). There are two forms that can be used in pursuing the right to access to information

Form 2	Form 4
This form can only be used if you want to request access to the records of a public or private body.	This form can only be used if you want to submit an internal appeal against the decisions of the Information Officers or that of the Deputy Information Officers of a National, Provincial or Local Sphere of Government to which an internal appeal is applicable.

- 11.1.3 These forms can be obtained on the Regulator's website at <https://www.justice.gov.za/inforeg/>

### 11.2 Deciding whether a request relates to information held by a private or public body

- 11.2.1 A public body performs a public function, such as providing electricity or water to the public. So, a public body is not just a National, Provincial or Local Government Department– it would include state-owned enterprises or Organs of State such as the Regulator, **Eskom**, or **PRASA**, however, a distinction must be made regarding a public body for purpose of internal appeal, which only refers to National, Provincial or Local Government.
- 11.2.2 A private body performs a private function. Such a body (which can be a person) carries on a trade, business or profession. It is very important to note that when submitting a **PAIA** request to a private body a person must state which right he is protecting or exercising by asking for this information. With regard to any information that is held by another person, Streicher JA summed up the position as follows, in **Cape Metropolitan Council v Metro Inspection Services (Western Cape) CC and Others**<sup>14</sup>,

<sup>14</sup> 2001 (3) SA 1013 (SCA) para 28 at 1026F–G

*“Information can only be required for the exercise or protection of a right if it will be of assistance in the exercise or protection of the right. It follows that, in order to make out a case for access to information in terms of section 32, an applicant has to state what the right is that he wishes to exercise or protect, what the information is which is required and how that information would assist him in exercising or protecting that right”.*

11.2.3 Sometimes the question of whether a record is a public or private record can be complicated and the public are advised to seek legal advice. For example, if a public body appoints a private body to render certain services on its behalf, such as installation of water metres in certain communities, access to the numbers of installed metres, even if such information is held by such private body, will be treated as information of a public body.

11.3 How does a person explain the right he is hoping to exercise or protect?

11.3.1 When explaining which right one is hoping to exercise when making a request to a private body, one cannot refer to the right of access to information. One has to explain how the record one is asking for is reasonably required for one to protect, or exercise, another right. This could include rights that are not just constitutional rights.

11.3.2 One may for example require the master plans from a company that has the potential to impact the pollution levels in a community, in order to help protect one’s right to the environment through monitoring its activities. Or one may require records, which will help one determine if one has the right to file a civil claim against an entity. One therefore needs to:

11.3.2.1 Specifically identify the right one hopes to protect or exercise, and then

11.3.2.2 Explain clearly why the *record* one is asking for is reasonably required to help one with that right.

11.3.3 In contrast, when submitting a **PAIA** request to a public body, one does not have to have a reason for requesting the information.

## 12. WHO CAN MAKE A PAIA REQUEST?

12.1 Any person, whether South African or non-South African, is allowed to make a request under **PAIA**. The requester can be a natural person or juristic person.

12.2 A public body is considered a juristic person and may make a request for access to records held by private bodies, but only if the public body is -

12.2.1 acting in the interests of the public, and

12.2.2 if the records are required to fulfil or protect any rights other than those of the public body.

12.3 Under **PAIA** a requester cannot request access to a record, of the public body, containing personal information about the requester from the public body<sup>15</sup>, however the requester or data subject can, in terms of section 23(1)(b) of **POPIA**, request from a responsible party the record or a description of the personal information about the data subject held by the responsible party. This means that any person can now request access to their personal information held by the public or private body upon production of adequate proof of identity. The personal information that a requester may request from the responsible body may include information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.

12.4 In terms of section 50(1) of **POPIA**, any person can request access to a record, of a private body, containing personal information about the requester or the person on whose behalf the request is made.

### 13. TO WHOM CAN A REQUEST BE MADE TO?

13.1 The Information Officer of a public body is required to designate a Deputy Information Officer(s), who must ensure that access to the records of the public body is as reasonably accessible as possible. Although this was not a requirement with regard to the private body under **PAIA**, a private body may designate the above-mentioned Deputy Information Officer, in terms of section 56 of **POPIA**.

13.2 The request for access to information, although it may be directed to the Information Officer, can be submitted to the Deputy Information Officer. Particulars of Deputy Information Officer(s) can be obtained in the **PAIA** manual of that particular body or from the Regulator.

### 14. COMPLETING THE FORM

14.1 Form 2 - request for access to a record of a public or private body:

14.1.1 In order to complete the **PAIA** form, a person needs to provide sufficient detail to allow the Information Officer or Deputy Information Officer to identify the records the requester seeks.

<sup>15</sup> Section 11(2) of PAIA

- 14.1.2 **PAIA** Regulations specify the form to be used, which must be sent to the Information Officer, or Deputy Information Officer of the body.
- 14.1.3 Requesters who are unable to read or write can make verbal requests to the Information Officer or Deputy Information Officer of a public body, who is then responsible for completing the form 2 on behalf of the requester. The current form will require you to complete the following sections:

Information Required	Description
<b>Particulars of public private body</b>	This section should contain the relevant email and fax number of the Information Officer and/or Deputy Information Officer.
<b>Particulars of person requesting access to records</b>	This should contain enough information about the requester to make the requester reasonably easy to identify, including the contact details of the requester: postal address, email address, fax and/or telephone number in South Africa. It also asks for your identity number to authenticate your identity. If you are requesting the information on behalf of someone else, proof of the capacity in which you are making the request must be provided (as the 'authorised person').
<b>Particulars of record requested</b>	Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to the form. All additional pages must be signed.
<b>Type of record</b>	This should contain enough information about the record to make it reasonably easy to identify. If the information required cannot fit in the space provided in the form, additional typed or handwritten page may be used to give more detail of the request, as long as each additional page is signed

Information Required	Description
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	and attached to the request form. You might, for example, include an extract from a report or news story that references the record you are looking for. It allows you to include a reference number for the record, if it is applicable.
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**Fees**

The body, to which a requester intends submitting a request for access to a record, including record containing personal information about his or herself, may request that you pay request fee (access fee) or deposit fee, but that amount must not be excessive, as the fees must be for the reasonable time required to search for and prepare a record. The Minister may by notice in the Gazette exempt the payment of fees as listed on paragraph 51.1 below.

A space is provided for the requester to indicate why he believes he or she should be exempted from paying any fees. The reason may include, for example, that he or she is unemployed.

**Form of access to record**

This section allows you to note with an "X" your preferences for the form of access to the record may be provided in a printed copy of record and/or flash drive and/or compact disc drive.

**Manner of access**

Under this section you are required to note your preference in relation to which language the record should be in (this may not be possible in relation to all records, but you should still indicate your preference). The manner of access of the record may contribute to a refusal of access due to higher fees. For example, if a requester wants document in your preferred language,

Information Required	Description
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fees for changing the documents to your preferred language may become payable. However, if the record is not available in the language you prefer, access may be granted in the language in which the record is available. The manner of access to record may include personal inspection of record, record sent by email, or fax or courier or postal.

<b>Notice of decision regarding request for access</b>	A space is provided for the requester to describe the manner in which he wishes to be informed about the decision to grant or deny the request. The requester can specify for instance that he would prefer to be contacted by email or by telephone or the response can be posted or couriered to him.
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<b>Particulars of right to be exercised or protected</b>	When requesting information from a private body a requester is required to describe the “particulars of right to be exercised or protected”. Here he must state the right he is relying on (such as his right to a healthy environment) and how the record he is requesting will help you either exercise, or protect, that right. He must show a connection between the record he wants, and the exercise or protection of the right.
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Unfortunately, unlike the request for access to record of a public body, he cannot access a record of the private body unless he specifies the right(s) he intends protecting or exercising should access for information be granted. This can include the fact that after he gains access to records, he will then exercise his right to equal protection and benefit of the law<sup>16</sup> by suing that body for damages that he may have suffered.

<sup>16</sup> Section 9(1) of the constitution of the Republic of South Africa, Act 108 of 1996

14.1.4 If for any reasons his request does not comply with the requirements listed above, the Information Officer may not just refuse his request, unless he notified the requester that he intends to refuse the request and the reasons are provided. The Information Officer must also notify that he will assist the requester or give him an opportunity to correct the error.

## 15. THE FEES INVOLVED

15.1 Generally, fees need to be paid both for making a request, but also to cover the cost of providing access to records in terms of a request. There are, however, some exceptions. If the requester is granted access to the records he or she requested and he or she is not exempted from paying any fees, as indicated in paragraph 15.2 below, the Information Officer or Deputy Information Officer of a public or private body can charge the prescribed fees relating to the following categories -

**NB: The fee structure in respect of fees payable to the Public and Private Bodies can be accessed on the Regulator’s website.**

Item	Description
1	The request fee payable by every requester
2	Photocopy of A4 size page
3	Printed copy of A4 size page
4	For a copy in a computer-readable form on: <ul style="list-style-type: none"> <li>(i) Flash drive (to be provided by requestor)</li> <li>(ii) Compact disc               <ul style="list-style-type: none"> <li>• If provided by requestor</li> <li>• If provided to the requestor</li> </ul> </li> </ul>
5	For a transcription of visual images per A4 size page
6	Copy of visual images
7	Transcription of an audio record, per A4 size page
8	Copy of an audio record on: <ul style="list-style-type: none"> <li>(i) Flash drive (to be provided by requestor)</li> <li>(ii) Compact disc               <ul style="list-style-type: none"> <li>• If provided by requestor</li> <li>• If provided to the requestor</li> </ul> </li> </ul>
9	To search for and prepare the record for disclosure for each hour or part of an hour, excluding the first hour, reasonably required for such search and preparation. To not exceed a total cost of the prescribed maximum amount
10	Deposit: If search exceeds 6 hours
11	Postage, e-mail or any other electronic transfer

15.2 The requester does not need to pay an access fee<sup>17</sup> to a public body if:-

15.2.1 He is a single person whose annual income, after permissible deductions, such as **PAYE** and **UIF**, is less than **R14 712.00** a year, or

15.2.2 He is married and the joint income with his partner, after permissible deductions, such as **PAYE** and **UIF**, is less than **R27 192.00** per year.

15.3 Please note that the public or private body can request, in Form 4 to the Regulations, a deposit from the requester, but only if they believe that the information or records requested will take more than six (6) hours to search, but the deposit amount cannot be more than one-third of the prescribed fee.

## 16. WILL THE INFORMATION OFFICER HELP THE REQUESTER MAKE A PAIA REQUEST?

16.1 The role of the Information Officers and/or Deputy Information Officers of both public and private bodies is to, in so far as it relates to the processing of requests for access to records:

16.1.1 receive the **PAIA** or **POPIA** request;

16.1.2 coordinate the processing of the request within the body;

16.1.3 make a decision as to whether to grant or refuse access to the records being requested;

16.1.4 liaise with the requester (e.g. they may need to ask the requester for more details or they may need to request an extension of time to deal with the request, etc.);

16.1.5 Advise the requester of the outcome of their **PAIA** request, which advice must be given as soon as is reasonably possible but within 30 days after receiving the request. The initial period of 30 days may be extended once for a further period of not more than 30 days, if for example, the requester has agreed to the extension or the request requires a search for records that cannot reasonably be completed within the original period;

16.1.6 provide the requester with reasons for the decision to refuse access. It is very important that the reasons given for a refusal are clear and detailed and must include reference to the specific sections of **PAIA** (see paragraph 19.4 below, regarding the grounds for refusal of access to records<sup>18</sup>);

<sup>17</sup> as per Government Notice R991 of 14 October 2005

<sup>18</sup> Section 33 to 46 of PAIA

- 16.1.7 inform relevant third parties through the third-party notification process, in terms of section 47 of **PAIA**; and
- 16.1.8 if access to the records is granted, provide the requester with a copy of the record.
- 16.2 When notifying the requester about the decision, also outline the forms of recourse available and the relevant time-lines (the recourse available is different for public and private bodies).
- 16.3 The additional role and responsibilities of the Information Officers and/or Deputy Information Officers are those detailed in the Guidance Note on Information Officers and Deputy Information Officers which Guidance Note is available at <https://www.justice.gov.za/infoereg/docs.html>
- 16.4 Because the role of the Information Officers and/or Deputy Information Officers is to facilitate the request for access to information, this also means they have a variety of duties to those making a request.
- 16.5 The Information Officers and/or Deputy Information Officers must provide the assistance for free.
- 16.6 The Information Officers and/or Deputy Information Officers of a public body have the following special tasks:

Duties of Information Officers	Description
<p><b>Assist with completing the form</b></p>	<p>The Information Officer must provide reasonable assistance to the requester in completing their <b>PAIA</b> form, and may not refuse to accept a form that is not properly completed unless they have either given that help, or offered that help and the assistance or help has been refused.</p>
<p><b>Provide relevant information</b></p>	<p>If it is reasonably possible, the Information Officer must provide the requester with any other information that may be relevant, even if not specifically requested.</p>
<p><b>Transfer the request</b></p>	<p>This is a very important duty. When a <b>PAIA</b> request is made to the wrong public body, the Information Officer must transfer the</p>

Duties of Information Officers	Description
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request to the correct public body within **14 days** of receiving the request and must inform the requester in writing of having done so. Once transferred, the correct Information Officer must then respond with a decision within **30 days**.

<b>Deferral of release</b>	The Information Officer may decide to defer the release of a record to a requester if that record will be published within <b>90 days</b> or if the record is required by law to be published but is yet to be.
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16.7 With both public and private bodies, the Information Officer must, if they are unable to find the particular records requested or believe that the records do not exist, submit a detailed affidavit or affirmation<sup>19</sup> to the requester giving notice that the records in question do not exist or cannot be found, but also outline the steps they took to locate them.

## 17. ASSISTANCE AVAILABLE FROM THE INFORMATION REGULATOR IN TERMS OF PAIA AND POPIA

17.1 The Information Officer of a public body has an obligation to render such reasonable assistance<sup>20</sup>, free of charge, as is necessary to enable that requester or data subject to comply with the manner of access as contemplated in sections 18 of the **PAIA** and section 23 of **POPIA**.

17.2 However, should the Information Officer fail to comply with his/her duty, referred in paragraph 17.1 above, a requester or a data subject can may lodge a complaint with the Regulator and the Regulator may, upon investigation, issue an Enforcement Notice directing the Information Officer to provide the reasonable assistance.

17.3 The Regulator may, if reasonably possible, on request, assist any person wishing to exercise any right contemplated in **PAIA** and **POPIA**<sup>21</sup>, and this includes providing reasonable assistance, free of charge, as is necessary to enable that requester or data subject to comply with the manner of access as contemplated in sections 18 and 53 of the **PAIA** and section 23 of **POPIA**.

17.4 The above includes providing guidance on how to complete a request for access form or completing a form on behalf of an illiterate or blind person.

<sup>19</sup> Section 23(1) and 51(1) of PAIA

<sup>20</sup> Section 19(1) of PAIA

<sup>21</sup> Section 83(3)(c) of PAIA

## 18. CAN THE INFORMATION OFFICER EXTEND THE TIMELINES INVOLVED?

- 18.1 An outline of the process and the key time-lines involved are contained in the diagram of the **PAIA** request process, in paragraph 27 below. Having specific time-lines is an important part of **PAIA**, as it fosters the effective management of requests for access to records.
- 18.2 As a reminder, once you have submitted your request correctly the Information Officer or Deputy Information Officer, to whom the request is made or transferred, must respond to you as soon as is reasonably possible but in any event **within 30 days**<sup>22</sup>. However, the Information Officer of a public or private body can request a single **30 day extension**<sup>23</sup>, but only if:
- 18.2.1 the request is for a large number of records or requires that a large number of records are searched and, without an extension, this search would interfere with the normal activities of the body concerned;
  - 18.2.2 the request requires a search through records in an office of that body not situated in the same city or town and could thus not be completed **within the 30 days**; and/or
  - 18.2.3 it requires a level of consultation in order to act on the request, which cannot reasonably be completed **within just 30 days**.
- 18.3 The Information Officer must notify the requester of his or her intention to extend the initial time period, and indicate the period of extension, the reason for the extension, and notify the requester of his or her or its right to -
- 18.3.1 Appeal to the relevant authority;
  - 18.3.2 complain to the Regulator; or
  - 18.2.3 launch proceedings in court against the extension as the case may be.
- 18.4 The Information Officer must also inform the requester of the process for each of the above-mentioned rights in the notice<sup>24</sup>.

## 19. RESPONSES TO A REQUEST FOR INFORMATION

- 19.1 **PAIA** has provided the public with the right to request access to records from any public or private body. It is often described as the law that keeps citizens in the know about their government. Public bodies are required to disclose any information requested under the **PAIA** unless it falls under one of **twelve (12)**

<sup>22</sup> Section 25(1) of PAIA

<sup>23</sup> Section 26(1) of PAIA

<sup>24</sup> Section 26(3) of PAIA - the extension notice must state that the requester may lodge an internal appeal, complaint to the Information Regulator or an application with a court, as the case may be, against the extension, and the procedure (including the period) for lodging the internal appeal, complaint to the Information Regulator or application, as the case may be.

**exemptions** or reasons why access to records of a public body may or must not be granted<sup>25</sup> and seven (7) exemptions or reasons why access to records of private body may or must not be granted<sup>26</sup>. The nineteen (19) exemptions provided for in **PAIA** are intended to protect interests such as personal privacy, national security, and law enforcement.

19.2 The guiding principle underlying the administration of **PAIA** is the presumption of openness. This means that any reason for limiting this openness must be justifiable. Public bodies should also consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they must sever or redact the information that cannot be disclosed and disclose the rest.

### 19.3 Types of responses to requests

19.3.1 When a request for access to a record is made, the Information Officer or Deputy Information Officer must, if a request for access to a record is granted or refused, inform the requester of -

- (a) his or her decision; and
- (b) the fees payable, if any,

on a form that corresponds substantially with **Form 3** of Annexure A to the Regulations:

19.3.2 However, **PAIA** provides a list of reasons or grounds (exemptions) (see paragraphs 19.4 and 19.6 below) why the request may or must be refused. This is important, as the request can only be refused on the basis of one of these listed grounds for refusal of access to records.

19.3.3 Despite the above-mentioned reasons for refusal of access to records, the Information Officer of a public body must grant a request for access to a record of the body if the public interest in the disclosure of the record clearly outweighs the harm contemplated in the listed reasons for refusal<sup>27</sup>. This means the requester can rely on public interest whenever any of the grounds of refusal of access to records is being invoked.

19.3.4 In short, the reasons behind why information cannot be disclosed relate to whether the disclosure of the information would cause more harm than non-disclosure would. There are two different types of listed grounds for refusal for access to records of a body:

<sup>25</sup> Chapter 4 of PAIA- grounds for refusal of access to records (section 34-45 of PAIA)

<sup>26</sup> Chapter 4 of PAIA -grounds for refusal of access to records (section 63-69 of PAIA)

<sup>27</sup> Section 46 of PAIA

## 19.4 Mandatory grounds of refusal (grounds of exemption)

19.4.1 With mandatory grounds, the Information Officer or Deputy Information Officer must refuse a request because they apply to the record.

19.4.2 There are more mandatory grounds than discretionary grounds. The following are the mandatory grounds of refusal, and the Information Officer or Deputy Information Officer must refuse a request because they apply to the record –

### 19.4.2.1 **Mandatory protection of privacy of third party who is a natural person;**

The Information Officer of a public or private body must not allow a requester access to the personal information of another person if it amounts to ‘an unreasonable disclosure’. The sections themselves indicate a few reasons when this does not apply, like when records are already in the public knowledge, or where a person has given consent. The consent issue is particularly important as it connects to another part of the process the requester should be aware of, which relates to third party notifications, in terms of chapter 5 of **PAIA**.

### 19.4.2.2 **Mandatory protection of certain records of the South African Revenue Service;**

The Information Officer of **SARS** must not allow a requester access to records obtained, or held, by **SARS** for its revenue collection purposes. However, records obtained or held by **SARS** may not be refused if a request is done by personal requester or the person on whose behalf the request is made.

### 19.4.2.3 **Mandatory protection of commercial information of third party;**

The Information Officer of a body must not allow a requester access to the commercial information of another person (in other words, who is not the requester or requestee. This would include information like trade secrets, or that might threaten that third party’s commercial interests. For example, **KFC** use certain recipes, including some ingredients manufactured by a third party, which are the trade secrets of that third party and its disclosure might threaten the commercial interests of that third party.

19.4.2.4 **Mandatory protection of certain confidential information, and protection of certain other confidential information, of a third party;**

The Information Officers of both a public and private body must not allow a requester access to a record if its release would amount to a breach of a duty of confidence owed to a third party in terms of an agreement or contract.

19.4.2.5 **Mandatory protection of safety of individuals, and protection of property;**

The Information Officer of both a public or private body must not allow a requester access to a record if its release could reasonably be expected to compromise the safety of an individual. In the same sections, it also states that the Information Officer of a body may refuse access if it would be likely to impair the security of a building or property.

19.4.2.6 **Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings;**

The Information Officer of a public body must not allow a requester access to records like bail proceeding records that are already protected by section 60 of the Criminal Procedure Act. In the same section, it also states that an Information Officer of a public body may refuse access to records of law enforcement that reveal its methods, techniques, procedures for prevention of crimes, or prosecution of crimes, as well as certain other records relevant to legal proceedings that are happening.

19.4.2.7 **Mandatory protection of records privileged from production in legal proceedings;**

The Information Officer of a private body must not allow a requester access to a record if the record is privileged from production in legal proceedings, unless the person entitled to the privilege has waived the privilege.

19.4.2.8 **Mandatory protection of research information of third party, and protection of research information of public or private body.**

The Information Officer of a body must not allow a requester access to a record if the record relates to research that is, or will be, undertaken by the body in question and its release would be likely to expose the researcher, the third party or the matter under research to a serious disadvantage.

19.4.3 Please note that the above mandatory grounds for refusal of access to records are somewhat the same for public and private bodies, except for the mandatory protection of certain records of South African Revenue Service, of police dockets in bail proceedings, of law enforcement and of legal proceedings, which are only applicable to public bodies.

19.4.4 If only part of the record is linked to an exemption ground, the Information Officer or Deputy Information Officer of both a public or private body is under an obligation to consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they should take reasonable steps to sever or redact that part that cannot be released to the requester and grant access to the rest of the record.

## 19.5 Deemed refusal of request<sup>28</sup>

19.5.1 A failure to respond properly to a request within the correct timeframe is considered to be a 'deemed refusal'. This is important, because **PAIA** allows the requester to challenge a decision when no decision has been made and the request has been ignored. The requester would merely state in the internal appeal that no response was received.

19.5.2 Request for access to records is deemed to be a refusal after the expiry of 30 days or any extended period and the public or private body fails to respond.

## 19.6 Discretionary grounds of refusal

19.6.1 With discretionary grounds, an Information Officer or Deputy Information Officer may consider whether or not to refuse a request because the grounds apply to the record requested. Because it is a discretion, the Information Officer must apply his/her mind objectively when considering the different grounds, which are:

### 19.6.1.1 **South Africa's defence, security and international relations:**

The Information Officer may refuse access if the release of the information could reasonably be expected to threaten the defence or security of the country. This could also apply where the release of the information might harm South Africa's relations with another country, such as revealing records supplied in confidence.

### 19.6.1.2 **Economic, financial and commercial interests:**

The Information Officer may refuse access if its release will be harmful to the economic and financial status of the Republic;

<sup>28</sup> Section 27 and 58 of PAIA

19.6.1.3 **Operations of public bodies:** The Information Officer of a public body may refuse access if the release of the information could reasonably hamper operations, for example if it is trying to formulate policy, or deliberate on an issue;

19.6.1.4 **Manifestly frivolous or vexatious requests:** The Information Officers may refuse a request for information if they are of the opinion that processing requests will be unreasonably time consuming and lead to a waste of resources. In addition, they may refuse access to a record if the request is seen to be made by a requester to unnecessarily annoy or provoke.

## 20. MANDATORY DISCLOSURE OF RECORDS IN THE PUBLIC INTEREST

20.1 Even if a discretionary or mandatory ground for refusal exists in relation to a request for access to records of public or private bodies, there is always the possibility that the public interest in the disclosure of the record is more important than the harm created by the release of the record.

20.2 Where the importance of the public interest exists as stated above and the disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with, the law; or an imminent and serious public safety or environmental risk, then the Information Officer of a body must grant a request for access to a record despite the existence of the exemption grounds listed above.

## 21. THIRD PARTY NOTIFICATION PROCESS<sup>29</sup>

21.1 An Information Officer or Deputy Information Officer of a body is required, in terms of sections 47 and 71 of **PAIA**, to take all reasonable steps to inform a third party about a request for his or records that might be a record that contains either personal information,

21.1.1 a SARS record;

21.1.2 trade secrets;

21.1.3 Information the release of which could constitute grounds for an action for breach of a duty of confidence; or research information that could expose someone or the subject matter to serious damage.

21.2 The notice to the third party whose records or Information are subject of request should invite the third party to -

<sup>29</sup> Section 47 and 71 of PAIA

- 21.2.1 make written or oral representations to the Information Officer why the request for access should be refused; or
- 21.2.2 give written consent for the disclosure of the record to the requester.
- 21.3 Importantly for the requester, **PAIA** says that the written notices to the third party must be sent to the third party within 21 days of the request being received, and that the Information Officer or Deputy Information Officer must inform the requester that a notice has been sent to the third party.
- 21.4 Once that notification has been sent, the Information Officer or Deputy Information Officer must then make a final decision on whether or not to release the records **within 30 days** of that notice being sent.
- 21.5 The third party must be notified about the decision taken and adequate reasons for granting the request must also be provided. The third party must also be informed about the right and the procedure to challenge the decision as indicated in paragraph 22 below.

## **22. LEGAL REMEDIES AVAILABLE AGAINST A DECISIONS OR FAILURE TO TAKE A DECISION BY THE INFORMATION OFFICER OR DEPUTY INFORMATION OFFICER**

- 22.1 Action to take once a decision is made on a request
  - 22.1.1 A requester can make a follow-up action in writing, on the pending decision of an Information Officer or Deputy Information Officer. It is encouraged that all correspondence between a requester and the Information Officer or Deputy Information Officer must be in writing for future reference purposes.
  - 22.1.2 There are different processes for public and private bodies, especially regarding internal appeals. For instance, with regard to a request for access to a record of a public body, the requester must first submit an internal appeal before approaching the Regulator or Court. However, there is no internal appeal against a decision (whether granting or refusal to grant access to records) or deemed refusal of access to records of a private body.
  - 22.1.3 This section will explain the legal remedies available to requesters who wish to challenge such decisions, which include internal appeals, lodging a complaint to the Regulator and applications to Court. See also diagram of **PAIA** request process flow, in paragraph 27 below.

22.1.4 A requester may, amongst others, challenge the following decision of a private and/or public body -

22.1.4.1 the tender or payment of the request fee;

22.1.4.2 the tender or payment of a deposit;

22.1.4.3 the access fee to be paid is too excessive;

22.1.4.4 the form of access granted;

22.1.4.5 the refusal of the request;

22.1.4.6 the procedure (including the period) for lodging the internal appeal;

22.1.4.7 inappropriate time extension taken to respond to a request for access;

22.1.4.8 failure to disclose records;

22.1.4.9 the granting of a request for access to a record;

22.1.4.10 refusal to grant request to waive the fees;

## 22.2 Internal remedies

22.2.1 How does a requester appeal internally against a public body's decision?

22.2.1.1 An internal appeal can only be lodged, in terms of section 74 of **PAIA**, with the relevant authority of the national or provincial sphere of government or any municipality in the local sphere of government as the case may be<sup>30</sup>.

22.2.1.2 So for example, the City of Johannesburg is an example of a local sphere of government against which an internal appeal can be submitted. The Road Accident Fund or the Regulator is an example of a public body which is not part of the national, provincial or local sphere of government as it is set up by legislation, and therefore an internal appeal may not be lodged against it.

<sup>30</sup> Section 74(1) of PAIA

22.2.1.3 When a requester or a third party is unhappy with a decision made by the Information Officer or Deputy Information Officer of a national, provincial or local sphere of government, the requester or a third party has the right to file an internal appeal, in terms of section 74(1) or (2) of **PAIA**. The process for lodging an appeal is prescribed in the **PAIA** manual of that particular body and the manner for lodging an internal appeal is also detailed herein below.

22.2.1.4 If the response from the national, provincial or local sphere of government is a deemed refusal, in another words, it has failed to respond to a request within 30 days or any extended period, the requester may file an internal appeal, as per the processes outlined herein, before the requester may approach the Regulator or a Court.

### 22.3 **Preservation of records until final decision on request has been finally determined**

22.3.1 The Information Officer of a National, Provincial or Local sphere of government to which an internal appeal is applicable is required, in terms of section 21 of **PAIA**, to take appropriate steps that are reasonably necessary to preserve the record and cannot delete or destroy any re-requested record, until such time as all or any proceedings in an internal appeal or a complaint to the Regulator or an application to court, as the case may be, are finally determined.

22.3.2 This means that the information officer cannot delete or destroy any information requested, pending any process prescribed in paragraph 22.3.1. above.

### 22.4 **To whom should the internal appeal be directed to?**

22.4.1 Although the appeal will be considered by the relevant authority, an internal appeal must be delivered or sent to the Information Officer of the National, Provincial or Local Sphere of Government, as the case may be, at his address, fax number or electronic mail address<sup>31</sup>, the contact details of which can be found in the **PAIA** manual or as may be obtained from the Regulator.

22.4.2 The Information Officer of the national, provincial or local sphere of government, as the case may be, has a specific obligation, in terms of section 75(4) of **PAIA**, to submit the appeal to the

<sup>31</sup> Section 75(1)(b) of PAIA

appeal authority, together with his reasons for the decision under appeal. The submission of the appeal to the relevant authority must be done within 10 working days after receipt of the appeal.

## 22.5 Who is the relevant authority?

22.5.1 The relevant authority, herein referred to as “appeal authority” is generally the political head of the body concerned (although this function can be officially delegated) and specifically refers to the following person.

<b>Public body ("Government")</b>	<b>Relevant Authority ("Appeal Authority")</b>
<b>Office of the Presidency</b>	The person designated in writing by the President, if any, otherwise the President is the appeal authority.
<b>National Department</b>	Minister responsible for that department or the person designated in writing by that Minister.
<b>Office of a Premier</b>	The person designated in writing by the Premier.
<b>Provincial Department</b>	Member of the Executive Council (MEC) responsible for that Provincial Department or the person designated in writing by the MEC;
<b>Municipality</b>	The Mayor, the Speaker or any other person designated in writing by the Municipal Council of that municipality;

22.5.2 Any other case, where it is not the office of the premier: the member of the executive who is responsible for that public body or the person designated in writing by that member.

22.5.3 If the appeal authority approves the Information Officers’ decision, then the internal appeal is denied and the original

22.5.4 decision of the Information Officer stands. However, should the appeal authority disagree with the Information Officer's decision, then the appeal is granted and the original decision is overturned.

## 22.6 Who can lodge an internal appeal?

22.6.1 Any requester whose **PAIA** request for access to the records of National, Provincial or Local sphere of Government, as the case may be, has been refused, and believes that one of the appeal grounds listed in paragraph 22.2.4 above is applicable to their request, has the right to file an internal appeal.

22.6.2 Third parties can also file internal appeals against the decision made by an Information Officer to grant access to a record that concerns them. If the internal appeal involves a third party, the appeal authority who received the internal appeal is required to notify those third parties (so the responsibility shifts from the Information Officer to the appeal authority).

## 22.7 Period within which to lodge an appeal

22.7.1 An internal appeal must be lodged-

22.7.1.1 within **60 days**<sup>32</sup> after the decision was taken;

22.7.1.2 within **30 days**<sup>33</sup> after notice is given to the third party of the decision appealed against

22.7.2 Lodging an internal appeal after the above-mentioned period (late) may not be allowed, unless a valid reason for being late is provided to the appeal authority. An example, such as being hospitalised for more than 60 days may be accepted as valid reasons for being late.

22.7.3 If the appeal authority does not accept the late lodging of an internal appeal, it must provide you with reasons for rejecting the appeal and provide guidance of any additional information, if any, required in order to accept the appeal. The appeal authority must also advise you about the process to lodge a complaint against their decision with the Regulator or a court.

<sup>32</sup> Section 75(1)(a)(i) of PAIA

<sup>33</sup> Section 75(1)(a)(ii) of PAIA

22.7.4 As indicated above, your appeal must be submitted by the Information Officer to the appeal authority within 10 working days after receipt of an internal appeal<sup>34</sup>.

## 22.8 Notice of appeal by appeal authority to the requester or third party

22.8.1 The appeal authority must, as soon as is reasonably possible but in any event within **30 days** after the receipt of the internal appeal<sup>35</sup>, notify -

22.8.1.1 the third party to whom or which the record under appeal belongs, or

22.8.1.2 the requester about the internal appeal against the granting of a request for access.

22.8.2 A requester or a third party to whom or which notice is given, may within **21 days** after that notice is given, make written representations to the appeal authority why the request for access should or should not be granted.

## 22.9 Decision on internal appeal and notice thereof<sup>36</sup>

22.9.1 The appeal authority must decide the internal appeal as soon as reasonably possible but in any event within 30 days:

22.9.1.1 after the internal appeal is received by the Information Officer of a body;

22.9.1.2 after a third party is informed, as indicated in paragraph 22.8.1 above.

22.9.2 The decision of the appeal authority must be communicated to the appellant, third party and the requester. The decision of the appeal authority must be accompanied by adequate reasons for the decision, including the provision of **PAIA** or **POPIA** relied upon.

22.9.3 If the appeal authority fails to give notice of the decision on an internal appeal to the appellant within 30 days, the appeal is deemed to have been dismissed and the requester can proceed to lodge a complaint to the Regulator or approach the Court for appropriate relief<sup>37</sup>.

<sup>34</sup> Section 75(4) of PAIA

<sup>35</sup> Section 76(2)(a) of PAIA

<sup>36</sup> Section 77 of PAIA

<sup>37</sup> Section 77(7) of PAIA

## 22.10 Completing the internal appeal - Form 4

- 22.10.1 In order to appeal against any decision by a National, Provincial or Local sphere of Government, the requester must lodge his internal appeal by completing Form 4. Form 4 must be submitted to the Information Officer of the sphere of government concerned, who is then required to forward it to the appeal authority, as stated above.
- 22.10.2 Form 4 is available on the Regulator's website, <https://www.justice.gov.za/inforeg/>, as well as in the website of the sphere of Government concerned.
- 22.10.3 The Information Officer or Deputy Information Officer of the sphere of Government concerned is not under an express obligation to help the requester complete the internal appeal form; however, the requester may still request the Information Officer to assist him in this regard.
- 22.10.4 Below is the step-by-step process to complete the internal appeal form -

Information Required	Description
<b>Particulars of public body</b>	This section should contain the name of the National, Provincial for Local sphere of Government concerned, and the name and surname of the Information Officer.
<b>Particulars of appellant who lodges the internal appeal</b>	This section should be completed by the appellant, whether in representative capacity or not. The full names and surname, identity number and the capacity, in which an internal appeal is lodged on behalf of another person, if relevant, must be provided. If the appeal is being in a personal capacity, such capacity must be recorded. Additional information required includes the contact details of the requester:

Information Required	Description
	<p>postal address, email address, fax and/or telephone number. This information should be the same as in the original request. If the person filling in the form is the representative of the requester, proof of the capacity in which appeal is lodged must be attached to this form.</p>
<p><b>Particulars of person on whose behalf request is made (If lodged by a third party)</b></p>	<p>This section only needs to be completed by a person who is requesting information for another person. If the person submitting the internal appeal is not the person who originally requested the information, the particulars of the requester must be provided herein. If the request is in one's personal capacity this section need not be completed.</p>
<p><b>The decision against which the internal appeal is lodged</b></p>	<p>The form provides space for the requester to indicate with an "x", which of the listed appeal grounds applies to the appeal.</p>
<p><b>Grounds for appeal</b></p>	<p>Under this section, the requester is required to describe in detail why he thinks the appeal grounds apply. He is required to provide reasons(s) why he thinks the decision of the Information Officer is incorrect. He also needs to attach any documents which support the appeal. The list of reasons supplies in support of the appeal can be outlined in greater detail on a separate page, if the space provided in the form is not sufficient. The additional pages submitted should be signed.</p>

Information Required	Description
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There must be sufficient reasons and supporting information to enable the appeal authority makes an informed decision. Therefore, one must also include an outline of everything that has happened in the run-up to the internal appeal. On the separate page, one can refer to specific sections of **PAIA** as a basis for the appeal.

<p><b>Notice of decision on appeal</b></p>	<p>A space is provided for a description of the manner in which the decision must be sent, for example by post, couriered or facsimile or e-mail. Please select the preferred manner of notification.</p>
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22.10.5 Whilst there is no prohibition against getting a lawyer to assist at any stage of the request for information, the various **PAIA** processes are meant to be user-friendly removing the need for a lawyer and for legal fees to be incurred.

**23. COMPLAINT TO THE INFORMATION REGULATOR**

- 23.1 A requester or third party may only submit a complaint to the Regulator after that requester or third party has exhausted the internal appeal procedure against a decision of the Information Officer of a national, provincial or local sphere of government. This means that one can only submit one’s complaint, against a particular sphere of government to the Regulator if one is not happy with the decision of the appeal authority. The Regulator will reject the complaint if an appeal process to the relevant sphere of government has not been completed.
- 23.2 However, with regard to a public body (in respect of which an internal appeal is not applicable) and a private body, a requester or third party may submit a complaint to the Regulator, if not satisfied by the decision of the body concerned.
- 23.3 A complaint to the Regulator by a requester or third party must be lodged within 180 days of receipt of the decision from the body.

- 23.4 A requester may lodge a complaint with the Regulator, if not happy with -
  - 23.4.1 the outcome of an internal appeal to the appeal authority of any sphere of government;
  - 23.4.2 a decision of the appeal authority to disallow the late lodging of an internal appeal;
  - 23.4.3 a decision of the Information Officer of a public body that is not part of any sphere of government to -
    - 23.4.3.1 refuse a request for access; or
    - 23.4.3.2 extend the period to deal with request; or
    - 23.4.3.3 grant access in a particular form.
  - 23.4.4 a decision of the head of a private body to -
    - 23.4.4.1 refuse a request for access; or
    - 23.4.4.2 demand payment of the request fee, or a deposit of the access fee; or
    - 23.4.4.3 extend a period to deal with request; or
    - 23.4.4.4 grant access in a particular form.
- 23.5 A third party may lodge a complaint with the Regulator, if not happy with -
  - 23.5.1 the outcome of an internal appeal to the appeal authority of the relevant sphere of government;
  - 23.5.2 a decision of the Information Officer of a public body that is not part of any sphere of government to grant a request for access; or
  - 23.5.3 a decision of the head of a private body to grant a request for access to a record of that body,

## 23.6 How does one complain to Regulator?

- 23.6.1 complaint to the Regulator must be made in writing and a complaint form must be completed, either manually or online. A complaint form, Form 5, can be downloaded from the Regulator's website, <https://www.justice.gov.za/inforeg/>
- 23.6.2 This means that the Regulator will not accept a complaint telephonically; however, the Regulator is required to provide reasonable assistance to any person who wishes to make a complaint and this includes assistance regarding completing a complaint form.
- 23.6.3 If one is challenging the decision of the Information Officer of a private body, one must provide sufficient evidence to prove that the record requested is required for the exercise or protection of any other right(s). Access to the records of a private body can only be granted if one can prove that one intends exercising or protecting any other right(s) with the record requested.

## 23.7 What happens after receipt of the complaint?

- 23.7.1 Upon receipt of one's complaint, the Regulator must -
- 23.7.1.1 investigate the complaint and refer its findings to the Enforcement Committee for a decision; or
  - 23.7.1.2 take no action on the complaint due to the fact that -
    - 23.7.1.2.1 The complaint has not been submitted within the period of 180 days and there are no reasonable grounds to condone the late submission of a complaint;
    - 23.7.1.2.2 the complaint is frivolous or vexatious or not made in good faith; or
    - 23.7.1.2.3 having regard to all the circumstances of the case, any further action is unnecessary or inappropriate. For example, the information requested has been made publicly available.
  - 23.7.1.3 Where appropriate conciliate or use its best endeavours to secure such a settlement or assist the parties to settle their dispute(s); and

23.7.1.4 Advise the complainant and the Information Officer, to whom the complaint relates, of the course of action to be undertaken.

## 23.8 Regulator's first communication to the complainant and Information Officer regarding the complaint lodged

23.8.1 If the Regulator decides not to take any further action on the complaint, the Regulator will inform the requester of that decision and the reasons for not taking further action on the complaint.

23.8.2 If the Regulator decides to investigate a complaint, the requester will receive a letter advising him that the Regulator has decided to conduct an investigation.

23.8.3 Upon receipt of a complaint, the Regulator will forward the details of the complaint to the Information Officer of the relevant body, and request him to submit to the Regulator, a written response to the complaint.

## 23.9 Investigative powers of the Regulator

23.9.1 The Regulator has powers, in terms of section 77G(2) of **PAIA**, to -

23.9.1.1 use its best endeavours to secure such a settlement;

23.9.1.2 summon and enforce the appearance of persons before the Regulator;

23.9.1.3 compel them to give oral or written evidence on oath and to produce any records;

23.9.1.4 receive and accept any evidence and other information, whether on oath, by affidavit;

23.9.1.5 enter and search any premises occupied by a responsible party;

23.9.1.6 conduct a private interview with any person in any premises entered; and

23.9.1.7 carry out in those premises any inquiries that the Regulator deems fit.

## 23.10 **Assessment of compliance with the provisions of PAIA**

- 23.10.1 The Regulator may conduct an assessment on whether a public or private body generally complies with the provisions of this **PAIA**.
- 23.10.2 The Regulator may randomly conduct a compliance assessment on a body, of its own volition, however, the Regulator can also conduct the compliance assessment upon request by or on behalf of the Information Officer of a body or any other person. This means that any person may request the Regulator to conduct compliance assessment on a body. A person can also submit an anonymous request to conduct a compliance assessment, by indicating that he or she request to remain anonymous.
- 23.10.3 The Regulator will provide the person who requested the assessment with the assessment report and a recommendation of action to be undertaken, if any.

## 23.11 **Information Notice**

The Regulator may serve the Information Officer of a body with an Information Notice requiring said party to furnish the Regulator with information specified in the notice. For example, if a complaint lodged with the Regulator relates to a refusal of access based on any of the exempted grounds, the Regulator may request, in an Information Notice, copies of the records to which access has been refused in order to determine if the reasons for refusal are valid or not.

## 23.12 **Establishment of Enforcement Committee**

- 23.12.1 The Regulator is required to establish an Enforcement Committee<sup>38</sup>, which has powers to -
- 23.12.1.1 consider all matters referred to it by the Regulator in terms PAIA and make a finding in respect thereof; and
  - 23.12.1.1 make any recommendation to the Regulator regarding any action that should be taken against the Information Officer of a body.

## 23.13 **Enforcement Notice**

- 23.13.1 The Regulator may, after having considered the recommendations of the Enforcement Committee, serve the Information Officer of a body with an Enforcement Notice -

<sup>38</sup> Section 50 of POPIA

23.13.1.1 confirming, amending or setting aside the decision which is the subject of the complaint; or

23.13.1.2 Requiring the Information Officer to take such action or to refrain from taking such action as the Information Regulator has specified in the notice.

#### 23.14 **What are consequences for non-compliance with Enforcement Notices?**

23.14.1 An Information Officer of a body who refuses to comply with an enforcement notice is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three years or to both such a fine and such imprisonment.

23.14.2 Section 77K of **PAIA** signifies the importance of the right of access to Information or records. This section also strengthens the importance of the Regulator in so far as promotion of right of access to information is concerned.

### 24. APPLICATION TO COURT

#### 24.1 **Who can file an application to court against a decision?**

24.1.1 requester or third party may only apply to a court for appropriate relief in terms of section 82 in the following circumstances:

24.1.1.1 After that requester or third party has exhausted the internal appeal process referred to in paragraph **22.3** above; or

24.1.1.2 After that requester or third party has exhausted the complaints procedure referred to in section 77A.

24.1.2 In terms of section 78(1) of **PAIA**, a requester or a third party has two options, either to refer a decision, listed in paragraphs 22.2.4, 23.4 and 23.5 above, to the Regulator or the Court. Whilst one is not compelled to approach the Regulator before approaching the Court, it is advisable that one should consider approaching the Regulator, as the Regulator has extensive and quick dispute resolution mechanisms, as opposed to the Court.

24.1.3 However, for the Court to have jurisdiction to adjudicate the matter, a requester or a third party must -

24.1.3.1 be aggrieved by either of the decisions, listed in paragraph 22.2.4, 23.4 or 23.5 above; or

24.1.3.2 have exhausted the complaints procedure with the Regulator or withdraw the complaint to the Regulator. This means that one cannot approach the Court if one's complaint is still pending with the Regulator.

24.1.4 If one is challenging the decision of an Information Officer of a private body, one needs to provide sufficient evidence to prove that the record requested is required for the exercise or protection of any other right(s).

## 24.2 **When can one file an application to Court against a decision of a body or Regulator?**

24.2.1 An application to Court by a requester or third party, who is either unsuccessful in an internal appeal to the appeal authority of the relevant sphere of government or aggrieved by a decision of the Information Officer of a body (listed in 22.2.4, 23.4 or 23.5 above) or that of the Regulator must be filed within 180 days from the date of the applicable event.

24.2.2 The Information Officer of a body or appeal authority of a Government, as the case may be, aggrieved by a decision of the Regulator may apply to a court for appropriate relief in terms of section 82, within 180 days<sup>39</sup>.

24.2.3 A requester, third party, or a body, may apply to court to have any of the decisions they are aggrieved by reviewed by the Court.

24.2.4 An application to Court under **PAIA** is done through civil proceedings, and should be used as a last resort.

24.2.5 Cases for access to information can be heard before the Magistrate's Courts, as a court of first instance<sup>40</sup>, and the High Court having jurisdiction.

24.2.6 Failing to bring the application within a period of 180 days may be condoned by the Court if one shows that the interests of justice so require. This means that the court may accept the late application if the issue to be adjudicated is found to be in the interests of justice.

<sup>39</sup> Section 78(4) of PAIA

<sup>40</sup> Section 91A of PAIA and Promotion of access to information Rules, 2019

If the records to which access is requested will assist one in applying for an appeal against imprisonment or assist one in getting further medical attention, for example, the court is likely to grant condonation in this regard.

24.2.7 An application may be brought in accordance with the procedure set out in rule 53 of the High Court Rules or in terms of rule 55 of the Magistrates' Court Rules if no records have or an incomplete record has been furnished by the administrator.

24.2.8 If the record has already been furnished, the application shall be brought in terms of rule 55 Magistrates' Court Rules, provided that where there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator, the applicant may proceed in accordance with the procedure set out in Rule 53 of the High Court Rules, at its election, but shall indicate in its founding affidavit why there is reason to believe that the full record has not been provided<sup>41</sup>.

### 24.3 **What is the legal status of the Regulator's decision pending the decision of the Court?**

The Regulator's powers are mainly sourced from the Constitution, **POPIA** and **PAIA**. As a result, the enforcement notice issued by the Regulator has legal consequences and is therefore binding until such time as the court of law has decided otherwise. The Regulator's decisions are therefore effective and enforceable unless directed otherwise by the relevant Court.

### 24.4 **What are orders the Court hearing an application may grant?**

24.4.1 The court (either Magistrates' or High Court) hearing an application may make the following orders -

24.4.4.1 confirm, amend or set aside the decision of either the Information Officer, or Appeal Authority or Information Regulator;

24.4.4.2 require the Information Officer or Appeal Authority to take such action or to refrain from taking such action as the Court considers necessary within a period mentioned in the order;

24.4.4.3 grant an interdict, interim or specific relief, a declaratory order or an order for compensation;

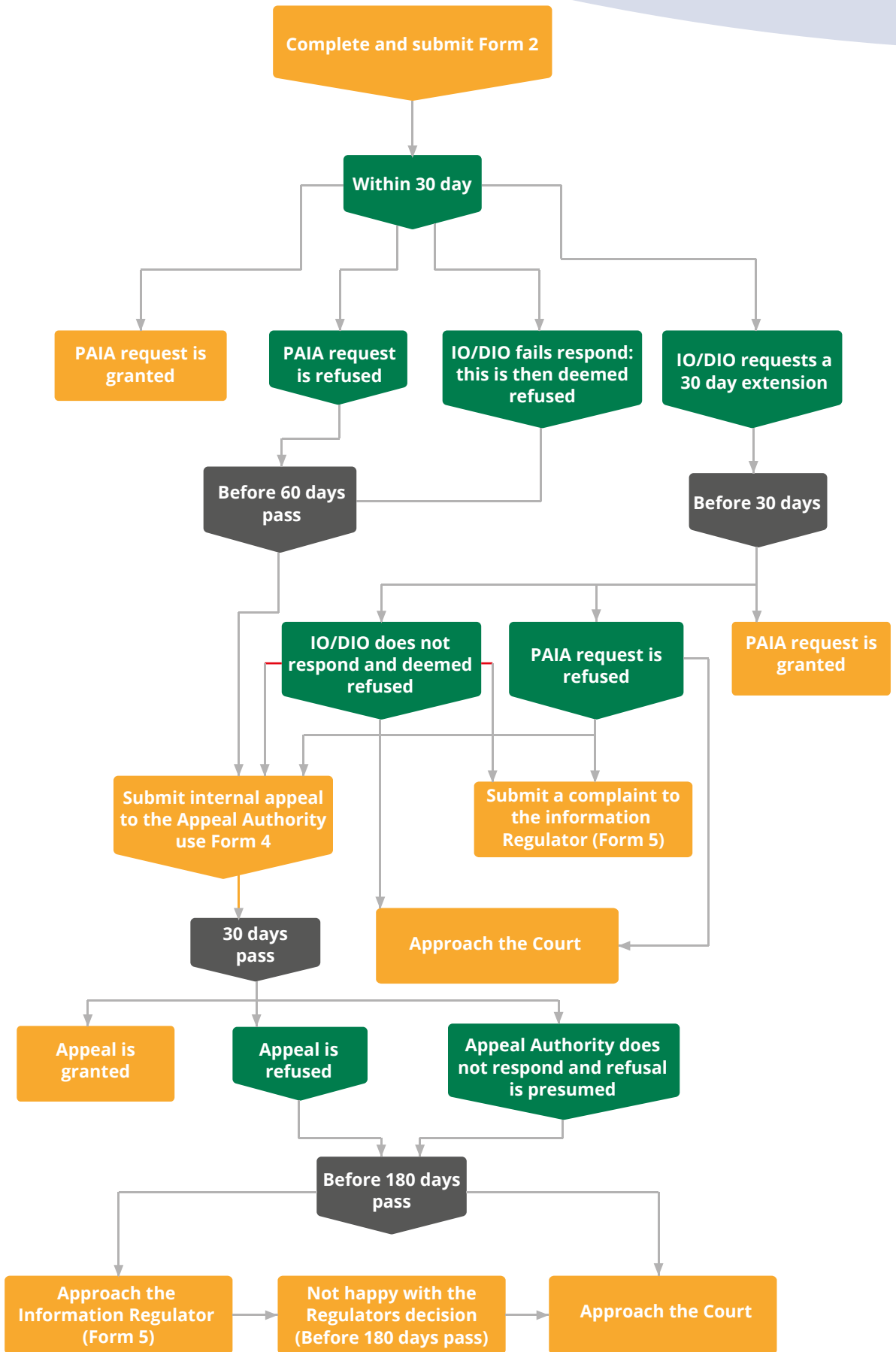
<sup>41</sup> Rule 4 Promotion of access to information Rules, 2019

24.4.4.4 make an order of costs against any party;

24.4.4.5 in the interests of justice, condone non-compliance with the 180-day period within which to bring an application. As indicated above, sufficient grounds for failure to adhere to the prescribed period must be explained in detail in the accompanying application for condonation.

## 25. DIAGRAM OF PAIA REQUEST PROCESS

Please refer to the step-by step process chart flow, on the processes to be followed when exercise the right of access to information.



## 26. REGULATIONS MADE IN TERMS OF SECTION 92 OF PAIA

26.1 In accordance with section 92(1) and 92(4) of **PAIA**, Minister made Regulations relating to the Promotion of Access to Information, covering the following matters

26.1.1 Obligations of Information Regulator (**Regulation 2**)

26.1.2 Obligations of information officer (**Regulation 3**)

26.1.3 Automatic availability of certain records of public body (**Regulation 4**)

26.1.4 Voluntary disclosure and automatic availability of certain records of

26.1.5 Availability of records of political parties (**Regulation 6**)

26.1.6 Request for access to information (**Regulation 7**)

26.1.7 Outcome of request and fees payable (**Regulation 8**)

26.1.8 Internal appeal against decision of information officer of public body (**Regulation 9**)

26.1.9 Lodging of complaints (**Regulation 10**)

26.1.10 Procedure regarding investigation of complaints (**Regulation 11**)

26.1.11 Settlement of matter (**Regulation 12**)

26.1.12 Conciliation of matter (**Regulation 13**)

26.1.13 Assessment (**Regulation 14**)

26.1.14 Electronic communication (**Regulation 15**)

26.1.15 Offences and penalties (**Regulation 16**)

26.2 In accordance with section 79(1) of **PAIA**, the Rules Board for Courts of Law, with the approval of the Minister, made rules of procedure for -

26.2.1 a court in respect of applications in terms of section 78 of **PAIA**; and

26.2.2 a court to receive representations ex parte referred to in section 80(3)(a)

## 27. KEY LEGISLATIONS, REGULATIONS, NOTICES AND ACKNOWLEDGEMENT

### Legislations, As May Be Amended From Time To Time

Promotion of Access to Information Act, Act 2 of 2000

Promotion of Administrative Justice Act, Act 3 of 2000

Promotion of Access to Information Amendment Act, Act 54 of 2002

Protection of Personal Information Act, Act 4 of 2013

Promotion of Access to Information Amendment Act, Act 31 of 2019

Political Party Funding Act, Act 6 of 2018

### Regulations and Notices

Government Notice	Date of Publications	Subject and Description
<b>Government Notice R.757 in GG No 45057</b>	27 August 2021	Regulations relating to the Promotion of Access to Information, 2021
<b>Government Notice R.991 in GG 28107</b>	14 October 2005	Regulations that prescribe the grounds under which a person is exempt from having to pay fees.
<b>Government Notice 397 in GG No. 44785</b>	30 June 2021	Exemption of certain private bodies from compiling <b>PAIA</b> Manual.
<b>Government Notice 1217 in GG 42717</b>	19 September 2019	Designation of Magistrate Courts as having the capacity to hear <b>PAIA</b> matters.
<b>Government Notice R.1284 in GG 42740</b>	4 October 2019	Rules of procedure for applications to be made in terms of <b>PAIA</b> before High Court or Magistrates Court.

## **ACKNOWLEDGEMENT**

This updated Guide on how to use **PAIA** was originally compiled by the South African Human Rights Commission (**SAHRC**) and the Regulator hereby acknowledges the original work of the **SAHRC**, including all its sources.

Issued by

**INFORMATION REGULATOR**



**INFORMATION  
REGULATOR  
(SOUTH AFRICA)**

*Ensuring protection of your personal information  
and effective access to information*



# **UMHLAHLANDLELA**

**WOKUSEBENZISA UMTHETHO  
2 KA-2000 WOKUGQUQUZELA UKUTHOLAKALA  
KOLWAZI, NJENGOBA UCHITSHIYELWE**

**ISIZULU**

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# PAIA GUIDE

## ISANDULELO ESIBUYA KUSIHLALO

UMthethosisekelo WeRiphabhuliki YaseNingizimu Afrika, Ka-1996<sup>1</sup> ("uMthethosisekelo") uthi iNingizimu Afrika ingumbuso ozimele, ongowentando yeningi osekelwe ekuthuthukisweni kwamalungelo abantu nasohlelweni lokuphatha oluqotho, olusabelayo nolusobala njengengxenywe yezimiso zayo. Ngaphambi kokuba iNingizimu Afrika ibe yizwe lentando yeningi elawulwa umthethosisekelo noMthethosivivinywa Wamalungelo ophoqelekayo, uhlelo lukaHulumeni eNingizimu Afrika phakathi kokunye, lwaphumela kusiko lokuba nemfihlo nokungasabeli ezinhlangothini zomphakathi nezizimele okwakuvame ukuholela ekusetshenzisweni kabi kwamandla nasekwepulweni kwamalungelo abantu. Kungalesi sizathu isigaba 32(1) soMthethosivivinywa Wamalungelo kuMthethosisekelo, sihlizakela ilungelo lokutholakala kolwazi olugcinwe umbuso; kanye nanoma yiluphi ulwazi olugcinwe ngomunye umuntu oludingekayo ukuze kusetshenziswe noma kuvikelwe noma yimaphi amalungelo. Isigaba 32(2) soMthethosisekelo sona sihlizakela ngokushaywa komthetho kazwelonke ozokwenza ukuba leli lungelo lisebenze, ngokuhlonipha, ukuvikela, ukugqugquzela nokufeza leli lungelo.

UMthetho Wokugqugquzela Ukutholakala Kolwazi, onguNombolo 2 ka-2000 (kusukela lapha ozobizwa nge-"**PAIA**", noma "uMthetho" ngokushintshana), njengoba uchitshiyelwe, ungumthetho kazwelonke owashaywa ngokwesigaba 32(2) somthethosisekelo oshiwo ngenhla.

Inhloso ye-**PAIA**, iwukukhuthaza isiko lokubeka izinto obala nobuqotho ezinhlangothini zomphakathi nezizimele. Ikwenza lokho ngokwenza lisebenze ilungelo lokutholakala kolwazi futhi ikhuthaze ngenkuthalo ukuba nomphakathi lapho abantu baseNingizimu Afrika bekwazi khona ngempumelelo ukuthola ulwazi oluzobenza bakwazi ngokugcwele ukusebenzisa nokuvikela wonke amalungelo abo kanye nokufeza izinhloso zeNingizimu Afrika zentando yeningi evulekile nehlangothini izakhamuzi.

Lo Mhlahlandlela We-**PAIA** wenzelwe ukufeza isibopho soMlawuli Wezolwazi ("uMlawuli") ngaphansi kweSigaba 10 se-**PAIA**, esidinga ukuba uMlawuli abuyekeze futhi enze utholakale uMhlahlandlela okhona ohlanganiswe yiKhomishini Yamalungelo Abantu YaseNingizimu Afrika.

Lo Mhlahlandlela wenzelwe ukuba ube yithuluzi eliqondisayo, elisebenziseka kalula futhi elitholakalayo kunoma yimuphi umuntu ofisa ukusebenzisa noma yiliphi ilungelo elikwi-**PAIA** nakuMthetho Wokuvikelwa Kwemininingwane Yomuntu, Ka-2013.



**Ummeli Pansy Tlakula**  
**USIHLALO WOMLAWULI WEZOLWAZI**

<sup>1</sup> UMthethosisekelo WeRiphabhuliki YaseNingizimu Afrika, Ka-1996 (UMthetho Nombolo 108 Ka-1996)

## ISITATIMENDE SOKUZIHLANGULA

Lo Mhlahlandlela awukhululi umuntu owusebenzisayo emthwalweni wokusebenzisa amakhono akhe nokunakekela kwakhe maqondana nemfuneko noma izibopho ezibekwe yinoma yimuphi umthetho. Ngaphezu kwalokho, lo Mhlahlandlela awuhlinzeki ngezululeko zezomthetho futhi awuhloselwe ukungena esikhundleni se-**PAIA** noma iMithethonqubo ekhishwe ngaphansi kwe-**PAIA**. UMLawuli akavumi cala nganoma yikuphi ukulahlekelwa okungase kubangelwe ukuncika kulo Mhlahlandlela.

### 1. UHLU LWAMAGAMA NEZIFINYEZO

<b>CEO</b>	UMqondisi Omkhulu
<b>CFO</b>	Umqondisi Wezezimali
<b>UMthethosisekelo</b>	UMthethosisekelo WeRiphabhuliki YaseNingizimu Afrika, UMthetho Nombolo 108 Ka-1996
<b>DIO</b>	ISekela LeSikhulu Sezolwazi
<b>Doj &amp; CD</b>	UMnyango Wezobulungiswa Nokuthuthukiswa KoMthethosisekelo
<b>IO</b>	ISikhulu Sezolwazi
<b>Members</b>	Amalungu OMLawuli Wezolwazi
<b>Minister</b>	UNgqongqoshe WezoBulungiswa Nezinkonzo Zokuqondiswa Kwezigwegwe
<b>PAIA</b>	UMthetho Nombolo 2 Ka-2000 Wokugquguzela Ukutholakala Kolwazi, njengoba uchitshiyelwe
<b>PAJA</b>	UMthetho Wezobulungiswa Bokuphatha, Ka-2000
<b>PFMA</b>	UMthetho Nombolo 1 Ka-1999 Wokuphathwa Kwezimali Zomphakathi, njengoba uchitshiyelwe
<b>POPIA</b>	UMthetho Nombolo 4 Ka-2013 Wokuvikelwa Kwemininingwane Yomuntu
<b>Regulator</b>	UMLawuli Wezolwazi
<b>SAHRC</b>	IKhomishini Yamalungelo Abantu YaseNingizimu Afrika

### 2. AMAGAMA AWUSIZO ACHAZWA NGENDLELA ECACILE NEQONDAKALA KALULA

Igama	Incazelo
<b>Inkokhiso Yokuthola Ulwazi</b>	Le nkokhiso yokuthola ulwazi ikhokhwa ngumceli enhlanganweni acela kuyo ulwazi, ukukhokhela izindleko zokufuna nokukopisha amarekhodi awadingayo. Izinto ongazikhokhiselwa zinqunywa ngumthethonqubo.
<b>Umpathi</b>	Wuphiko lukahulumeni noma yimuphi umuntu wemvelo noma ongokomthetho owenza isenzo sokuphatha.

**Igama****Incazelo****Isenzo sokuphatha**

Yinoma yisiphi isinqumo esithathiwe, noma ukwehluleka ukuthatha isinqumo

- (a) yinhlango kahulumeni, lapho:
- (i) isebenzisa amandla ngokoMthethosisekelo noma ngokomthethosisekelo wesifundazwe; noma
  - (ii) isebenzisa amandla omphakathi noma yenza umsebenzi womphakathi ngokwanoma yimuphi umthetho; noma
- (b) umuntu wemvelo noma ongokomthetho, ngaphandle kwenhlango kahulumeni, lapho esebenzisa amandla omphakathi noma enza umsebenzi womphakathi ngokwezinhlinzeko zokufukuba abantu.

esithinta kabi amalungelo anoma yimuphi umuntu futhi esinomthelela oqondile emalungelweni omuntu.

**Umuntu Ogunyaziwe**

Umuntu ogunyaziwe ngumuntu owenza isicelo esenzela omunye umuntu, futhi ogunyazwe ngokufanelekile ngento ebhalwe phansi ukuba enze lokho.

**Amarekhodi Atholakala Ngokuzenzekelayo**

Lawa ngamarekhodi lawo inhlango yomphakathi noma ezimele ezowahlinzeka umceli ngaphandle kokuba kudingeke afake isicelo. Lawa marekhodi afakwe 'kwisaziso sokudalula ngokuzithandela', okufanele sikhishelwe umphakathi.

**Umninilwazi**

Ngumuntu lowo imininingwane emayelana naye.

**Izinsuku**

Ngaphandle kwalapho kucaciswe 'njengosuku lokusebenza' esigabeni se-**PAIA**, usuku luthathwa njengosuku lwekhalenda. Ukubala isikhathi, usuku esamukelwe ngalo isicelo alubalwa, futhi zonke izinsuku ngemuva kwalokho ziyabalwa, kuhlangele nezimpelasonto namaholide omphakathi kuze kube yilapho kubalwa usuku lokugcina. Uma usuku lokugcina lokuphendula isicelo lungeSonto noma ngeholidi lomphakathi, usuku olulandelayo yilo olubalwa njengosuku lokugcina.

**Kubhekwa Njengokwenqatshwa**

Uma kungatholakali mpendulo esicelweni phakathi nesikhathi esinqunyiwe, lokhu kuchazwa ngokuthi 'kubhekwa njengokwenqatshwa'.

**IFomu 2**

Leli fomu linqokomthethonqubo futhi kufanele lisetshenziselwe ukucela ukuthola ulwazi olugcinwe inhlango yomphakathi noma ezimele.

**IFomu 4**

Leli fomu linqokomthethonqubo futhi kufanele lisetshenziswe lapho kufakwa isikhalazo ngesinqumo esenziwe yinhlango yomphakathi maqondana nesicelo sokuthola ulwazi.

**Igama****Incazelo****UMhlahlandlela**

Lo Mhlahlandlela, owenziwe ngokulandela isigaba 10 se-**PAIA**, njengoba ichitshiyelwe, ohlose ukusiza umuntu ofisa ukusebenzisa noma yiliphi ilungelo elikwi-**PAIA** nakuMthetho Ka-2013 Wokuvikelwa Kwemininingwane Yomuntu.

**ISikhulu Sezolwazi**

ISikhulu Sezolwazi ngumuntu ogunyaziwe ukusingatha izicelo ze-**PAIA**. Lokhu okulandelayo yizinhlu zeZikhulu Zezolwazi enhlangweni ethile -

<b>Inhlangano Yomphakathi noma Uphiko Lukahulumeni</b> (njengoba kuchazwe esigabeni 239 so Mthethosisekelo)	UMnyango Kazwelonke	UMqondisi-Jikelele noma umuntu obambeke
	UMnyango Wokuphatha ESifundazweni	INhloko Yomnyango noma umuntu obambeke.
	UMasipala	UMphathi KaMasipala noma umuntu obambeke.
	Izinhlangano Zikahulumeni ezishiwo kwi-PFMA Isheduli 1, 2, 3A, 3B, 3C no-3D	UMqondisi Omkhulu noma umuntu obambeke.
<b>Inhlangano Ezimele</b>	Umuntu Wemvelo	Umnikazi ozimele yedwa owenza noma yikuphi ukuhweba, ibhizinisi noma umsebenzi, kodwa esebenza ngaphansi kwalokho akwenzayo hhayi yena qobo.
	Umfelandawonye	Noma yimuphi umlingani womfelandawonye noma yimuphi umuntu ogunyazwe ngokufanele ngumfelandawonye
	Iqembu Lezepolitiki	Umholi weqembu lezepolitiki noma yimuphi umuntu ogunyazwe ngokufanele yilowo mholi.

**Igama****Incazelo****ISikhulu  
Sezolzazi**

	Umuntu Ongokomthetho	<p>UMqondisi Omkhulu noma uMqondisi Ophethe noma isikhulu esilingana nomuntu ongokomthetho noma yimuphi umuntu ogunyazwe ngokufanele yilesi sikhulu.</p> <p><b>PHAWULA:</b> UMqondisi Omkhulu noma isikhulu esilingana naye singagunyaza noma yimuphi umuntu wemvelo abe yiSikhulu Sezolzazi eNhlanganweni Ezimele.</p>
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**ISekela  
LeSikhulu  
Sezolzazi**

ISekela LeSikhulu Sezolzazi ngumuntu oqokwe noma onikezwe amandla yiSikhulu Sezolzazi enhlanganweni yomphakathi ukuba asize umceli ngesicelo sakhe solwazi, futhi lowo iSikhulu Sezolzazi esingamnikeza amanye amandla e-**PAIA**.

**PHAWULA:** Nakuba kuyinhlango yomphakathi kuphela engaqoka noma idlulisele umsebeni kwiSekela LeSikhulu Sezolzazi, ngokwesigaba 17(1) se-**PAIA**, uMthetho Ka-2013 Wokuvikelwa Kwemininingwane Yomuntu ("**POPIA**") unikeza amandla okuqoka iSekela LeSikhulu Sezolzazi enhlanganweni ezimele, ngokwesigaba 56(1) esikuwo.

**UMlawuli  
Wezolzazi**

IHhovisi LoMlawuli Wezolzazi selisunguliwe, ngokwesigaba 39 se-**POPIA**, ukuqapha nokuphoqelela ukulandelwa kwe-**POPIA** ne-**PAIA**. Kulo Mhlahlandlela iHhovisi LoMlawuli Wezolzazi noma uMlawuli Wezolzazi ubizwa ngokuthi uMlawuli.

**Isikhalazo  
Sangaphakathi**

Isikhalazo sangaphakathi yinqubo yokuphikisa isinqumo esithathiwe mayelana nesicelo se-**PAIA** enhlanganweni yomphakathi, okumele iphothulwe ngaphambi kokuba isikhalazo siyiswe kuMlawuli noma enkantolo efanele.

**Inhlangano  
Ezimele**

Inhlangano ezimele ingumuntu, inkampani noma olunye uhlobo lwenhlangano engokomthetho eyenza uhwebo, ibhizinisi noma umsebenzi, ebandakanya neqembu lezopolitiki.

Igama	Incazelo
<b>Inhlangano Yomphakathi</b>	Inhlangano yomphakathi isho umnyango kahulumeni noma omunye umkhakha noma isikhungo, esenza umsebenzi womphakathi. Kodwa-ke, maqondana nesikhalazo sangaphakathi, noma ikuphi ukubhekisela “kwinhlangano yomphakathi” kuye kwashintshelwa kwelithi “uHulumeni”, ukuze kugwenywe ukudideka maqondana nezinhlangano zomphakathi lapho isikhalazo ngesinqumo singasebenzi khona.
<b>Irekhodi</b>	Irekhodi liwunoma yiluphi ulwazi olurekhodiwe kungakhathalekile ukuthi ngayiphi indlela, okubandakanya, mgokwesibonelo, amadokhumenti abhaliwe, izinto ezilalelwayo, izinto eziyidijithali nezevidiyo. Irekhodi elicelwe enhlanganweni yomphakathi noma ezimele libhekisela kwirekhodi elisezandleni zaleyo nhlangano kungakhathalekile ukuthi leyo nhlangano yiyo eyalenza lelo rekhodi noma cha.
<b>Imithethonqubo</b>	I-PAIA ivumela uNgqongqoshe ukuba akhiphe imithethonqubo elekelela lo Mthetho, okumele ishicilelwe kuSomqulu KaHulumeni, futhi ihlanganisa izindaba ezifana namafomu okufanele asetshenziswe nezimali ezingakhokhiselwa izinqubo ezithile.
<b>Igunya Elifanele</b>	I-PAIA isebenzisa igama elithi ‘igunya elifanele’ ukuchaza umuntu okuHulumeni Kazwelonke, Wesifundazwe noWasekhaya lowo isikhalo sangaphakathi okufanele sifakwe kuye, ngokuvamile okuba yinhloko yezepolitiki kuleyo nhlangano ethintekayo (lo msebenzi unganikwa omunye umuntu ngokusemthethweni).

### 3. IMININGWANE YOKUXHUMAA NOMLAWULI

#### ISikhulu Sezolwazi

**Umqondisi Omkhulu:**

**Okuthintwana Naye:**

**Imeyli:**

Mnuz Mosalanyane Mosala

Nksz Ntombizodwa Harrieth Rikhotso

[NtoRikhotso@justice.gov.za](mailto:NtoRikhotso@justice.gov.za)

**Isekela LeSikhulu Sezolwazi:**

**Imeyli:**

Nksz Varsha Sewlal

[VarSewlal@justice.gov.za](mailto:VarSewlal@justice.gov.za)

**Ikheli Lomgwaqo: :**

JD House, 27 Stiemens Street  
Braamfontein  
Johannesburg  
2001

**Ikheli Leposi:**

P.O. Box 31533  
Braamfontein  
Johannesburg  
2017

**Ucingo:**

010 023 5200

## 4. INHLOSO YALO MHLAHLANDLELELA WE-PAIA

- 4.1 Inhloso yalo Mhlahlandlela iwukuhlinzeka ngolwazi oludingwa yinoma imuphi umuntu ofisa ukusebenzisa noma yiliphi ilungelo eliseMthethweni Ka-2000 Wokugqugquzela Ukutholakala Kolwazi (**PAIA**) kanye noMthetho Ka-2013 Wokuvikelwa Kwemininingwane Yomuntu ("**POPIA**"). Noma yimuphi umuntu, kungakhathalekile ubuzwe bakhe, angafaka isicelo sokuthola ulwazi ngaphansi kwe-**PAIA**.
- 4.2 Lo Mhlahlandlela uzosiza ngokukhethekile umuntu, obizwa nangokuthi umninilwazi, ukuthi angayithola kanjani imininingwane yakhe siqu ngokwesigaba 23 se-**POPIA**. Ngaphansi kwe-**POPIA**, umuntu noma umninilwazi unelungelo -
- 4.2.1 lokucela enhlanganweni ethintekayo ukuqinisekiswa, mahhala, ukuthi ingabe yiyo yini egcine leyo mininingwane ephathelene naye noma cha, kanye
- 4.2.2 nokucela enhlanganweni ethintekayo irekhodi noma incazelo yemininingwane yomuntu siqu emaqondana nomninilwazi egcinwe yinhlango ethintekayo, okubandakanya imininingwane yobunikazi babo bonke abantu besithathu, noma izigaba zabantu besithathu, abake noma abaye baluthola leyo mininingwane;
- 4.2.3 ukucela enhlanganweni ethintekayo -
- (a) ukulungisa noma ukucima imininingwane yomuntu siqu ephathelene nomninilwazi esezandleni noma engaphansi kwayo leyo nhlangano enganembile, engasebenzi, eyeqisayo, ephelwe yisikhathi, engaphelele, edukisayo noma etholwe ngokungemthetho; noma
- (b) ashabalalise acime irekhodi lemininingwane yomuntu siqu ephathelene nomninilwazi leyo inhlango ethintekayo engasavunyelwe ukuyigcina
- 4.3 Lo mhlahlandlela uzosiza nanoma yimuphi umuntu ekutheni angacela kanjani ukuthola amarekhodi ngaphansi kwe-**PAIA**. Lo Mhlahlandlela uzobuye usize abaceli:
- 4.3.1 ukuqonda i-**PAIA**, izinzuzo nomsuka wayo;
- 4.3.2 ukufunda inqubo yesinyathelo ngasinye ekwenzeni isicelo namacebiso engeziwe okwenza leyo nqubo ibe lula;
- 4.3.3 ukufunda izinhlobo zolwazi olungacelwa kusetshenziswa i-**PAIA**;
- 4.3.4 ukuqonda inqubo umceli angasiphikisa ngayo isinqumo esithathiwe maqondana nesicelo sakhe;

4.3.5 ukwethulwa ezinguqukweni ezizokwenzeka kwi-PAIA uma i-POPIA seyisebenza ngokugcwele

4.4 Lo mhlahlandlela uzosiza futhi abantu ekuqondeni ukuthi bangakuphikisa kanjani ukunikezwa kwemvume yokutholakala kwamarekhodi abo noma ukuthi bangalibamba kanjani iqhaza enqubweni yokuthola amarekhodi abo.

## 5. MAYELANA NE-PAIA

5.1 Ilungelo lokuthola Ulwazi “lingenye yezindlela eziphumelela kakhulu zokugcina izimiso zoMthethosisekelo ezizokuba *sobala, ukuvuleleka, ukubamba iqhaza nobuqotho*. Izimiso zomthethosisekelo ezishiwo ngenhla azinakufinyeleleka uma kunguhulumeni yedwa onolwazi oluqondisa izenzo nezinqumo zawo. Ngenxa yalokho, ukutholakala kolwazi akukhona nje kuphela ukuthi kuyisekelo sentando yeningi esebenza kahle, kodwa futhi kwandisa ukuthembela komphakathi kuhulumeni futhi kuqinisa ukuba kwawo semthethweni. Ezinye izinzuzo zelungelo lokuthola ulwazi ziwukuthi, ngokwesibonelo, kuthunaza ukukhwabanisa nenkohlakalo, ukungaqiniseki nokunye ukuziphatha okungafanele kuhulumeni.

5.2 Ngenkathi kubhalwa uMthethosisekelo waseNingizimu Afrika ngemva kokuwa koBandlululo ngeminyaka yawo-1990, izinhlangano ezahlukahlukene nabantu babekhankasela ukufakwa kwelungelo lokuthola ulwazi. Kwakwethenjwa ukuthi ukufakwa kwaleli lungelo kuMqulu Wamalungelo kuzoqinisekisa ukuthi izenzo zonya ezinjengoBandlululo ngeke ziphinde zenzeke, njengoba uhulumeni nezinhlangano ezizimele zazizophoqeleka ukuba zenze izinto ngobuqotho nangendlela esobala ngokunikeza imvume yokuthola ulwazi, futhi ngenxa yalokho, zingeke zikwazi ukucasha kwesithupha sokugcina imfihlo. Kwakubonakala njengesinyathelo esidingekayo ekusizeni ukwakha isiko lokuthethelela elingaholela ebudlelwaneni obuhle phakathi kwabantu, nalabo abaphethe. Kwelinye lamacala okuqala ukubhekana nombuzo wokuthi ingabe umuntu obekwe icala unalo yini ilungelo lokuthola lonke ulwazi oluqukethe edokodweni lamaphoyisa. UJones J wakuvuma ukubaluleka kwalo kule migomo:

***“Inhloso... iwukuyeka ukuqhutshekiswa kohlelo oludala lokuphatha, uhlelo lapho uhulumeni wayekwazi khona ukuphunyuka ekulandiseni ngezenzo zawo ngokwenqaba ukudalula ulwazi ngisho noma kwakunomthelela ekusetshenziseni noma ekuvikelweni kwamalungelo omuntu. Lokhu kungububi obenzelwe ukuvimbela [...] ubulungiswa obungavezeka nokuvuleleka kugqugquzela ukwethemba komphakathi ekuphathweni kwezindaba zomphakathi. Leli themba lingelinye lezimpawu zomphakathi obuswa ngentando yeningi lowo uMthethosisekelo owuphokophelelayo”.***

<sup>2</sup> Hoexter Administrative Law 94

<sup>3</sup> 1994 (1) SACR 635 (E)

- 5.3 Isigaba 32 soMthethosisekelo sivikela ilungelo lokutholakala kolwazi olugcinwe yizinhlangano zomphakathi nezizimele. Isigaba 32 siphinde sithi kufanele kushaywe umthetho ozolenza lisebenze ilungelo lokutholakala kolwazi ngokuchaza izindlela ulwazi olungatholwa ngayo ezinhlanganweni zomphakathi nezizimele, nangokuhlinzeka ngezizathu lapho inhlangano yomphakathi nezimele inganqaba khona nemvume yokuthola ulwazi.
- 5.4 I-**PAIA** yenziwa ngenxa yalokho okushiwo ngumthethosisekelo ngenhla, futhi yaqala ukusebenza kakhulu ngoMashi 2001. Amazwi ayo esingeniso ayavuma ukuthi “kwakunesiko lokugcina imfihlo nokungasabeli” esikhathini sangaphambi kwentando yeningi, futhi ayasho ukuthi enye yezinhloso ze-**PAIA** “ukukhuthaza isiko lokwenza izinto obala nokulandisa ngezenzo zezinhlangano zomphakathi nezizimele.”
- 5.5 I-**PAIA** yenzelwe ukuwenza asebenze amalungelo omuntu okuthola ulwazi nokulandisa ngezenzo. Iklanyelwe ukunika abantu amandla okusebenzisa umthetho, futhi isiza ekwenzeni lula ukucela ukuthola ulwazi ngezindlela ezihlukahlukene. Umuntu akadingi ummeli ukuze enze isicelo sokuthola ulwazi ngokwemigomo ye-**PAIA**

## 6. IZINHLOSO ZE-PAIA

- 6.1 Izinhloso ze-**PAIA** akukhona ukuba ithathe isikhundla selungelo elingokomthethosisekelo, kodwa ukwenza lisebenze ilungelo elisesigabeni 32 kuye ngemikhawulo evumelekile, nangendlela esiza ukulinganisana kwawo wonke amanye amalungelo aqukethwe kuMthethosisekelo. Ithemba ukugqugquzela isiko lamalungelo abantu nobulungiswa bezenhlalo kubantu, ezinhlanganweni zomphakathi nasezinhlanganweni ezizimele. I-**PAIA** ifuna ukugqugquzela ukwenza izinto obala, ngokuqotho nokuphathwa ngendlela efanele kwazo zonke izinhlangano (zikhahulumeni nezizimele) ngokunika abantu amandla okuqonda amalungelo abo okuthola ulwazi, bawasebenzise, futhi bahlolisise, futhi babe neqhaza, ekwenziweni kwezinqumo ezibathintayo.
- 6.2 Ilungelo lokuthola ulwazi liyilungelo elinamandla amakhulu elingokomthethosisekelo, njengoba lisiza abantu ukuba babone amanye amalungelo. Umuntu angalisebenzisa ukusiza ukuqapha nokuhlola ukulethwa kwezinsizakalo zikhahulumeni, noma ukuthola amarekhodi omlando angase awadinge.
- 6.3 Izinhloso ze-**PAIA** yilezi -
- 6.3.1 ukwenza lisebenze ilungelo elingokomthethosisekelo lokuthola
- 6.3.1.1 noma yiluphi ulwazi olugcinwe uHulumeni; kanye
- 6.3.1.2 noma yiluphi ulwazi olugcinwe ngomunye umuntu futhi oludingekayo ekusetshenzisweni noma ekuvikelweni kwanoma imaphi amalungelo.

- Imfuneko ephathelene nokuvikelwa kwamalungelo igcinwe olwazini olusezandleni zenhlangano ezimele. Ngenxa yalokho, izinhlangano ezizimele azibophekile ngezinga eliqine kakhulu lokwenza izinto ngendlela esobala njengoba kunjalo ngezinhlangano zomphakathi. Izinhlangano ezizimele, ngamanye amazwi, zinelungelo lokugcina imininingwane yazo ikuzo kuphela, ngaphandle uma leyo mininingwane idingeka ekuvikelweni amalungelo.
- I-**PAIA** iyaqaphela, ngokweSigaba 8(1) sayo, ukuthi inhlangano ingase ibe “eyomphakathi” noma “ezimele” ngezinhloso zoMthetho kuye ngokuthi irekhodi elisekudwini “lithintene yini nokusetshenziswa kwamandla noma ukusebenza kwenhlangano yomphakathi noma kwenhlangano ezimele.”

### 6.3.2 ukwenza lelo lungelo lisebenze -

6.3.2.1 kuncike emikhawulweni evumelekile, okubandakanya, kodwa kungagcini lapho, imikhawulo ehlose ukuvikela imfihlo ngendlela efanele, imfihlo yezebhizinisi nokuphatha ngendlela ephumelelayo, esebenzayo nekahle; futhi

6.3.2.2 ngendlela elinganisa lelo lungelo nanoma yimaphi amanye amalungelo, okubandakanya amalungelo akuMqulu Wamalungelo eSahlukeni 2 soMthethosisekelo;

6.3.3 ukwenza kusebenze izibopho ezingokoMthethosisekelo zikaHulumeni ekugqugquzeleni isiko lamalungelo abantu nobulungiswa kwezenhlalo, ngokubandakanya izinhlangano zomphakathi encazelweni ‘yomceli’, kanye nokuzivumela, phakathi kokunye, ukuthola ulwazi ezinhlanganweni ezizimele lapho zilandela izimfuneko ezine ezikulo Mthetho, okubandakanya isibopho esengeziwe sezinhlangano ezithile zomphakathi ezimweni ezithile zokwenza izinto ezizuzisa umphakathi;

6.3.4 ukusungula izindlela noma izinqubo zokuzithandela neziyimpoqo zokwenza lelo lungelo lisebenze ngendlela eyenza abantu bakwazi ukuthola amarekhodi ezinhlangano zomphakathi nezizimele ngokushesha okukhulu, okungabizi kakhulu nangendlela engakhandli kangangokunokwenzeka; futhi

6.3.5 ngokujwayelekile, ukugqugquzela ukwenza izinto obala, ukuba nesibopho nokuphatha ngempumelelo kuzo zonke izinhlangano zomphakathi nezizimele, ngokubandakanya kepha kungagcini lapho, ukunika amandla nokufundisa wonke umuntu -

6.3.5.1 ukuqonda amalungelo abo ngokwalo Mthetho ukuze basebenzise amalungelo abo maqondana nezinhlangano zomphakathi nezizimele;

6.3.5.2 ukuqonda imisebenzi nokusebenza kwezinhlangano zomphakathi; kanye

6.3.5.3 nokuhlolisisa ngenkuthalo, futhi babe neqhaza, ekwenziweni kwezinqumo ezithinta amalungelo abo ezenziswa yizihlangano zomphakathi.

6.4 UMthetho Wokuchibiyela UMthetho Wokugquguzela Ukutholakala Kolwazi, Ka-2019

6.4.1 Endabeni ***ye-My Vote Counts NPC v Minister of Justice and Correctional Services and Another [2018] ZACC 17***, inkantolo yomthethosisekelo yathi “uMbuso ungaphansi kwesibopho esivela ekufundweni okufanele kwezigaba 32, 19 no-7(2) zoMthethosisekelo ukwenza konke okusemandleni ukuze kunikezwe umbono osebenzayo nonengqondo ngelungelo lokuthola ulwazi nelungelo lokuvota. Ingingi liphinde lathi lokhu kungenxa yokuthi ukusetshenziswa kwelungelo lokuvota kumele kube yinto umuntu ayenza enolwazi, futhi kunokuxhumana okubalulekile phakathi kokusebenzisa kahle ilungelo lokuvota nelungelo lokuthola ulwazi. Futhi “ngaphandle kokuthola ulwazi, ikhono lezakhamizi lokwenza izinqumo zepolitiki ezifanele nokubamba iqhaza elifanele empilweni yomphakathi licekeleka phansi”. Inkantolo YoMthethosisekelo ikuqinisekile ukungasebenzi kwalokhu ngokomthethosisekelo futhi yayalela iPhalamende ukuba lichibiyele i-**PAIA** nokuba lithathe noma yisiphi esinye isinyathelo elisibona sifanele ukuhlinzekela ukuqoshwa, ukulondolozwa kanye nokwenza lula ukutholakala kolwazi olulingene ngezimali zokuxhasa ngasese amaqembu ezipolitiki kanye nabakhankasi abazimele phakathi nesikhathi sezinyanga eziyi-18.

6.4.2 Ngokuya ngesinqumo senkantolo yomthethosisekelo esishiwo ngenhla, uMongameli, mhla ka-3 kujuni 2019, waphasisa uMthetho Ka-2019 Wokuchibiyela Umthetho Wokugquguzela Ukutholakala Kolwazi, (uMthetho Ka-2019 Wokuchibiyela I-**PAIA**) .. UMthetho Ka-2019 wokuchitshiyelwa kwe-**PAIA** ubandakanya iqembu lezipolitiki encazelweni yehlangano ezimele, okusho ukuthi umholi weqembu lezipolitiki noma omunye umuntu ogunyazwe ngokomthetho yilowo mholi uyisikhulu noma inhloko yezolwazi. Umthetho Ka-2019 wokuchibiyela i-**PAIA** manje welula ilungelo lokuthola noma yimaphi amarekhodi eqembu lezipolitiki.

6.4.3 UMthetho wokuchibiyela uhlinzekela ukuthi ulwazi oluphatelene nezimali zokuxhasa ngasese amaqembu ezipolitiki nabakhankasi abazimele, kumele lubhalwe phansi, lugcinwe futhi lwenziwe lutholakale.

6.4.4 Ngokwesigaba 52A soMthetho Ka-2019 Wokuchibiyela I-**PAIA**, inhloko yeqembu lezipolitiki kufanele isungule futhi igcine amarekhodi anoma imuphi umnikelo owedlula umkhawulo obekiwe, ka-**R100 000.00**, onikezwe lelo qembu lezipolitiki kunoma yimuphi unyaka wezimali nokuthi bangobani abantu noma izihlangano ezenze leyo minikelo. Inhloko yeqembu lezipolitiki iphinde idingeke ukuba yenze amarekhodi atholakale njalo ngezinyanga ezintathu, njengoba kusho umthetho; futhi igcine amarekhodi isikhathi esiyiminyaka okungenani emihlanu ngemuva kokuba amarekhodi athintekayo enziwe.

<sup>4</sup> UMthetho Wokuchibiyela UMthetho Wokutholakala Kolwazi, Nombolo 31 ka-2019

6.4.5 Lokhu kusho ukuthi ngenkathi uMthetho Wokuxhaswa Ngezimali Kwamaqembu Ezepolitiki uphoqelela ukudalula kwiKhomishani Yezokhetho, uMthetho Ka-2019 wokuchibiyela i-**PAIA** manje welulela ilungelo lokuthola ulwazi, kumarekhodi anoma yimuphi umnikelo ongaphezu kuka-**R100 000.00**, kunoma yimuphi umuntu, eyenziwe kulelo qembu lezepolitiki.

6.5 Omunye umthetho ovikela ilungelo lokuthola ulwazi

I-**PAIA** ibuye ibe khona kuzo zonke izici zezomthetho, eklanyelwe ukwakha “isiko lokuthethelelana”. Ngokuqaphela lokhu, i-**PAIA** ithi noma imuphi omunye umthetho onikeza umuntu indlela yokuthola ulwazi elula kune-**PAIA**, ungasetshenziswa esikhundleni sayo<sup>5</sup>.

6.5.1 UMthetho 71 Ka-2008 Wezinkampani

6.5.1.1 Isigaba 26(1) soMthetho Wezinkampani sihlinzeka umuntu othola inzuzo kunoma yiziphi izibambiso ezikhishwe inkampani eyenza inzuzo, noma oyilungu lenkampani engenzi nzuzo, unelungelo lokuhlola nokukopisha, ngaphandle kwenkokhiso yanoma ikuphi ukuhlola okunjalo noma lapho kukhokhwa imali engengaphezulu kwenani elibekiwe lekhophi enjalo, ulwazi oluqukethwe kumarekhodi enkampani.

6.5.1.2 Ngokwesigaba 26(7)(b) soMthetho Wezinkampani, “amalungelo okuthola ulwazi abekwe kulesi sigaba ngaphezu, futhi hhayi esikhundleni, kwanoma yimaphi amalungelo umuntu okungenzeka unawo okuthola ulwazi ngokoMthetho Ka-2000 Wokugqugquzela Ukutholakala Kolwazi (uMthetho Nombolo 2 Ka-2000)”.

6.5.2 UMthetho Ka-2018 Wokuxhaswa Ngezimali Kwamaqembu Ezepolitiki (UMthetho Nombolo 6 Ka-2018)

6.5.2.1 Ukuxhaswa Ngezimali Kwamaqembu Ezepolitiki kwethula uhlaka oluqinile lokulawula uxhaso lwangasese lwawo wonke amaqembu ezepolitiki abhalisiwe, kungakhathaleki amelelwe yini kuzishayamthetho zikazwelonke noma zezifundazwe noma cha. Lokhu kubandakanya ukubeka imingcele yomthombo, ubukhulu kanye nokusetshenziswa kwezimali ezinikelwe ngamaqembu ezepolitiki.

6.5.2.2 Ukuqinisekisa ukwenziwa kwezinto obala nobuqotho, amaqembu ezepolitiki kudingeka adalule yonke iminikelo etholiwe engaphezu komkhawulo wokudalula ongu-**R100 000.00** kwiKhomishani Yezokhetho njalo ezinyangeni ezintathu (kanye nangaphambi kokhetho lukazwelonke).

<sup>5</sup> Isigaba 2(1) se-PAIA

- 6.5.2.3 Noma yimuphi umuntu noma inhlangotho eyenza umnikelo eqenjini lezopolitiki owothwa noma eminingana eba ngaphezu kuka - **R100 000.00** ngonyaka kufanele ibike lowo mnikelo kwiKhomishani Yezokhetho phakathi nezinsuku ezingu-30 yenze lowo mnikelo noma phakathi nezinsuku ezingu-30 kusukela iminikelo eminingana yeqo khona ku- **R100 000.00**.
- 6.5.2.4 Okokugcina, uMthetho Wokuxhaswa Ngezimali Kwamaqembu Ezopolitiki ubeka isibopho kwiKhomishani Yezokhetho ukwazisa umphakathi njalo ezinyangeni ezintathu ngeminikelo ebikwe amaqembu ezopolitiki nokubika minyaka yonke ePhalamende ngayo yonke iminikelo enikezwe amaqembu ezopolitiki phakathi nonyaka.
- 6.5.3 UMthetho Ka-2013 Wokuvikelwa Kwemininingwane Yomuntu (UMthetho Nombolo 4 Ka-2013)
- 6.5.3.1 Isigaba 23 se-**POPIA** sihlizeka umniniwazi ngelungelo lokuthola imininingwane yomuntu siqu egcinwe yinhlangotho ethintekayo, okubandakanya imininingwane yokuthi bangobani bonke abantu besithathu, noma izigaba zabantu besithathu, abaye, noma abake bathola leyo mininingwane.
- 6.5.3.2 Lokhu kusho ukuthi nakuba ukuthola irekhodi eliqukethe imininingwane yomuntu siqu ephathelene nomceli kungafakiwe kwi-**PAIA** ngokweSigaba 11(2) sayo, umniniwazi angacela -
- 6.5.3.2.1 ukuthola imininingwane yakhe siqu; kanye/noma
- 6.5.3.2.2 amagama abo bonke abantu besithathu, kanye/noma izigaba zabantu besithathu, abaye, noma abake bayithola leyo mininingwane.
- 6.5.3.2.3 ukulungisa noma ukucima imininingwane yomuntu siqu ephathelene nomniniwazi esezandleni zayo okuwukuthi ayinembile, ayisebenzi, iyeqisa, iphelelwe yisikhathi, ayiphelele, iyadukisa noma itholwe ngokungemthetho; noma
- 6.5.3.2.4 ukuba kushatshalaliswe noma kucinywe irekhodi lemininingwane yakhe okuwuthi inhlangotho ethinyekayo ayisagunyaziwe ukuligcina.
- 6.5.3.3 Inhlangotho ethintekayo ingenqaba ukudalula noma yimiphi imininingwane yomuntu siqu eceliwe, ngokwezizathu zokwenqatshwa kokutholakala kwamarekhodi, njengoba kubekiwe endimeni 19.4 ngezansi

## 6.5.4 UMthetho 3 Ka-2000 Wokugquguzela Ubulungiswa Bokuphatha

- 6.5.4.1 Omunye umthetho obalulekile okufanele ukhunjulwe lapho ucabanga ngokuthola ulwazi nguMthetho Wokugquguzela Ubulungiswa Bokuphatha (**PAJA**). I-**PAJA** inika ilungelo lokwenza isenzo sokuphatha esisemthethweni, esizwakalayo nenqubo efanelekile kanye nelungelo lezizathu ezibhaliwe zesenzo sokuphatha njengoba kushiwo esigabeni 33(2) soMthethosiseke<sup>6</sup>.
- 6.5.4.2 Ngokwesigaba 5(1) se-**PAJA**, noma imuphi umuntu omalungelo akhe athinteki kakhulu nakabi ngenxa yesenzo sokuphatha futhi enganikwanga izizathu zaleso senzo, zingakapheli izinsuku ezingama-90 ngemuva kosuku lowo muntu azi ngalo ngaleso senzo noma usuku okulindeleke ukuba kube ukuthi useyazi ngalo ngaleso senzo, angacela kumphathi othintekayo izizathu ezibhaliwe zaleso senzo. Umphathi okucelwe kuye kumele, zingakapheli izinsuku ezingama-90 etholile isicelo, anikeze lowo muntu izizathu esanele sabhalwa phansi sesenzo sokuphatha.

## 7. UKUSUNGULWA KOMLAWULI WEZOLWAZI

- 7.1 Ukuqinisekisa ukugquguzelwa nokuthuthukiswa kwezinhloso ze-**PAIA**, eziwukwenza lisebenze lelo lungelo lokuthola ulwazi ngendlela eyenza abantu bakwazi ukuthola amarekhodi ezinhlangotho zomphakathi nezizimele ngokushesha okukhulu nengabizi ngangokunokwenzeka, kwasungulwa uMlawuli Wezolwazi (“uMlawuli”) ngokwesigaba 39 se-**POPIA**.
- 7.2 Ukuze kuqinisekise ukuthi izinqubo zokuphatha ezingadidi nezingabizi kakhulu ziyalandelwa lapho kwenziwa isicelo sokuthola ulwazi, izikhalazo eziya kuMlawuli neziya enkantolo kufanele kube ngezikhetheke ngempela kunokuba zimane zenziwe nje ngoba umthetho uyavuma.
- 7.3 I-**POPIA** ichibiyela indima ye-**SAHRC** maqondana negunya le-**PAIA**. Kusukela mhla ka-30 Juni 2021, yonke imisebenzi ye-**SAHRC**, njengoba ibalulwe kwi-**PAIA**, izosingathwa nguMlawuli, onanamandla engeziwe okuphoqelela.
- 7.4 Nakuba i-**SAHRC** isazogcina izibopho zayo zomthethosisekelo ezibanzi zokugquguzela, ukuvikela nokuqapha amalungelo abhalwe kuMthethosivivinywa Wamalungelo, i-**SAHRC** kanye noMlawuli bazosebenzisana eduze kakhulu.

<sup>6</sup> Wonke umuntu omalungelo akhe athikanyezwe kabi yisenzo sokuphatha unelungelo lokunikwa izizathu ezibhaliwe.

## 8. INDIMA YOMLAWULI WEZOLWAZI

- 8.1 Umlawuli unendima ebaluleke kakhulu maqondana ne-**PAIA**. Umlawuli ugunyazwe yi-**PAIA**, ngaphansi kweNgxenye 4, iSahluko 1A kanye neNgxenye 5 nezinye izigaba, ukuba:
  - 8.1.1 agqugquzele ilungelo lokuthola ulwazi nokusiza umphakathi ekusebenziseni i-**PAIA** lapho kungenzeka khona ukwenza njalo,
  - 8.1.2 ukuqapha nokuqhubekisela phambili ukusetshenziswa kwe-**PAIA** yizinhlangano zomphakathi nezizimele (okubandakanya ukukhuthaza izindlela ezisebenzayo zokwenza ulwazi lutholakale ngesikhathi)
  - 8.1.3 enze izincomo zokuqinisa i-**PAIA**, nokuba
  - 8.1.4 abike minyaka yonke ePhalamende.
- 8.2 Isigaba 77C(1) no-(2) se-**PAIA** sihlizekela la mandla, imithwalo nemisebenzi elandelayo yoMlawuli, ukuze -
  - 8.2.1 aphenye ngesikhalazo esenziwe kuMlawuli ngendlela enqunyiwe;
  - 8.2.2 adlulisele isikhalazo kwiKomidi Lezokuphoqelela elasungulwa ngokwesigaba 50 se-**POPIA**; noma
  - 8.2.3 anqume, ngokuhambisana nesigaba 77D, ukungathathi sinyathelo ngesikhalazo noma, kuye ngesimo sesikhalazo, kungadingeki zinyathelo maqondana nesikhalazo; nokuba
  - 8.2.4 lapho kufanele khona, abe njengomlamuli maqondana naleso sikhalazo ngendlela enqunyiwe
- 8.3 Umlawuli, ngokwesigaba 77H(1) se-**PAIA**, futhi ngokusuka kuye ngokwakhe, noma ngokucelwa noma ngokwenzela isikhulu sezolwazi noma inhloko yenhlangano ezimele noma omunye umuntu ahlole ukuthi inhlangano yomphakathi noma ezimele ngokuvamile iyazilandela yini izinhlinzeko ze-**PAIA**, maqondana nezinqubomgomo nezinqubo zayo zokuyisebenzisa.
- 8.4 Umlawuli unikwe amandla, ngokwesigaba 77F se-**PAIA**, ukusebenzisa konke anakho ukuze axazulule isikhalazo, uma kuvela esikhalazweni, noma kunoma iyiphi impendulo ebhaliwe eyenziwe maqondana naso ukuthi singaxazululeka lesi sikhalazo. Lokhu kusho ukuthi uMlawuli angazama kuphela ukusiza abathintekayo ukuba baxazulule izingxabano zabo, uma kunesikhalazo esifakwe kuMlawuli, ngaphandle uma ethathe isinqumo, ngokusuka kuye, sokuhlola, njengoba kushiwo endimeni 8.3 ngenhla.

## 9. UKWENZA ISICELO SEREKHODI

Uyacelwa ukuthi ubheke ishadi elinesinyathelo ngasiye sale nqubo endimeni 27 ngezansi, sendlela yokucela ukuthola amarekhodi.

### 9.1 Ukuqalisa: **Amabhukwana E-PAIA**

- 9.1.1 Yize lo Mhlahlandlela ushicilelwe ukusiza umphakathi kuzo zonke izindawo ukuba ubambe ilungelo lawo elingokomthethosisekelo lokuthola ulwazi, kukhona neminye imithombo yolwazi nayo emngasiza umuntu ekwenzeni isicelo sokuthola amarekhodi. I-**PAIA** idinga ukuba zonke izinhlangano zomphakathi, nezinhlangano ezizimele, zihlanganise ibhukwana<sup>7</sup> le-**PAIA** futhi zilenze litholakale.
- 9.1.2 Ngaphambi kokuba noma ubani athathe izinyathelo zokuthola ulwazi noma amarekhodi enhlangano ethile, iBhukwana Le-**PAIA** liyithuluzi lokuqala lokufundwa.
- 9.1.3 Ngokuyinhloko, ibhukwana le-**PAIA** liwusizo kumuntu ukuba:
  - 9.1.3.1 ahlole uhlobo lwamarekhodi okungenzeka asevele ayatholakala ngaphandle kwesidingo sokufaka isicelo se-**PAIA**;
  - 9.1.3.2 aqonde indlela yokwenza isicelo sokuthola ulwazi olugcinwe yinhlangano ethile;
  - 9.1.3.3 athole yonke imininingwane efanele yomuntu ozosiza umphakathi ngamarekhodi noma yimuphi umuntu ahlose ukuwathola;
  - 9.1.3.4 azi zonke izixazululo ezitholakala kuleyo nhlangano okucelwa kuyo amarekhodi, ngaphambi kokuya kuMlawuli noma eziNkantolo;
  - 9.1.3.5 azi incazelo yezinsizakalo ezitholakala kumalungu omphakathi zivela enhlanganweni nokuthi angazithola kanjani lezo zinsizakalo;
  - 9.1.3.6 azi ukuthi ingabe inhlangano izoyicubungula yini imininingwane yomuntu siqu, inhloso yokucubungula imininingwane yomuntu siqu kanye nencazelo yezinhlu zabanilwazi nezemininingwane nezinhlu zolwazi oluphathelele nalokho;
  - 9.1.3.7 azi ukuthi ingabe inhlangano ihlele ukudlulisa noma ukucubungula imininingwane yomuntu siqu ngaphandle kwaseRiphabhuliki YaseNingizimu Afrika; nokuba

<sup>7</sup> Isigaba 14 nesigaba 51 se-PAIA

9.1.3.8 azi ukuthi ingabe inhlangotho inazo yini izindlela ezifanele zokuphepha ukuqinisekisa ubumfihlo, ubuqotho nokutholakala kolwazi okumele lucutshungulwe.

## 9.2 Atholakala kuphi amabhukwana e-PAIA?

### 9.2.1 IBhukwana Le-PAIA lezinhlangotho zomphakathi

9.2.1.1 Zonke izinhlangotho zomphakathi kumele zenze ukuba iBhukwana Le-PAIA litholakale kalula okungenani ngezilimi ezintathu ezisemthethwen<sup>8</sup>.

9.2.1.2 Okungenani, kudingeka ukuba zenze ikhophi eyodwa yeBhukwana Le-PAIA litholakale mahhala, ngaphandle uma kucelwa ikhophi eprintiwe

9.2.1.2.1 kuwebhusayithi yehhlangotho yomphakathi;

9.2.1.2.2 enhlokothovisi yehhlangotho yomphakathi ukuze lihlolwe ngumphakathi ngezikhathi ezijwayelekile zokusebenza;

9.2.1.2.3 uma umuntu efuna ikhophi eprintiwe, inhlangotho yomphakathi kufanele yenze ikhophi, kodwa ingacela inkokhelo efanele yokwenza ikhophi eprintiwe; kanye

9.2.1.3.4 nakuMlawuli uma ecelwa.

### 9.2.2 AmaBhukwana E-PAIA ezinhlangotho ezizimele

9.2.2.1 Izinhlangotho ezizimele nazo kudingeka ukuba zihlanganise ibhukwana<sup>9</sup> le-PAIA, kepha asikho isidingo sokuyihlanganisa ngezilimi ezingaphezu kolulodwa noma ngolimi oluthile, nakuba kunconywa ukuba amaBhukwana E-PAIA ezinhlangotho ezizimele kufanele okungenani abe ngesiNgisi. Uma inhlangotho ethile ihlinzeka ngezinsizakalo kubantu abaningi abangenayo imfundo efanele, uMlawuli uncoma ukuba ibhukwana laleyo nhlangotho libe nangolunye ulimi olusemthethweni.

9.2.2.2 Okungenani, izinhlangotho ezizimele kudingeka ukuba zenze ikhophi yeBhukwana Le-PAIA litholakale mahhala<sup>10</sup>, ngaphandle uma kucelwa ikhophi eprintiwe

9.2.2.2.1 kuwebhusayithi yehhlangotho ezizimele

9.2.2.2.2 endaweni eyinhloko yebhizinisi lenhlangotho ezizimele ukuze lihlolwe ngumphakathi ngezikhathi zomsebenzi ezijwayelekile;

<sup>8</sup> Isigaba 14(1) se-PAIA

<sup>9</sup> Ngokwesigaba 51 se-PAIA

<sup>10</sup> Isigaba 51(3) se-PAIA

9.2.2.2.3 uma umuntu efuna ikhophi eprintiwe, inhlango ezimele kumele yenze ikhophi, kepha ingacela inkokhiso efanele yokwenza leyo khophi eprintiwe; kanye

9.2.2.2.4 nakuMlawuli uma ecelwa.

9.2.3 UNgqongqoshe Wezobulungiswa Nezinsizakalo Zokuhlunyelelisa Kwezimilo unamandla okukhulula<sup>11</sup> izinhlangano ezithile ezizimele noma isigaba esithile sezinhlangano ezizimele esibophweni sokwenza ibhukwana. Njengamanje, kuze kube ngumhla **ka-31 Disemba 2021**, uNgqongqoshe usezikhululile<sup>12</sup> zonke izinhlangano ezizimele, ngaphandle kwanoma iyiphi inkampani -

- (a) engeyona inkampani ezimele njengoba kuchazwe esigabeni 1 soMthetho Wezinkampani, 2008 (uMthetho Nombolo 71 ka-2008);
- (b) iyinkampani ezimele njengoba kuchazwe esigabeni 1 soMthetho Wezinkampani, 2008 (uMthetho Nombolo 71 ka-2008) osebenza kunoma yimiphi imikhakha eshiwo kukholamu 1 yesheduli kulesi Saziso futhi -
  - (i) inabasebenzi abangama-50 noma ngaphezulu ebaqashile; noma
  - (ii) inengqikithi yenzuzo yonyaka elingana noma engaphezu kwenani elisebenza kuyo elishiwo kukholomu 2 yethebula elingezansi,

ekuhlanganiseni ibhukwana elishiwo esigabeni 51(1) soMthetho oshiwo okokuqala isikhathi esiyizinyanga eziyisithupha (6) kusukela ngomhla **ka-1 Julayi 2021** kuya kumhla **ka-31 Disemba 2021**: -

Umkhakha	Inzuzo yonyaka
Wezolimo	R6 wezigidi
Wezozimayini Nezokumbiwaphansi	R22.5 wezigidi
Wezokukhiqiza	R30 wezigidi
Wezagesi, Igesi Namanzi	R30 wezigidi
Wezokwakha	R15 wezigidi
Wezokuthengisa Nokuhweba Ngezimoto Nokhanda	R45 wezigidi
Wezokuhweba Kuma-wholesale, Abathengisi	R75 wezigidi
Nemisebenzi Ehlanganyelwayo	
Wezokudla, Indawo Yokuhlala Nokunye Ukuhweba	R15 wezigidi
Ezokuthutha, Indawo Yokugcina Izinto Nezokuxhumana	R30 wezigidi
Ezezimali Nezamabhizinisi	R30 wezigidi
Izinsizakalo Zomphakathi, Ezikhethekile Nezomuntu Siqu	R15 wezigidi

<sup>11</sup> Isigaba 51(4) se-PAIA

<sup>12</sup> USomqulu KaHulumeni nombolo: 39504, 11 Disemba 2015

- 9.2.4 Ngenxa yokubaluleka kwesidingo somthetho sokuhlenganisa iBhukwana Le-**PAIA**, ikakhulukazi isichibiyelo<sup>13</sup> sesigaba 51 se-**PAIA** (ezoqala ukusebenza ngomhla ka-30 Juni 2021), maqondana nokuthi ubukhulu bolwazi okumele ibhukwana lelo libe nalo buye banwetshwa ukuze libhakandanye izindaba eziphathele ne-**POPIA**, izinhlangano ezizimele ngeke zisakhululwa esibophweni sokuhlenganisa ibhukwana le-**PAIA**. Ngenxa yalokho, kusukela ngomhla ka-1 Januwari 2022, zonke izinhlangano ezizimele nezikahulumeni kuzodingeka ukuba zitholakale zinalo iBhukwana Le-**PAIA**, njengoba kushiwo endimeni 9.2.2.2 ngenhla.
- 9.2.5 Ukukhululwa kwezinkampani ezizimele esibophweni sokuhlenganisa ibhukwana le-**PAIA** akuzikhululi lezo zinkampani ezizimele ekuthobeleni i-**PAIA**. Lokhu kusho ukuthi noma yimuphi umuntu usengafaka isicelo sokuthola ulwazi enhlanganweni ezimele ekhululiwe. Ukukhululwa kumane kusho ukuthi lezo zinkampani ezizimele akudingeki zihlanganise ibhukwana le-**PAIA**.
- 9.2.6 Khumbula futhi, ukuthi akuzona zonke izinhlangano ezizimele eziyizinkampani, njengoba incazelo yenhlangano ezimele ibandakanya umuntu ongokwemvelo, umnikazi oyedwa kanye nomfelandawonye. Kodwa-ke, kusengakuhle ukuhlola iwebhusayithi yazo, njengoba ezinye iZinkampani zakha ibhukwana le-**PAIA** kungakhathalekile inani labasebenzi noma inzuzo yazo yonyaka.
- 9.3 Ukudalulwa ngokuzithandela kwamarekhodi athile nokuwenza atholakale ngokuzenzakalelayo
- 9.3.1 Amarekhodi atholakala ngokuzenzakalelayo yilawo inhlangano yomphakathi noma ezimele ezowahlinzeka ngaphandle kwesidingo sokuthi umceli afake isicelo se-**PAIA** (ngamanye amazwi, umuntu angavele alicele nje ngaphandle kokugcwalisa iFomu 2 Le-**PAIA**).
- 9.3.2 Isikhulu Sezolwazi enhlanganweni yomphakathi kudingeka, ngokwesigaba 15(1) se-**PAIA**, ukuba senze kutholakale uhlu noma imikhakha yamarekhodi atholakala ngokuzenzakalelayo, njengoba kushiwo endimeni 9.3.4 ngezansi.
- 9.3.3 Amarekhodi atholakala ngokuzenzekelayo enhlangano ezimele nawo angenziwa atholakale, ngokwesigaba 52(1) se-**PAIA**, kodwa ngokuzithandela ngokuya ngendima 9.3.4 ngezansi.
- 9.3.4 Incazelo yemikhakha yamarekhodi atholakala ngokuzenzakalelayo kufanele yenziwe itholakale
- (a) kuMlawuli Wezolwazi;
  - (b) kuwebhusayithi yenhlangano; nokuba
  - (c) ihloleke, emahhovisi enhlangano ethintekayo ngezikhathi zomsebenzi ezijwayelekile.

<sup>13</sup> Isigaba 110 se-**POPIA**

- 9.3.5 Uyacelwa ukuba uqaphele ukuthi uMlawuli incazelo yamarekhodi enhlangano yomphakathi atholakala ngokuzenzakalelayo uzoyifaka kuwebhusayithi yayo.
- 9.3.6 Lolu hlu lubandakanya amarekhodi okungase kudingeke ukuba enziwe atholakale ngeminye imithetho, kanye namanye amarekhodi inhlangotho ekhetha ukuwafaka. Ukuze kugwenywe inqubo yesicelo se-**PAIA**, umceli welulekwa ukuba ahlole iBhukwana Le-**PAIA** lenhlangotho ethintekayo yomphakathi noma ezimele. Uma umuntu efisa ukuthola amarekhodi awela ngaphansi kohlu lwenhlangotho lwamarekhodi atholakalayo ngokuzenzakalelayo, lowo muntu angavele acele ukuwathola ngaphandle kokugcwalisa iFomu 2 Le-**PAIA**.
- 9.3.7 UMthetho 6 Ka-2018 Wokuxhazwa Ngezimali Kwamaqembu Ezepolitiki uletha izinguquko ezithile nge-**PAIA**, lapho izinhloko zamaqembu ezepolitiki kudingeka ukuba zibhale futhi zigcine amarekhodi eminikelo yangasese, okuzodingeka ukuba enziwe abe sobala emphakathini ngaphandle kokuba umuntu afake isicelo se-**PAIA**.

## 10. IMININGWANE YOKUXHUMANA NEZIKHULU ZEZOLWAZI

- 10.1 Yize iminingwane yokuxhumana neZikhulu Zezolwazi kuzo zonke izinhlangano zomphakathi kudingeka ukuba ishicilelwe kuwo wonke amabhuku ocingo, ngokwesigaba 16 se-**PAIA**, uMlawuli unemininingwane eqondile yokuxhumana nazo zonke iZikhulu Zezolwazi (kubandakanya amaSekela Ezikhulu Zezolwazi, aqokwe ngokwemigomo yesigaba 17 no-56 se-**PAIA** ne-**POPIA** ngokulandelana kwazo) ababhaliswe ngayo ngokwesigaba 55(2) se-**POPIA**.
- 10.2 Nakuba ukuthola iminingwane efanele yokuxhumana kungase ngokuvamile kube yingxenye eyinselele kakhulu yokwenza isicelo se-**PAIA**, njengoba izindima zishintsha njalo emkhakheni womphakathi futhi ibhukwana le-**PAIA** lingase lingabi ngelamuva, indawo yokuqala yokuthola iminingwane yokuxhumana kusafanele kube yilo iBhukwana Le-**PAIA** lenhlangotho. Kodwa-ke, uma umceli engalitholi ibhukwana, ukushayela ihhovisi lenhlangotho acele iminingwane edingekayo, nakho kungasiza.
- 10.3 KoMasipala, iNhlangotho YaseNingizimu Afrika Yohulumeni Basekhaya (i-**SALGA**) ibeka iminingwane yabo bonke oMasipala kule linki:  
<http://www.salga.org.za/Municipalities%20MCD.html>
- 10.4 Umnyango wezokuxhumana kaHulumeni nawo uyahlinzeka ngemininingwane yokuxhumana kazwelonke neyazifundazwe kanye neminingwane yokuxhumana neziNkampani ZikaHulumeni ngaphansi kwale linki:  
<https://www.gov.za/about-government/contact-directory>. Khumbula njalo ukuthi incazelo yeSikhulu Sezolwazi iyasiza ukubona ukuthi iminingwane kabani yokuxhumana edingekayo ukuze ubone iSikhulu Sezolwazi

## 11. INQUBO YOKWENZA ISICELO SOLWAZI

### 11.1 Amafomu esicelo

- 11.1.1 Isicelo sokuthola ulwazi singenziwa kukho kokubili ezinhlanganweni zomphakathi nezizimele.
- 11.1.2 I-**PAIA** idinga ukuthi uma ufuna ukwenza lesi sicelo, kufanele uthumele isicelo ngefomu elidingekayo (lawa mafomu anqunywe yiMithethonqubo). Kunezinhlango ezimbili ezingasetshenziswa lapho usebenzisa ilungelo lokuthola ulwazi.

IFormu 2	IFormu 4
Leli fomu lingasetshenziswa kuphela uma ufuna ukucela ukuthola amarekhodi ezinhlango zomphakathi noma ezizimele.	Leli fomu lingasetshenziswa kuphela uma ufuna ukufaka isikhalazo sangaphakathi esiphikisa izinqumo zeZikhulu Zezolwazi noma lezo zamaSekela Ezikhulu Zezolwazi zeMikhakha KaHulumeni Kazwelonke, Wezifundazwe noma Wendawo lapho kufanele siye kumkhakha isikhalazo sangaphakathi.

- 11.1.3 La mafomu angatholakala kuwebhusayithi yoMlawuli ku <https://www.justice.gov.za/infoereg/>

### 11.2 Ukunquma ukuthi isicelo ngesemininingwane egcinwe yinhlango ezimele noma yomphakathi

- 11.2.1 Inhlango yomphakathi yenza umsebenzi womphakathi, njengokuhlazeka umphakathi ngogesi noma ngamanzi. Ngenxa yalokho, inhlango yomphakathi ayiyona nje uMnyango kaHulumeni kaZwelonke, weZifundazwe noma waSekhaya – ibandakanya izinkampani zikaHulumeni noma izinhlango ZoMbuso ezifana noMlawuli, i-Eskom, noma i-PRASA, kodwa-ke, kufanele kwenziwe umehluko maqondana nenhlango yomphakathi ngenhloso yesikhalo sangaphakathi, okubhekiswe kuphela kuHulumeni kaZwelonke, weSifundazwe noma waSekhaya.

- 11.2.2 Inhlango ezimele yenza umsebenzi wangasese. Inhlango enjalo (okungaba ngumuntu) wenza uhwebo, ibhizinisi noma umsebenzi othile. Kubaluleke kakhulu ukuqaphela ukuthi lapho kufakwa isicelo se-**PAIA** enhlango wenziwe ezimele, umuntu kufanele asho ukuthi yiliphi ilungelo alivikelayo noma alisebenzisayo ngokucela lolu lwazi. Mayelana nanoma yiluphi ulwazi olugcinwe ngomunye umuntu, uStreicher JA wafingqa le ndaba ngendlela elandelayo, **eCape Metropolitan Council v Metro Inspection Services (Western Cape) CC nabanye**<sup>14</sup>,

<sup>14</sup> 2001 (3) SA 1013 (SCA) indinyana 28 kwi-1026F-G

*“Imininingwane ingadingeka kuphela ekusetshenzisweni noma ekuvikelweni kwelungelo uma lizoba usizo ekusetshenzisweni noma ekuvikelweni kwelungelo. Lokhu kulandela ukuthi, ukuze kuvulwe icala lokutholakala kolwazi ngokwesigaba 32, umceli kufanele asho ukuthi yiliphi ilungelo afisa ukulisebenzisa noma ukulivikela, ukuthi yiluphi ulwazi oludingekayo nokuthi lolo lwazi lungamsiza kanjani ekusebenziseni noma ekuvikeleni lelo lungelo”.*

11.2.3 Ngezinye izikhathi umbuzo wokuthi irekhodi liyirekhodi lomphakathi noma langasese yini ungaba nzima futhi umphakathi welulekwa ukuba ufune izeluleko zomthetho. Isibonelo, uma inhlango yomphakathi iqoka inhlango ezimele ukuba iyenzele imisebenzi ethile, njengokufakwa kwamamitha amanzi emiphakathini ethile, ukuthola inani lamamitha afakiwe, noma ngabe lolo lwazi lugcinwe yileyo nhlangano ezimele, luyobhekwa njengolwazi lwenhlango yomphakathi.

11.3 Umuntu ulichaza kanjani ilungelo anethemba lokulisebenzisa noma ukulivikela?

11.3.1 Lapho umuntu echaza ukuthi yiliphi ilungelo anethemba lokulisebenzisa lapho enza isicelo enhlango weni ezimele, akakwazi ukubhekisela kwilungelo lokuthola ulwazi. Umuntu kufanele achaze ukuthi irekhodi alicelayo lidingeka kanjani ngokunengqondo ukuze avikele, noma asebenzise elinye ilungelo. Lokhu kungabandakanya amalungelo okungewona amalungelo angokomthethosisekelo kuphela.

11.3.2 Umuntu, ngokwesibonelo, angase adinge amapulani ayinhloko avela enkampanini engase ibe nomthelela emazingeni okonakalisa imvelo emphakathini, ukuze amsize ekuvikeleni ilungelo lomuntu ngokuqondene nemvelo ngokuqapha imisebenzi yaleyo nkampani. Noma umuntu angadinga amarekhodi, azomsiza ekunqumeni ukuthi unalo yini ilungelo lokumangalela inkampani ethile. Ngenxa yalokho, umuntu kudingeka:

11.3.2.1 Alisho ngokuthe ngqo ilungelo anethemba lokulivikela noma lokulisebenzisa, bese

11.3.2.2 Echaza ngokucacile ukuthi kungani irekhodi alicelayo lidingeka ngokuzwakalayo ekumsizeni ngalelo lungelo

11.3.3 Ngokuphambene nalokho, lapho kufakwa isicelo se-**PAIA** enhlango weni yomphakathi, akudingeki ukuthi umuntu abe nesizathu sokucela ulwazi.

## 12. UBANI ONGENZA ISICELO SE-PAIA?

12.1 Noma yimuphi umuntu, noma ngabe ungowaseNingizimu Afrika noma akayena owaseNingizimu Afrika, uvunyelwe ukwenza isicelo ngaphansi kwe-**PAIA**. Umceli angaba ngumuntu wemvelo noma umuntu ongokomthetho.

- 12.2 Inhlangano yomphakathi ibhekwa njengomuntu ongokomthetho futhi ingenza isicelo sokuthola amarekhodi agcinwe yizinhlangano ezizimele, kodwa kuphela uma inhlangano yomphakathi -
- 12.2.1 yenzela ukuzuzisa umphakathi, futhi
  - 12.2.2 uma amarekhodi edingeka ukuze kufezwe noma kuvikelwe noma yimaphi amalungelo ngaphandle kwalawo enhlangano yomphakathi.
- 12.3 Ngaphansi kwe-**PAIA** umceli akakwazi ukucela ukuthola irekhodi, lenhlangano yomphakathi, eliqukethe imininingwane yangasese ephathelene nomceli enhlanganweni yomphakathi<sup>15</sup>, kodwa noma kunjalo umceli noma umninilwazi, ngokwesigaba 23(1)(b) se-**POPIA**, angacela enhlanganweni ethintekayo irekhodi noma incazelo yemininingwane yomuntu siqu ephathelene nomninilwazi egcinwe yileyo nhlangano ethinyekayo. Lokhu kusho ukuthi noma yimuphi umuntu manje angacela ukuthola imininingwane yakhe siqu egcinwe yinhlangano yomphakathi noma ezimele lapho eveza ubufakazi obanele bokuthi ungubani. Imininingwane yomuntu siqu leyo umceli angayicela enhlanganweni ethintekayo, okubandakanya imininingwane mayelana nobunikazi babo bonke abantu besithathu, noma izigaba zabantu besithathu, abaye, noma abake bayithola leyo mininingwane.
- 12.4 Ngokwesigaba 50(1) se-**POPIA**, noma yimuphi umuntu angacela ukuthola irekhodi, lenhlangano ezimele, eliqukethe imininingwane yangasese ephathelene nomceli noma umuntu isicelo esenzelwa yena.

### 13. SINGENZIWA KOBANI ISICELO?

- 13.1 ISikhulu Sezolwazi enhlanganweni yomphakathi kudingeka ukuba siqoke iSekela LeSikhulu Sezolwazi, okufanele liqinisekise ukuthi amarekhodi enhlangano yomphakathi atholakala ngakho konke okusemandleni. Yize lokhu bekungeyona imfuneko maqondana nenhlangano ezimele ngaphansi kwe-**PAIA**, inhlangano ezimele ingakhetha iSekela LeSikhulu Sezolwazi esishiwo ngenhla, ngokwesigaba 56 se-**POPIA**.
- 13.2 Isicelo sokutholakala kolwazi, nakuba singase siyiswe eSikhulwini Sezolwazi, singathunyelwa kwiSekela LeSikhulu Sezolwazi. Imininingwane yeSekela LeSikhulu Sezolwazi ingatholakala ebhukwini le-**PAIA** yaleyo nhlangano noma kuMlawuli.

### 14. UKUGCWALISA IFOMU

- 14.1 IFomu 2 - isicelo sokuthola irekhodi lenhlangano yomphakathi noma ezimele:
- 14.1.1 Ukuze agcwalise ifomu le-**PAIA**, umuntu kudingeka anikeze imininingwane eyanele ukuze iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi bakwazi ukubona ukuthi yimaphi amarekhodi afunwa ngumceli.

<sup>15</sup> Isigaba 11(2) se-PAIA

- 14.1.2 IMithethonqubo Ye-**PAIA** iyalicacisa ifomu okufanele lisetshenziswe, okumele lithunyelwe eSikhulwini Sezolwazi, noma kwiSekela LeSikhulu Sezolwazi kuleyo nhlangano.
- 14.1.3 Abaceli abangakwazi ukufunda nokubhala bangenza izicelo zomlomo eSikhulwini Sezolwazi noma kwiSekela LeSikhulu Sezolwazi enhlanganweni yomphakathi, okuyiso okuyobe sekumele sigcwalisele lowo mceli ifomu 2. Ifomu lamanje lizodinga ukuba ugcwalise lezi zingxenye ezilandelayo:

### **Imininingwane edingekayo Incazelo**

#### **Imininingwane yenhlangotho yomphakathi / ezimele**

Le ngxenye kufanele ibe ne-imeyili nenombolo yefeksi efanele yeSikhulu Sezolwazi kanye/noma iSekela LeSikhulu Sezolwazi.

#### **Imininingwane yomuntu ocela ukuthola amarekhodi**

Lokhu kufanele kube neminingwane eyanele mayelana nomceli ukuze kube lula ukumazi umceli, okubandakanya imininingwane yokuxhumana nomceli: ikheli leposi, ikheli le-imeyili, inombolo yefeksi kanye/noma yocingo yaseNingizimu Afrika. Iphinde icele nenombolo yakho kamazisi ukuqinisekisa ubuwena. Uma ulwazi ulucelela omunye umuntu, kumele kuhlinzekwe ubufakazi besikhundla owenza ngaso leso sicelo ('njengomuntu ogunyaziwe').

#### **Imininingwane yerekhodi elicelwayo**

Nikeza imininingwane ephelile yerekhodi ocela ukulithola, okubandakanya inombolo yereferensi uma uyazi, ukuze lelo rekhodi litholakale. (Uma isikhala esinikeziwe singanele, sicela uqhubeke ekhasini elihlukile bese ulihlanganisa nefomu. Wonke amakhasi angeziwe kufanele asayinwe.

#### **Uhlobo lwerekhodi**

Lokhu kufanele kube neminingwane eyanele mayelana nerekhodi ukuze kube lula ukulifuna. Uma imininingwane edingekayo ingeke yanele esikheleni esinikezwe efomini, kungasetshenziswa elinye ikhasi elibhalwe ngomshini noma ngesandla ukunikeza imininingwane eyengeziwe yesicelo, inqobo nje uma ikhasi ngalinye

## Iminingwane edingekayo Incazelo

elengeziwe lisayiniwe futhi lahlanganiswa nefomu lesicelo. Ungase, ngokwesibonelo, ufake nokuthile okukhiphe embikweni noma kwabezindaba okukhomba irekhodi olifunayo. Ikuvumela ukuba ufake inombolo yereferensi yerekhodi, uma ikhona.

### Izinkokhiso

Inhlangano, leyo umceli ahlose ukusithumela kuyo isicelo sokuthola irekhodi, okubandakanya irekhodi eliqukethe iminingwane yakhe, ingakucela ukuba ukhokhe imali yesicelo (imali yokuthola ulwazi) noma imali yediphozithi, kepha leyo mali akumele yeqe ngokweqile, njengoba lezi zinkokhiso kufanele zibe ngezesikhathi esizwakalayo esidingekayo ukucinga nokulungisa irekhodi. UNgqongqoshe angase ngesaziso kuSomqulu akukhulule ekukhokheni lezi zimali njengoba kubhalwe esigabeni 51.1 ngezansi.

Kunikezwa isikhala sokuba umceli abonise ukuthi kungani ekholwa ukuthi kufanele akhululwe ekukhokheni noma yiziphi izimali. Isizathu singabandakanya, ngokwesibonelo, ukuthi akasebenzi.

### Indlela yokuthola irekhodi

Le ngxenye ikuvumela ukuba uphawule ngo-"X" izindlela ofisa ukulithola ngazo irekhodi, ngekhophi ephrintiwe yerekhodi kanye/noma i-flash drive kanye/noma i-compact disc drive.

### Isimo sokuthola irekhodi

Ngaphansi kwale ngxenye kumele usho ulimi ofuna ukulithola ngalo irekhodi (lokhu kungase kungenzeki maqondana nawo wonke amarekhodi, kepha kusamele usho lokho okukhethayo).

Isimo sokuthola irekhodi singaba nomthelela ekwenqatshelweni ngenxa yezinkokhelo eziphezulu. Isibonelo, uma umceli efuna idokhumenti ngolimi oluthile alukhethayo,

## Imininingwane edingekayo Incazelo

kungase kudingeke ukuba akhokhele izindleko zokuguqulela lelo rekhodi olumini alufunayo. Kodwa-ke, uma irekhodi lingatholakali ngolimi olufunayo, ungavunyelwa ukulithola ngolimi lelo rekhodi elitholakala ngalo. Isimo sokuthola irekhodi singabandakanya ukuzihlolela wena irekhodi, ukuthunyelwa kwerekhodi nge-imeyili, noma ifeksi noma ikhuriya noma iposi.

### Isaziso esiphathelene nesicelo sokuthola ulwazi

Kunikezwa isikhala sokuba umceli achaze indlela afisa ukwaziswa ngayo ngesinqumo sokuvunywa noma sokwenqatshwa kwesicelo. Umceli angacacisa ngokwesibonelo ukuthi angathanda ukuthintwa nge-imeyili noma ngocingo noma impendulo ingathunyelwa ngeposi noma ngekhuriya.

### Imininingwane yelungelo elizosetshenziswa noma elizovikelwa

Lapho ecela ulwazi enhlanganweni ezimele umceli kudingeka ukuba achaze "imininingwane yelungelo okufanele lisetshenziswe noma livikelwe". Lapha kufanele asho ilungelo athembele kulo (njengelungelo lakhe lokuba sendaweni enempilo) nokuthi irekhodi alicelayo lizomsiza kanjani ekusebenziseni noma ekuvikeleni lelo lungelo. Kumele abonise ukuxhumana phakathi kwerekhodi alifunayo, nokusetshenziswa noma ukuvikelwa kwelungelo.

Ngeshwa, ngokungafani nesicelo sokuthola irekhodi lenhlangano yomphakathi, akakwazi ukuthola irekhodi lenhlangano ezimele uma engachazanga ilungelo noma amalungelo ahlose ukuwavikela noma ukuwasebenzisa uma eyinikwa imvume. Lokhu kungabandakanya iqiniso lokuthi ngemuva kokuthola amarekhodi, uzobe esesebenzisa ilungelo lakhe lokuvikelwa nokuhlomula ngomthetho<sup>16</sup> ngokumangalela leyo nhlangano ngomonakalo okungenzeka uye wabhekana nawo.

<sup>16</sup> Isigaba 9(1) somthethosisekelo weRiphabhuliki YaseNingizimu Afrika, uMthetho 108 ka-1996

14.1.4 Uma ngasizathu simbe isicelo sakhe singahambisani nezimfuneko ezibalulwe ngenhla, iSikhulu Sezolwazi ngeke sivele sisenqabe nje isicelo sakhe, ngaphandle uma simazisa umceli ukuthi sihlose ukusenqaba isicelo, sinikeze nezizathu. ISikhulu Sezolwazi kumele simazise nokuthi sizomsiza umceli noma simnikeze ithuba lokulungisa iphutha.

## 15. IZINKOKHISO

15.1 Ngokuvamile, izinkokhiso kudingeka zikhokhelwe kokubili ukwenza isicelo, kodwa futhi ukhokhele nezindleko zokuthola amarekhodi ngokwesicelo. Nakuba kunjalo, zikhona izimo okungakhokhiswa kuzo. Uma umceli enikezwa imvume yokuthola amarekhodi awacelile futhi engakhululwanga ekukhokheni noma yiziphi izimali, njengoba kushiwo endimeni 15.2 ngezansi, iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi enhlanganweni yomphakathi noma ezimele lingamkhokhisa imali enqunyiwe maqondana nezinhlu ezilandelayo -

**PHAWULA: Uhlaka lwezinkokhiso maqondana nezimali ezikhokhelwa iZinhlango Zomphakathi NeZizimele lungatholakala kuwebhusayithi yoMlawuli Wezolwazi.**

Isici	Incazelo
1	Inkokhiso yesicelo ekhokhwa yibo bonke abaceli
2	Ifothokhophi yekhasi eliyi-A4
3	Ikhophi eprintiwe yekhasi eliyi-A4
4	Ngokuqondene nekhophi efundeka kwikhompyutha: <ul style="list-style-type: none"> <li>(i) I-Flash drive (kumele ilethwe umceli)</li> <li>(ii) I-Compact disc               <ul style="list-style-type: none"> <li>• Uma ilethwe umceli</li> <li>• Uma ihlinzekelwe umceli</li> </ul> </li> </ul>
5	Ukuguqulelwa emagameni kwerekhodi eliyizithombe ikhasi ngalinye eliyi-A4
6	Ikhophi yezithombe
7	Ukuguqulelwa emagameni kwerekhodi eliyinkulumo, ikhasi ngalinye eliyi-A4
8	Ikhophi yerekhodi eliyinkulumo: <ul style="list-style-type: none"> <li>(i) I-Flash drive (kumele ilethwe umceli)</li> <li>(ii) I-Compact disc               <ul style="list-style-type: none"> <li>• Uma ilethwe umceli</li> <li>• Uma ihlinzekelwe umceli</li> </ul> </li> </ul>
9	Ukucinga irekhodi nokulilungiselela ukulikhipha ihora ngalinye noma ingxenye yehora, ngaphandle kwehora lokuqala, elidingeka ngokufanelekile kulokho kucinga nokulungiselela. Kungadluli ingqikithi yezindleko engu Postage, e-mail or any other electronic transfer
10	Idiphozithi: Uma ukucinga kweqa emahoreni ayi-6
11	Iposi, i-imeyli noma enye indlela yokuthumela ngezobuchwepheshe

15.2 Umceli akudingeki akhokhe imali yokuthola ulwazi<sup>17</sup> enhlanganweni yomphakathi uma:-

15.2.1 Engumuntu ongashadile umholo wakhe wonyaka, ngemuva kokudonswa okuvumelekile, njenge-**PAYE** ne-**UIF**, ungaphansi kuka-**R14712.00** ngonyaka, noma

15.2.2 Eshadile futhi umholo wakhe uhlangene nowakwakhe, ngemuva kokudonswa okuvumelekile, njenge-**PAYE** ne-**UIF**, ungaphansi kuka-**R27192.00** ngonyaka.

15.3 Sicela wazi ukuthi inhlango yomphakathi noma ezimele ingacela, kwiFomu 4 kwiMithethonqubo, idiphazithi kumceli, kodwa kuphela uma ikholelwa ukuthi imininingwane noma amarekhodi aceliwe kuzothatha amahora angaphezu kwayisithupha (6) ukuwacinga, kepha inani lediphazithi alikwazi ukuba ngaphezu kwengxenye eyodwa kwezintathu zemali ebekiwe.

## 16. INGABE ISIKHULU SEZOLWAZI SIYOMSIZA UMCELI ENZE ISICELO SE-PAIA?

16.1 Indima yeZikhulu Zezolwazi kanye/noma amaSekela EZikhulu Zezolwazi kokubili ezinhlango yomphakathi nezizimele, maqondana nokucutshungulwa kwezicelo zokuthola amarekhodi, kumele:

16.1.1 zithole isicelo se-**PAIA** noma se-**POPIA**;

16.1.2 ziqondise ukucutshungulwa kwesicelo enhlanganweni;

16.1.3 zithathe isinqumo sokuvumela noma ukwenqabela ukutholakala kwamarekhodi acelwayo;

16.1.4 zikuxhumane nomceli (isb. zingadinga ukucela eminye imininingwane kumceli noma zingadinga ukucela ukwelula isikhathi sokusingatha isicelo, njll);

16.1.5 zazise umceli ngomphumela wesicelo sakhe se-**PAIA**, isaziso okufanele sinikezwe ngokushesha ngangokunokwenzeka kodwa zingakapheli izinsuku ezingama-30 ngemuva kokuthola isicelo. Isikhathi sokuqala sezinsuku ezingama-30 singanwetshwa kube kanye isikhathi esingeqile kwezinye izinsuku ezingama-30, uma ngokwesibonelo, umceli evumelene nokwelulwa kwesikhathi noma uma ukucingwa kwamarekhodi aceliwe kungenakuphuthulwa phakathi nesikhathi sokuqala.

16.1.6 zinikeze umceli izizathu zesinqumo sokunqabela ukutholakala kwamarekhodi. Kubaluleke kakhulu ukuthi izizathu zokwenqaba ezinikezwayo zicace bha, zenabe kahle futhi kufanele zibe nokuthile okuvela ezigabeni ezithile ze-**PAIA** (bheka indima 19.4 ngezansi, maqondana nezizathu zokwenqatshwa kokutholakala kwamarekhodi<sup>18</sup>);

<sup>17</sup> ngokwesaziso sikaHulumeni R991 sika-14 Okthoba 2005

<sup>18</sup> Isigaba 33 kuya ku-46 se-PAIA

- 16.1.7 zazise abantu besithathu abafanele ngenqubo yokwazisa abantu besithathu, ngokwesigaba 47 se-**PAIA**; futhi
- 16.1.8 uma ukutholakala kwamarekhodi kuvunywa, zinike umceli ikhophi yerekhodi.
- 16.2 Lapho kwaziswa umceli ngesinqumo, makushiwo nezindlela zokuthola usizo olukhona kanye nezikhathi ezifanele (usizo olutholakalayo luhlukile ezinhlanganweni zomphakathi nezizimele).
- 16.3 Indima nezibopho ezengeziwe zeZikhulu Zezolwazi kanye/noma amaSekela EZikhulu Zezolwazi zichazwe kabanzi kwiZiqondiso zeZikhulu Zezolwazi namaSekela EZikhulu Zezolwazi, uZiqondiso ezitholakala ku <https://www.justice.gov.za/infoleg/docs.html>
- 16.4 Ngenxa yokuthi umsebenzi weZikhulu Zezolwazi kanye/noma amaSekela EZikhulu Zezolwazi uwukwenza lula isicelo sokutholakala kolwazi, lokhu kusho nokuthi zinezibopho ezihlukahlukene kulabo abenza isicelo.
- 16.5 IZikhulu Zezolwazi kanye/noma amaSekela EZikhulu Zezolwazi kumele usizo zilunikeze mahhala.
- 16.6 IZikhulu Zezolwazi kanye/noma amaSekela EZikhulu Zezolwazi enhlanganweni yomphakathi zinale misebenzi ekhethekile elandelayo:

## Imisebenzi YeZikhulu Zezolwazi Incazelo

### Ukusiza ekugcwaliseni ifomu

ISikhulu Sezolwazi kufanele sinikeze usizo olufanele kumceli ekugcwaliseni ifomu lakhe le-**PAIA**, futhi asinakwenqaba ukwamukela ifomu elingagcwaliswanga kahle ngaphandle kwalapho silunikezile lolo sizo, noma sicelile ukulekelela noma ukusiza kodwa umceli wenqaba.

### Ukuhlinzeka ngemininingwane edingekayo

Uma kungenzeka, iSikhulu Sezolwazi kufanele sinikeze umceli noma yimiphi eminye imininingwane engase ibaluleke, ngisho noma ingacelwanga ngqo.

### Ukudlulisela isicelo

Lokhu kungumsebenzi obaluleke kakhulu. Uma isicelo se-**PAIA** senziwa enhlanganweni yomphakathi engafanele, iSikhulu Sezolwazi kufanele sidlulisele isicelo ehlanganweni yomphakathi efanele zingakapheli **izinsuku**

**eziyi-14** sisitholile leso sicelo futhi kufanele sazise umceli ngokumbhalela ukuthi yilokho esikwenzile ngesicelo sakhe. Uma isicelo sesidlulisiwe, iSikhulu Sezolvazi esifanele kumele siphendule ngesinqumo zingakapheli **izinsuku ezingama-30**.

**Ukuhlehliswa  
kokukhishwa  
kwamarekhodi**

ISikhulu Sezolvazi singanquma ukuhlehlisa ukukhishwa kwerekhodi kumceli uma lelo rekhodi lizoshicilelwa zingakapheli izinsuku ezingama-90 noma uma lelo rekhodi lifunwa ngumthetho ukuba lishicilelwe kodwa kuwuthi yikhona lisazoshicilelwa.

16.7 Kukho kokubili izinhlangano zomphakathi nezizimele, iSikhulu Sezolvazi, uma singakwazi ukuthola amarekhodi athile aceliwe noma sikholelwa ukuthi lawo marekhodi awekho, kumele sithumele incwadi efungelwe enable noma isiqinisekiso<sup>19</sup> kumceli sinimkeza isaziso sokuthi amarekhodi awacelile awekho noma awatholakali, kodwa futhi sichaze nezinyathelo esizithathile ukuwafuna.

## 17. USIZO OLUTHOLAKALA KUMLAWULI WEZOLWAZI NGOKWE-PAIA NE-POPIA

17.1 ISikhulu Sezolvazi enhlanganweni yomphakathi sinesibopho sokunikeza usizo olufanele<sup>20</sup>, mahhala, lapho kudingeka ukuze lowo mceli noma umninilwazi ahambisane nendlela yokuthola ulwazi njengoba kushiwo esigabeni 18 se-**PAIA** nasesigabeni 23 se-**IPOPIA**.

17.2 Kodwa-ke, uma iSikhulu Sezolvazi sihluleka ukufeza umsebenzi waso, okukhulunywe ngawo endimeni 17.1 ngenhla, umceli noma umninilwazi angafaka isikhalazo kuMlawuli futhi uMlawuli, lapho kuphenywa, angakhipha iSaziso Sokuphoqelela esiqondisa eSikhulwini Sezolvazi ukuba sinikeze usizo olufanele.

17.3 UMlawuli, uma kungenzeka, eceliwe, angasiza noma yimuphi umuntu ofisa ukusebenzisa noma yiliphi ilungelo elishiwo kwi-**PAIA** ne-**POPIA**<sup>21</sup>, futhi lokhu kubandakanya ukunikeza usizo olufanele, mahhala, lapho kudingeka ukuze lowo mceli noma umninilwazi ahambisane nendlela yokuthola ulwazi njengoba kushiwo esigabeni 18 no-53 se-**PAIA** nasesigabeni 23 se-**POPIA**.

17.4 Lokhu okungenhla kubandakanya ukunikeza isiqondiso sendlela yokugcwalisa ifomu lokuthola ulwazi olufunwa umuntu ongakwazi ukubhala nokufunda nongaboni.

<sup>19</sup> Isigaba 23(1) no-51(1) ze-PAIA

<sup>20</sup> Isigaba 19(1) se-PAIA

<sup>21</sup> Isigaba 83(3)(c) se-PAIA

## 18. ISIKHULU SEZOLWAZI SINGAKWAZI YINI UKWELULA IZIKHATHI EZIDINGEKAYO?

- 18.1 Uhlaka lwenqubo nezikhathi ezibalulekile ezidingekayo ziqukethwe emdwebeni wenqubo yokufaka isicelo se-**PAIA**, endimeni 27 ngezansi. Ukuba nezikhathi ezibekiwe kuyingxenywe ebalulekile ye-**PAIA**, njengoba kukhuthaza ukuphathwa ngendlela ephumelelayo kwezicelo zokuthola amarekhodi.
- 18.2 Ukukukhumbuza, uma ususithumele isicelo sakho kahle, iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi, okuyiso esithunyelelwe noma esidluliselelwe isicelo, kufanele sikuphendule ngokushesha ngangokunokwenzeka kodwa kunoma yikuphi **zingakapheli izinsuku ezingama-30**<sup>22</sup>. Kodwa-ke, iSikhulu Sezolwazi enhlanganweni yomphakathi noma ezimele singacela ukwelulwa kube kanye **kwesikhathi sezinsuku ezingama-30**<sup>23</sup>, kodwa kuphela uma:
- 18.2.1 isicelo sifuna inqwaba yamarekhodi noma sidinga ukuba kucingwe emarekhodini amaningi kakhulu futhi, ngaphandle kokwelulwa kwesikhathi, lokhu kucinga kungaphazamisa imisebenzi evamile yaleyo nhlangano ethintekayo;
- 18.2.2 isicelo sidinga ukuba kucingwe kumarekhodi asehhovisi aleyo nhlangano angekho edolobheni elifanayo futhi ngaleyo ndlela kungenakuphuthulwa zingakapheli izinsuku ezingama-30; kanye/noma
- 18.2.3 kudingeka ukuba kuthintwe abathile ngezinga elithile ukuze kufezwe isicelo, okuyinto engenakuphuthulwa zingakapheli izinsuku ezingama-30.
- 18.3 ISikhulu Sezolwazi kufanele sazise umceli ngenhloso yaso yokunweba ubude besikhathi sokuqala, futhi sisho ubude besikhathi esinwetshiwe, isizathu sokunwetshwa kwesikhathi, futhi simazise umceli ngelungelo lakhe -
- 18.3.1 lokukhalaza lolo daba kwiziphathimandla ezifanele;
- 18.3.2 lokukhalaza kuMlawuli; noma
- 18.2.3 lokufaka isikhalo enkantolo sokuphikisa ukwelulwa kwesikhathi lapho kudingeka.
- 18.4 ISikhulu Sezolwazi kufanele futhi sazise umceli ngenqubo yelungelo ngalinye kulawa ashiwo ngenhla esazisweni<sup>24</sup>.

## 19. IZIMPENDULO ZESICELO SOKUTHOLA ULWAZI

- 19.1 I-**PAIA** inikeze umphakathi ilungelo lokucela ukuthola amarekhodi kunoma iyiphi inhlangano yomphakathi noma ezimele. Kuvame ukuchazwa njengomthetho ogcina izakhamuzi zazi ngohulumeni wazo. Izinhlangano zomphakathi kudingeka zidalule noma yiluphi ulwazi olucelwe ngaphansi kwe-**PAIA** ngaphandle uma

<sup>22</sup> Isigaba 25(1) se-PAIA

<sup>23</sup> Isigaba 26(1) se-PAIA

<sup>24</sup> Isigaba 26(3) se-PAIA - isaziso sokunweba isikhathi kumele sisho ukuthi umceli angakwazi ukufaka isikhalazo sangaphakathi, akhalaze kuMlawuli Wezolwazi, kuye ngezimo, ngokunwetshwa kwesikhathi, nangenqubo (okubandakanya ubude besikhathi) ukufaka isikhalazo sangaphakathi, ukukhalaza kuMlawuli Wezolwazi, kuye ngezimo.

ingena ngaphansi kwesinye sezizathu **zokukhululwa eziyishumi nambili (12)** noma izizathu zokuthi kungani ukutholakala kwamarekhodi enhlangano yomphakathi kungase kungavunyelwa noma kungafanele kuvunyelwe<sup>25</sup> kanye nezizathu zokukhululwa **eziyisikhombisa (7)** noma izizathu zokuthi kungani ukuthola amarekhodi enhlangano ezimele kungase kungavunyelwa noma kungafanele kuvunyelwe<sup>26</sup>. Izizathu zokukhululwa eziyishumi nesishiyagalolunye (19) ezihlinzekwe kwi-**PAIA** zihloselwe ukuvikela izintshisekelo ezifana nobumfihlo bemininingwane yomuntu siqu, ukuphepha kwezwe, kanye nokugcinwa komthetho.

19.2 Isimiso esiyisisekelo sokusetshenziswa kwe-**PAIA** siwukukholelwa ekubekeni izinto obala. Lokhu kusho ukuthi noma yisiphi izizathu sokunciphisa lokhu kubekwa kwezinto obala kumele sizwakale. Izinhlango zomphakathi kufanele nokuba zibheke ukuthi ingabe zingakwazi yini ukudalula ingxenye ethile yolwazi noma nini lapho zinquma ukuthi ukudalulwa kwalo lonke ulwazi akunakwenzeka futhi kufanele zikhiphe noma zihlele kabusha imininingwane engenakudalulwa bese ziyidalula yonke esele.

### 19.3 Izinhlalo zezimpendulo zezicelo

19.3.1 Lapho isicelo sokuthola irekhodi sesenziwe, iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi, uma isicelo sokuthola irekhodi sivunywana noma sinqatshwa, kumele sazise umceli-

- (a) Ngesinqumo saso, kanye
- (b) Nezinkokhiso ezifunekayo, uma zikhona,

efomini elihambisana kakhulu neFomu 3 leSithasiselo A kwiMithethonqubo.

19.3.2 Kodwa-ke, i-**PAIA** inikeza uhlu lwezizathu noma izisekelo (zokukhululwa) (bheka indima 19.4 no-19.6 ngezansi) zokuthi kungani isicelo singase senqatshwe noma kufanele senqatshwe. Lokhu kubalulekile, njengoba isicelo singenqatshwa kuphela ngesisekelo sesinye salezi zizathu ezisohlwini lokwenqabela ukuthola amarekhodi.

19.3.3 Naphezu kwezizathu ezibalulwe ngenhla zokwenqatshwa kokutholakala kwamarekhodi, iSikhulu Sezolwazi enhlanganweni yomphakathi kufanele sisivume isicelo sokuthola irekhodi lenhlango uma intshisekelo yomphakathi ekudalweni kwerekhodi kusobala ukuthi idlula ubungozi obushiwo ezizathwini zokwenqaba ezisohlwini. Lokhu kusho ukuthi umceli angathembela kwintshisekelo yomphakathi noma nini lapho kusetshenziswa esinye sezizathu zokwenqabela ukutholakala kwamarekhodi.

19.3.4 Ngamafuphi, izizathu zokuthi kungani ulwazi lungenakudalulwa zihambisana nokuthi ukudalulwa kwalolo lwazi kungadala umonakalo omkhulu yini kunokungadalulwa kwalo. Kunezinhlalo ezimbili ezehlukene zezizathu zokwenqabela ukutholakala kwamarekhodi enhlangano:

<sup>25</sup> Isahluko 4 se-PAIA- izizathu zokwenqabela ukutholakala kwamarekhodi (isigaba 34-45 se-PAIA)

<sup>26</sup> Isahluko 4 of PAIA - izizathu zokwenqabela ukutholakala kwamarekhodi (isigaba 63-69 se-PAIA)

<sup>27</sup> Isigaba 46 se-PAIA

## 19.4 Iziphatu eziyimpoqo zokwenqaba (iziphatu zokukhululwa)

19.4.1 Ngenxa yeziphatu eziyimpoqo, iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi kufanele sisenqabe isicelo ngoba ziyasebenza kulo rekhodi.

19.4.2 Kuneziphatu eziyimpoqo eziningi kuneziphatu ezingeyona impoqo. Lokhu okulandelayo kuyiziphatu eziyimpoqo zokwenqaba, futhi iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi kumele sisenqabe isicelo ngoba ziyasebenza kulelo rekhodi –

### 19.4.2.1 **Ukuvikelwa okuyimpoqo kwemininingwane yangasese yomuntu wesithathu ongumuntu wemvelo;**

ISikhulu Sezolwazi enhlanganweni yomphakathi noma ezimele akufanele sivumele umceli ukuba athole imininingwane eyimfihlo yomunye umuntu uma lokho kuzoba 'ukudalula okungafanele'. Izigaba ngokwazo ziveza iziphatu ezimbalwa lapho lokhu kungasebenzi khona, njengalapho amarekhodi esevele esesemphakathini, noma lapho umuntu eyinikezile imvume. Udaba lwemvume lubaluleke kakhulu njengoba luxhuma kwenye ingxenye yenqubo umceli okufanele ayazi, ephathelene nezaziso zokwazisa abantu besithathu, ngokwesigaba 5 se-PAIA.

### 19.4.2.2 **Ukuvikelwa okuyimpoqo kwamarekhodi athile oPhiko Lwezentela LwaseNingizimu Afrika;**

ISikhulu Sezolwazi Sakwa-SARS akufanele sivumele umceli ukuba athole amarekhodi atholwe, noma agcinwe ngu-SARS ngezinhloso zokuqoqa imali. Kodwa-ke, amarekhodi atholwe noma agcinwe yi-SARS awanakwenqatshelwa uma isicelo senziwa ngumceli ofuna amarekhodi akhe noma omuntu amcelelayo.

### 19.4.2.3 **Ukuvikelwa okuyimpoqo kolwazi lwezebhizinisi lomuntu wesithathu;**

ISikhulu Sezolwazi enhlanganweni akumele sivumele umceli ukuba athole ulwazi lwezebhizinisi lomunye umuntu (ngamanye amagama, okungeyena umceli noma ocelwayo). Lokhu kungabandakanya ulwazi olunjengezimfihlo zokuhweba, noma lokho okungasongela ibhizinisi lalowo muntu wesithathu. Isibonelo, i-KFC isebenzisa amaresiphi athile, okubandakanya nezithako ezithile ezenziwe umuntu wesithathu, okuyizimfihlo zokuhweba zalowo muntu wesithathu futhi ukuzidalula kungasongela ibhizinisi lalowo muntu wesithathu.

19.4.2.4 **Ukuvikelwa okuyimpoqo kolwazi oluthile oluyimfihlo, nokuvikelwa kolunye ulwazi oluyimfihlo, lomuntu wesithathu;**

IZikhulu Zezolwazi ezinhlanganweni zomphakathi nezizimele akumele zivumele umceli ukuba athole irekhodi uma ukukhishwa kwalo kuzofana nokwephula isivumelwano sokugcina imfihlo esenziwe nomuntu wesithathu.

19.4.2.5 **Ukuvikelwa okuyimpoqo kokuphepha kwabantu, nokuvikelwa kwempahla;**

ISikhulu Sezolwazi ezinhlanganweni somphakathi nezizimele akumele sivumele umceli ukuba athole irekhodi uma ukukhishwa kwalo kungalindeleka ukuba kubeke engcupheni ukuphepha komuntu. Ezigabeni ezifanayo, ibuye ithi iSikhulu Sezolwazi enhlanganweni singase sikwenqabele ukutholakala kwerekhodi uma kungenzeka kuthikameze ukuphepha kwesakhiwo noma kwempahla.

19.4.2.6 **Ukuvikelwa okuyimpoqo kwamadokhethi amaphoyisa lapho kwenziwa ibheyili, nokuvikelwa kokugcinwa komthetho kanye nezinqubo zomthetho;**

ISikhulu Sezolwazi enhlanganweni yomphakathi akumele sivumele umceli ukuba athole amarekhodi anjengamarekhodi ebheyili asevele evikelwe kakade yisigaba 60 soMthetho Wenqubo Yobugebengu. Kuso lesi sigaba, ibuye ithi iSikhulu Sezolwazi enhlanganweni yomphakathi singase sikwenqabele ukutholakala kwamarekhodi okuphoqelelwa komthetho aveza izindlela, amasu, izinqubo zokuvimbela ubugebengu, noma ukushushiswa kwezigebengu, kanye namanye amarekhodi ahlobene nezinqubo zomthetho ezenzekayo.

19.4.2.7 **Ukuvikelwa okuyimpoqo kwamarekhodi avinjelwe ukukhiqizwa ezinqubweni zomthetho;**

ISikhulu Sezolwazi enhlanganweni ezimele akumele sivumele umceli ukuba athole irekhodi uma lelo rekhodi livinjelwe ukukhiqizwa ezinqubweni zomthetho, ngaphandle kwalapho umuntu onelungelo lalelo rekhodi elisusa ilungelo lakhe.

19.4.2.8 **Ukuvikelwa okuyimpoqo kolwazi locwaningo lomuntu wesithathu, kanye nokuvikelwa kolwazi locwaningo lwenhlango yomphakathi noma ezimele.**

ISikhulu Sezolwazi enhlanganweni akumele sivumele umceli ukuba athole irekhodi uma lelo rekhodi lithintene nocwaningo olwenziwa, noma oluzokwenziwa, yileyo nhlangano ethintekayo futhi ukukhishwa kwalo kungadalula umcwaningi, umuntu wesithathu noma udaba olucwaningwayo okungabangela izinkinga ezinkulu.

19.4.3 Uyacelwa ukuba uphawule ukuthi lezi zizathu ezingenhla eziyimpoqo zokwenqabela ukutholakala kwamarekhodi ziyafana ngadlathile ezinhlanganweni zomphakathi nezizimele, ngaphandle kokuvikelwa okuyimpoqo kwamarekhodi athile oPhiko Lwezentela LwaseNingizimu Afrika, amadokhethi amaphoyisa lapho kwenziwa ibheyili, ukuphoqelelwa komthetho nawezinqubo zomthetho, ezisebenza kuphela ezinhlanganweni zomphakathi.

19.4.4 Uma kuyingxenye ethile kuphela yerekhodi ethintwa yizizathu zokwenqaba, iSikhulu Sezolwazi enhlanganweni yomphakathi noma ezimele singaphansi kwesibopho sokubheka ukuthi ukudalulwa kwengxenye ethile yolwazi kungenzeka yini noma nini lapho siquma ukuthi ukudalulwa kwalo lonke ulwazi akunakwenzeka kufanele sithathe izinyathelo ezifanele zokukhipha noma ukuhlela kabusha leyo ngxenye engenakunikezwa umceli bese siyivumela yonke ingxenye esele yerekhodi

## 19.5 Kuthathwa ngokuthi isicelo senqatshiwe<sup>28</sup>

19.5.1 Ukwehluleka ukuphendula kahle isicelo singakapheli isikhathi esibekiwe kubhekwa ngokuthi 'kuthathwa ngokuthi isicelo senqatshiwe'. Lokhu kubalulekile, ngoba i-PAIA ivumela umceli ukuba aphikise isinqumo lapho kungekho siqumo esenziwe nesicelo singanakangwa. Umceli angavele asho nje lapho efaka isikhalazo sangaphakathi ukuthi akatholanga mpendulo.

19.5.2 Isicelo sokuthola amarekhodi sithathwa njengesinqatshiwe ngemuva kokuphela kwezinsuku ezingama-30 noma kwesikhathi eseluliwe, inhlango yomphakathi noma ezimele ingaphenduli.

## 19.6 Izizathu zokwenqaba ezingeyona impoqo

19.6.1 Ngenxa yezizathu ezingeyona impoqo, iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi singabheka ukuthi sisenqabe yini noma cha isicelo ngoba izizathu zisebenza kwirekhodi eliceliwe. Ngenxa yokuthi aziyona impoqo, iSikhulu Sezolwazi kufanele sisebenzise umqondo waso ngokufanele lapho sibheka izizathu ezihlukahlukene, okuyilezi:

19.6.1.1 **ezokuvikela zaseNingizimu Afrika, ezokuphepha kanye nobudlelwano bamazwe omhlaba:** ISikhulu Sezolwazi singakwenqabela ukutholakala kolwazi uma ukukhishwa kwalo kungalindeleka ukuba kusongele ezokuvikela noma ukuphepha kwezwe. Lokhu kungasebenza nalapho ukukhishwa kolwazi kungalimaza ubudlelwano beNingizimu Afrika nelinye izwe, njengokuveza amarekhodi ahlinzekwe ngokuyimfihlo.

19.6.1.2 **Ezomnotho, ezezimali nezebhizinisi:** ISikhulu Sezolwazi singase sikwenqabele ukutholakala kolwazi uma ukukhishwa kwalo kuzolimaza ezomnotho nezezimali zeRiphabhuliki;

<sup>28</sup> Isigaba 27 no-58 ze-PAIA

19.6.1.3 **Ukusebenza kwezinhlangano zomphakathi:** ISikhulu Sezolwazi enhlanganweni yomphakathi singakwenqabela ukutholakala kolwazi uma ukukhishwa kwalo kungaphazamisa imisebenzi, ngokwesibonelo uma izama ukwakha inqubomgomo, noma ibhunga ngodaba oluthile;

19.6.1.4 **Izicelo ezibonakala zingenasisekelo noma ezichukuluzayo:** IZikhulu Sezolwazi zingase sisenqabe isicelo solwazi uma zinombono wokuthi ukucubungula lezo zicelo kuzothatha isikhathi ngokungadingekile, kuholele ekuchithekeni kwezimali. Ngaphezu kwalokho, zingakwenqabela ukutholakala kwerekhodi uma kubonakala sengathi umceli wenzela ukucasula nokuchukuluza okungadingekile.

## 20. UKUDALULWA OKUYIMPOQO KWAMAREKHODI OKUZUZISA UMPHAKATHI

20.1 Ngisho noma sikhona isizathu esingeyona impoqo noma esiyimpoqo sokwenqaba isicelo sokuthola amarekhodi ezinhlangano zomphakathi noma ezizimele, kuhlale kunethuba lokuthi izidingo zomphakathi ekudalulweni kwerekhodi zibaluleke kakhulu kunokulimala okungase kubangelwe ukukhishwa kwerekhodi.

20.2 Lapho ukubaluleka kwezidingo zomphakathi kukhona njengoba kushiwo ngenhla futhi ukudalulwa kwerekhodi kuzoveza ubufakazi bokwephulwa okukhulu, noma ukwehluleka ukuthobela umthetho; noma ingozi yokuphepha komphakathi eseduze futhi ebucayi noma ukuba sengcupheni kwezemvelo, lapho-ke iSikhulu Sezolwazi enhlanganweni kufanele sisivume isicelo sokuthola irekhodi naphezu kokuba nezizathu zokwenqaba ezishiwo ngenhla.

## 21. INQUBO YOKWAZISA UMUNTU WESITHATHU<sup>29</sup>

21.1 ISikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi enhlanganweni, ngokwesigaba 47 no-71 se-**PAIA**, kudingeka sithathe zonke izinyathelo ezifanele zokwazisa umuntu wesithathu ngesicelo serekhodi lakhe noma amarekhodi angaba yirekhodi eliqukethe imininingwane yomuntu yangasese,

21.1.1 irekhodi lakwa-**SARS**;

21.1.2 izimfihlo zokuhweba

21.1.3 imininingwane ukudedelwa kwayo okungaba yizizathu zesenzo sokwephula isibopho sokugcina imfihlo; noma ulwazi locwaningo olungadalula othile noma udaba okungabangela umonakalo omkhulu.

21.2 Isaziso esiya kumuntu wesithathu lowo amarekhodi noma ulwazi lwakhe yilo oluceliwe kufanele simeme umuntu wesithathu ukuba -

<sup>29</sup> Isigaba 47 no-71 ze-PAIA

- 21.2.1 enze izethulo ezibhalwe phansi noma ezenziwa ngomlomo eSikhulwini Sezolwazi ukuthi kungani isicelo sokuthola ulwazi kufanele senqatshwe; noma
- 21.2.2 anikeze imvume ebhaliwe yokudalulwa kwerekhodi kumceli.
- 21.3 Okubalulekile kumceli, i-**PAIA** ithi izaziso ezibhaliwe eziya kumuntu wesithathu kufanele zithunyelwe kumuntu wesithathu **zingakapheli izinsuku ezingama-21** isicelo samukelwe, nokuthi iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi kufanele lazise umceli ukuthi isaziso sithunyelwe kumuntu wesithathu.
- 21.4 Uma lesa saziyo sesithunyelwe, iSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi kufanele sibe sesithatha isinqumo esingujuqu sokuthi sizowadedela yini noma cha amarekhodi **zingakapheli izinsuku ezingama-30** lesa saziyo sithunyelwe.
- 21.5 Umuntu wesithathu kufanele aziswe ngesinqumo esithathiwe futhi kufanele kunikezwe nezizathu ezanele zokuvunywa kwesicelo. Umuntu wesithathu kufanele futhi aziswe nangelungelo nenqubo yokuphikisa isinqumo njengoba kushiwo esigabeni 22 ngezansi.

## **22. USIZO LWEZOMTHETHO OLUTHOLAKALAYO EKUPHIKISENI IZINQUMO NOMA UKUNGATHATHI SINQUMO KWESIKHULU SEZOLWAZI NOMA ISEKELA LESIKHULU SEZOLWAZI**

- 22.1 Isinyathelo ongasithatha lapho nje isinqumo sesicelo sesenziwe
- 22.1.1 Umceli angathatha isinyathelo sokulandelela ngokubhala, isinqumo esisalenga seSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi. Kukhuthazwa ukuthi konke ukuxhumana phakathi komceli neSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi kumele kubhalwe phansi ukuze kusetshenziswe esikhathini esizayo.
- 22.1.2 Kunezinqubo ezihlukahlukene zezinhlango zomphakathi nezizimele, ikakhulukazi maqondana nezikhalazo zangaphakathi. Isibonelo, maqondana nesicelo sokuthola irekhodi lenhlango yomphakathi, umceli kufanele aqale ngokufaka isikhalazo sangaphakathi ngaphambi kokuya kuMlawuli noma eNkantolo. Kodwa-ke, asikho isikhalazo sangaphakathi sokuphikisa isinqumo (noma ngabe kuvunyiwe noma kwenqatshiwe ukutholakala kwamarekhodi) noma lokho okuthathwa njengokwenqatshwa kokutholakala kwamarekhodi enkampani ezimele.
- 22.1.3 Lesi sigaba sizochaza usizo lwezomthetho olutholakalyo kubaceli abafisa ukuphonsela inselelo lezo zinqumo, okubandakanya ukufaka isikhalazo kwangaphakathi, ukufaka isikhalazo kuMlawuli nokuyisa isikhalazo eNkantolo. Bheka neshadi lokulandelana kwezinyathelo zenqubo yesicelo se-**PAIA**, esigabeni 27 ngezansi.

22.1.4 Umceli angase, phakathi kokunye, aphikise isinqumo esilandelayo senhlangano ezimele kanye/noma yomphakathi -

22.1.4.1 ithenda noma ukukhokhwa kwemali yesicelo;

22.1.4.2 ithenda noma ukukhokhwa kwediphozithi;

22.1.4.3 imali yokuthola ulwazi okumele ikhokhwe yeqe kakhulu;

22.1.4.4 indlela enikeziwe yokuthola irekhodi;

22.1.4.5 ukwenqatshwa kwesicelo;

22.1.4.6 inkambiso (okubandakanya nobude besikhathi) yokufaka isikhalazo sangaphakathi;

22.1.4.7 ukunwetshwa kwesikhathi okungafanele okwenzelwe ukuphendula isicelo sokuthola ulwazi;

22.1.4.8 ukwehluleka ukudalula amarekhodi;

22.1.4.9 ukuvunywa kwesicelo sokuthola irekhodi;

22.1.4.10 ukwenqatshwa kwesicelo sokungakhokhi;

## 22.2 Usizo lwangaphakathi

22.2.1 Umceli usifaka kanjani isikhalazo sangaphakathi sokuphikisa isinqumo senhlangano yomphakathi?

22.2.1.1 Isikhalazo sangaphakathi singafakwa kuphela, ngokwesigaba 74 se-**PAIA**, kuziphathimandla ezifanele zomkhakha kahulumeni kazwelonke noma wesifundazwe noma yimuphi umasipala emkhakheni kahulumeni wendawo kuye ngohlobo lwesikhalo.<sup>30</sup>

22.2.1.2 Ngokwesibonelo, iDolobha LaseGoli liyisibonelo somkhakha kahulumeni wendawo lapho isicelo sangaphakathi singafakwa khona. ISikhwama Sezingozi Zomgwaqo noma uMlawuli uyisibonelo senhlangano yomphakathi engeyona ingxenye kahulumeni kazwelonke, wesifundazwe noma wasekhaya njengoba emiswe ngumthetho, okusho ukuthi isikhalazo sangaphakathi asinakufakelwa zona.

<sup>30</sup> Isigaba 74(1) se-PAIA

22.2.1.3 Lapho umceli noma umuntu wesithathu engeneme ngesinqumo esenziwe yiSikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi emkhakheni kahulumeni kazwelonke, wesifundazwe noma wasekhaya, umceli noma umuntu wesithathu unelungelo lokufaka isikhalazo sangaphakathi, ngokwesigaba 74(1) noma u-(2) kwi-**PAIA**. Inqubo yokufaka isikhalazo ibekiwe ebhukwaneni le-PAIA laleyo nhlango futhi indlela yokufaka isikhalazo sangaphakathi ichaziwe nalapha ngezansi.

22.2.1.4 Uma impendulo evela emkhakheni kahulumeni kazwelonke, wesifundazwe noma wasekhaya ithathwa njengokwenqaba, ngamanye amazwi, wehlulekile ukuphendula isicelo ezinsukwini ezingama-30 noma kunoma yisiphi isikhathi eseluliwe, umceli angafaka isikhalazo sangaphakathi, ngokwenqubo echazwe lapha, ngaphambi kokuba umceli aye kuMlawuli noma eNkantolo.

## 22.3 **Ukulondolozwa kwamarekhodi kuze kube yilapho sethithathiwe isinqumo sokugcina maqondana nesicelo**

22.3.1 ISikhulu Sezolwazi somkhakha kahulumeni kaZwelonke, weSifundazwe noma waSekhaya lapho kufakwe khona isikhalazo sangaphakathi kuyadingeka, ngokwesigaba 21 se-**PAIA**, ukuba sithathe izinyathelo ezifanelekile ezidingekayo ukuze kugcinwe irekhodi futhi asinakucisha noma sishabalalise noma yiliphi irekhodi eliceliwe, kuze kube yilapho ekugcineni seziphothulwe zonke nanoma yiziphi izinqubo zesikhalazo sangaphakathi noma isikhalazo kuMlawuli noma isikhalazo enkantolo, kuye ngohlobo lwesikhalazo.

22.3.2 Lokhu kusho ukuthi isikhulu sezolwazi asikwazi ukucisha noma ukushabalalisa noma yiluphi ulwazi oluceliwe, kuyilapho kusalindwe inqubo eshiwo endimeni 22.3.1.1 ngenhla.

## 22.4 **Isikhalazo sangaphakathi kufanele sibhekiswe kubani?**

22.4.1 Nakuba isikhalazo sizobhekwa yisiphathimandla esifanele, isikhalazo sangaphakathi kufanele silethwe noma sithunyelwe eSikhulwini Sezolwazi soMkhakha KaHulumeni kaZwelonke, weSifundazwe noma waSekhaya, kuye ngohlobo lwesikhalazo, ekhelini lakhe, kwinombolo yefeksi noma ekhelini le-imeyili , imininingwane yaso etholakala ebhukwaneni le-**PAIA** noma kuMlawuli.

22.4.2 ISikhulu Sezolwazi emkhakheni kahulumeni kazwelonke, wesifundazwe noma wendawo, kuye ngohlobo lwesikhalazo, sinesibopho esiqondile, ngokwesigaba 75(4) se-**PAIA**, sokuletha isikhalazo kusiphathimandla

<sup>31</sup> Isigaba 75(1)(b) se-PAIA

sezikhalazo, kanye nezizathu zaso zesinqumo esiphikiswayo. Ukulethwa kwesikhalazo kuziphathimandla ezifanele kufanele kwenziwe zingakapheli izinsuku eziyi-10 zokusebenza ngemuva kokutholwa kwesikhalazo.

## 22.5 Ubani oyisiphathimandla esifanele?

22.5.1 Isiphathimandla esifanele, lapha esibizwa ngokuthi “yisiphathimandla sezikhalazo” ngokuvamile siyinhloko yezepolitiki enhlanganweni ethintekayo (nakuba lo msebenzi ungadluliselwa ngokusemthethweni komunye umuntu) futhi kusho ngqo abantu abandelayo

Inhlangano Yomphakathi (“UHulumeni”)	Isiphathimandla Esifanele (“Isiphathimandla Sezikhalazo”)
<b>IHhovisi LikaMongameli</b>	Umuntu oqokwe ngenchwadi nguMongameli, uma ekhona, uma kungenjalo uMongameli uyisiphathimandla sezikhalazo.
<b>UMnyango Kazwelonke</b>	UNgqongqoshe owengamele lowo mnyango noma umuntu oqokwe ngenchwadi ngulowo Ngqongqoshe
<b>IHhovisi LikaNdunankulu</b>	Umuntu oqokwe ngenchwadi nguNdunankulu.
<b>UMnyango Wesifundazwe</b>	ILungu LoMkhandlu Ophethe ( <b>MEC</b> ) elengamele lowo Mnyango Wesifundazwe noma umuntu oqokwe ngenchwadi ngu- <b>MEC</b> .
<b>UMasipala</b>	IMeya, uSomlomo noma omunye umuntu oqokwe ngenchwadi nguMkhandlu KaMasipala walowo masipala.

22.5.2 Noma yisiphi isimo, lapho kungesilo ihhovisi likandunankulu: ilungu lesigungu esiphethe elengamele leyo nhlangano yomphakathi noma umuntu oqokwe ngenchwadi yilelo lungu.

22.5.3 Uma isiphathimandla sezikhalazo sivumelana nesinqumo seSikhulu Sezolwazi, kuyosho ukuthi isikhalazo sangaphakathi siyenqatshwa futhi isinqumo sokuqala seSikhulu Sezolwazi siyasebenza. Kodwa-ke, uma isiphathimandla sezikhalazo singavumelani nesinqumo seSikhulu Sezolwazi, kuyosho ukuthi isikhalazo siyavunywa futhi isinqumo sokuqala siyachithwa.

22.5.4 isinqumo seSikhulu Sezolwazi siyaqhubeka sisebenza. Kodwa-ke, uma igunya lezikhhalazo lingavumelani nesinqumo seSikhulu Sezolwazi, isikhhalazo sizovunywa kuthi isinqumo sokuqala sichithwe.

## 22.6 Ubani ongafaka isikhhalazo sangaphakathi?

22.6.1 Noma yimuphi umceli ofake isicelo se-**PAIA** sokuthola amarekhodi emkhakheni kaHulumeni kaZwelonke, weZifundazwe noma waSekhaya, kuye ngohlobo lwesicelo, sabe sesiyenqatsha, futhi ekholwa ukuthi esinye sezizathu zokufaka isikhhalazo ezishiwo endimeni 22.2.4 ngenhla siyasebenza esicelweni sakhe, unelungelo lokufaka isikhhalazo sangaphakathi.

22.6.2 Abantu besithathu nabo bangazifaka izikhhalazo zangaphakathi eziphikisa isinqumo esenziwe iSikhulu Sezolwazi sokuvumela ukutholakala kwerekhodi elibathintayo. Uma isikhhalazo sangaphakathi sithinta umuntu wesithathu, isiphathimandla sezikhhalazo esithole isikhhalazo sangaphakathi kudingeka sazise labo bantu besithathu (okusho ukuthi umthwalo uyasuka eSikhulwini Sezolwazi uye kusiphathimandla sezikhhalazo).

## 22.7 Ubude besikhathi sokufaka isikhhalazo

22.7.1 Isikhalo sangaphakathi kufanele sifakwe -

22.7.1.1 kungakapheli **izinsuku ezingama-60**<sup>32</sup> ngemuva kokuthathwa kwesinqumo;

22.7.1.2 zingakapheli **izinsuku ezingama-30**<sup>33</sup> ngemuva kokuba isaziso sinikezwe umuntu wesithathu mayelana nesinqumo esikhhalazelwayo.

22.7.2 Ukufaka isikhhalazo sangaphakathi ngemuva kwalesi sikhathi esishiwo ngenhla (sekwedlule isikhathi) akunakuvunyelwa, ngaphandle kwalapho isiphathimandla sezikhhalazo sinikezwa isizathu esizwakalayo sokuza sekwephuzile. Isibonelo, njengokulaliswa esibhedlela ngaphezu kwezinsuku ezingama-60 kungamukelwa njengezizathu ezizwakalayo zokuphuza ukufika.

22.7.3 Uma isiphathimandla sezikhhalazo singakwamukeli ukufakwa kwesikhhalazo sangaphakathi sekwedlule isikhathi, kufanele sikunikeze izizathu zokwenqaba isikhhalazo futhi sikunikeze umhlahlandlela wanoma yiluphi olunye ulwazi olwengeziwe, uma lukhona, oludingekayo ukuze samukele isikhhalazo. Isiphathimandla sezolwazi kumele futhi sikweluleke ngenqubo yokufaka isikhhalazo ngesinqumo saso kuMlawuli noma enkantolo.

<sup>32</sup> Isigaba 75(1)(a)(i) se-PAIA

<sup>33</sup> Isigaba 75(1)(a)(ii) se-PAIA

22.7.4 Njengoba kubonisiwe ngenhla, isikhalazo sakho kufanele silethwe yiSikhulu Sezolwazi kwisiphathimandla sezikhalazo zingakapheli izinsuku eziyi-10 zokusebenza ngemuva kokuthola isikhalazo sangaphakathi<sup>34</sup>.

## 22.8 Isaziso sesikhalazo esithunyelwa yisiphathimandla sesikhalazo kumceli noma kumuntu wesithathu

22.8.1 Isiphathimandla sezikhalazo kufanele, ngokushesha okukhulu ngangokunokwenzeka kodwa kunoma yikuphi kungakapheli **izinsuku ezingama-30** ngemuva kokuthola isikhalazo sangaphakathi<sup>35</sup>, sazise -

22.8.1.1 umuntu wesithathu ongumnikazi walelo rekhodi elikhalazelwayo, noma

22.8.1.2 umceli mayelana nesikhalazo sangaphakathi sokuphikisa ukuvunyelwa kwesicelo sokuthola irekhodi.

22.8.2 Umceli noma umuntu wesithathu onikezwa isaziso, zingakapheli **izinsuku ezingama-21** ngemuva kokuba esinikiwe leso saziso, angenza izethulo ezibhaliwe kusiphathimandla sezikhalazo ukuthi kungani isicelo sokuthola irekhodi kufanele sivunyelwe noma kungafanele sivunyelwe.

## 22.9 Isinqumo ngesikhalazo sangaphakathi nesesaziso saso<sup>36</sup>

22.9.1 Isiphathimandla sezikhalazo kufanele sinqume maqondana nesikhalazo sangaphakathi ngokushesha ngangokunokwenzeka kodwa kunoma yikuphi kungakapheli izinsuku ezingama-30:

22.9.1.1 ngemuva kokuthi isikhalazo sangaphakathi sifikile eSikhulwini Sezolwazi kuyo nhlangano;

22.9.1.2 ngemuva kokwaziswa komuntu wesithathu, njengoba kushiwo endimeni 22.3.6.1 ngenhla.

22.9.2 Isinqumo sesiphathimandla sezikhalazo kufanele siyiswe kumkhalazi, umuntu wesithathu nakumceli. Isinqumo sesiphathimandla sezikhalazo kufanele sihambisane nezizathu ezanele zesinqumo, okubandakanya izinhlinzeko ze-**PAIA** noma ze-**POPIA** okusekelwe kuzo isinqumo.

22.9.3 Uma isiphathimandla sezikhalazo sehluleka ukukhipha isaziso ngesinqumo sesikhalazo sangaphakathi sisinike umkhalazi kungakapheli izinsuku ezingama-30, isikhalazo sithathwa njengesichithiwe futhi umkhalazi angaqhubeka afake isikhalazo kuMlawuli noma aye eNkantolo ukuze athole usizo olufanele<sup>37</sup>.

<sup>34</sup> Isigaba 75(4) se-PAIA

<sup>35</sup> Isigaba 76(2)(a) se-PAIA

<sup>36</sup> Isigaba 77 se-PAIA

<sup>37</sup> Isigaba 77(7) se-PAIA

## 22.10 Ukugcwalisa isikhalazo sangaphakathi - IFomu 4

- 22.10.1 Ukuze afake isikhalazo sangaphakathi sokuphikisa noma yisiphi isinqumo esenziwe umkhakha kaHulumeni kaZwelonke, weSifundazwe noma waSekhaya, umceli kumele afake isikhalazo sakhe sangaphakathi ngokugcwalisa iFomu 4. IFomu 4 kufanele lithunyelwe eSikhulwini Sezolwazi emkhakheni kahulumeni othintekayo, okuzobe-ke sona sekudingeka ukuba sisidlulisele kusiphathimandla sezikhalazo, njengoba kushiwo ngenhla.
- 22.10.2 IFomu 4 liyatholakala kwiwebhusayithi yoMlawuli, <https://www.justice.gov.za/inforeg/>, nakuwebhusayithi yomkhakha kaHulumeni othintekayo.
- 22.10.3 ISikhulu Sezolwazi noma iSekela LeSikhulu Sezolwazi emkhakheni kaHulumeni othintekayo asikho ngaphansi kwesibopho esiqondile sokusiza umceli agcwalise ifomu lesikhalazo sangaphakathi; kodwa-ke, umceli usengasicela iSikhulu Sezolwazi ukuba simsize kulokhu.
- 22.10.4 Ngezansi kunenqubo yesinyathelo ngasinye sokugcwalisa ifomu lesikhalo sangaphakathi

### **Iminingwane edingekayo    Incazelo**

#### **Iminingwane yehlangano yomphakathi**

Le ngxenye kufanele ibe negama lomkhakha othintekayo kaHulumeni kaZwelonke, weSifundazwe noma waSekhaya, negama nesibongo seSikhulu Sezolwazi.

#### **Iminingwane somkhalazi ofake isikhalazo sangaphakathi**

Le ngxenye kufanele igcwaliswe ngumkhalazi, kungaba umelele othile noma cha. Amagama aphelele nesibongo, inombolo kamazisi kanye nesikhundla akwenza ngaso lokhu, okubandakanya lapho isikhalazo sangaphakathi senzela omunye umuntu, uma kudingeka, kufanele konke kushiwo. Uma umuntu ezenzela yena isikhalazo, kufanele akusho lokho. Iminingwane eyengeziwe edingekayo ibandakanya iminingwane yokuxhumana nalowo mceli:

## **Iminingwane edingekayo**

## **Incazelo**

ikheli leposi, ikheli le-imeyili, ifeksi kanye/noma inombolo yocingo. Le miningwane kufanele ifane nesesicelweni sokuqala. Uma umuntu ogcwalisa ifomu engummeleli womceli, ubufakazi besikhundla asifaka ngaso isikhalazo kufanele buhlanganiswe naleli fomu.

## **Iminingwane yomuntu owenzelwa isicelo (Uma sifakwa ngumuntu wesikhathu)**

Le ngxenye idinga ukugcwaliswa kuphela ngumuntu ulwazi alucelela omunye umuntu. Uma umuntu ofaka isikhalazo sangaphakathi kungeyena umuntu owayecele ulwazi ekuqaleni, iminingwane yalowo mceli kufanele ihlinzekwe lapha. Uma umuntu ezenzela yena isicelo, akudingeki ukuba le ngxenye igcwaliswe.

## **Isinqumo esifakelwe isikhalazo sangaphakathi**

Ifomu linesikhala sokuba umceli abonise ngo-“x”, ukuthi yisiphi ezizathwini zokukhalaza ezisohlwini esisebenza esikhalazweni sakhe.

## **Izizathu sokukhalaza**

Ngaphansi kwale ngxenye, umceli kudingeka achaze kabanzi ukuthi kungani ecabanga ukuthi izizathu zokukhalaza ziyasebenza kuye. Kudingeka anikeze izizathu zokuthi kungani ecabanga ukuthi isinqumo seSikhulu Sezolwazi asilungile. Kudingena nokuba afake noma yimaphi amaphepha asekelwa isikhalazo. Uhlu lwezizathu ezisekelwa isikhalazo lungachazwa kabanzi ekhasini elihlukile, uma isikhala esisefomini singenele. Amakhasi angeziwe azothunyelwa kufanele asayinwe.

Kufanele kube nezizathu ezanele neminingwane esekelayo ukuze isiphathimandla sezikhalazo senze isinqumo sinolwazi. Lokho kusho ukuthi umuntu kufanele futhi afake uhlaka lwazo zonke izinto ezenzekile kuze kube yilapho efaka isikhalazo sangaphakathi. Ekhasini elihlukile, umuntu angakhomba izigaba ezithile ze-**PAIA** njengesisekelo sesikhalazo.

#### Isaziso sesinqumo sesikhalazo

Kunesikhala sokuchazwa kwendlela isinqumo okufanele sithunyelwe ngayo, ngokwesibonelo ngeposi, ngekhuriya noma ngefeksi noma nge-imeyili. Sicela ukhethe indlela oyithandayo yokuthola isaziso.

22.10.5 Nakuba kungekho lutho oluvimbela umuntu ukuba athole ummeli ozomsiza kunoma yiliphi iqophelo lesicelo solwazi, izinqubo ezehlukahlukene ze-**PAIA** zenzelwe ukwenza izinto zibe lula, okususa isidingo sommeli nezindleko zezomthetho okumele zikhokhwe.

## 23. ISIKHALAZO ESIYA KUMLAWULI WEZOLWAZI

- 23.1 Umceli noma umuntu wesithathu angathumela kuphela isikhalazo kuMlawuli ngemuva kokuba lowo mceli noma lowo muntu wesithathu eseyenze yonke inqubo yesikhalazo sangaphakathi sokuphikisa isinqumo seSikhulu Sezolwazi emkhakheni kahulumeni kazwelonke, wesifundazwe noma wasekhaya. Lokhu kusho ukuthi umuntu angaletha kuphela isikhalazo sakhe, sokukhalaza ngomkhakha othile kahulumeni kuMlawuli uma umuntu engathokozile ngesinqumo sesiphathimandla sesikhalazo. UMLawuli uzosenqaba isikhalazo uma inqubo yokukhalaza emkhakheni othintekayo kahulumeni ingakapheli.
- 23.2 Kodwa-ke, maqondana nenhlangano yomphakathi (lapho isikhalazo sangaphakathi singasebenzi) nenhlangano ezimele, umceli noma umuntu wesithathu angasithumela isikhalazo kuMlawuli, uma engagculisekile ngesinqumo senhlangano ethintekayo.
- 23.3 Isikhalazo somceli noma somuntu wesithathu esiya kuMlawuli kufanele sifakwe zingakapheli izinsuku eziyi-180 ngemuva kokuthola isinqumo senhlangano.

23.4 Umceli angafaka isikhalazo kuMlawuli, uma engajabulile -

23.4.1 ngomphumela wesikhalazo sangaphakathi kwisiphathimandla sezikhalalo kunoma yimuphi umkhakha kahulumeni;

23.4.2 ngesinqumo sesiphathimandla sezikhalo sokungavumeli ukufakwa kwesikhalazo sangaphakathi sekwedlule isikhathi;

23.4.3 ngesinqumo seSikhulu Sezolwazi enhlangaweni yomphakathi engeyona ingxenye yanoma yimuphi umkhakha kahulumeni -

23.4.3.1 sokwenqaba isicelo sokuthola ulwazi; noma

23.4.3.2 sokunweba isikhathi sokusingatha isicelo; noma

23.4.3.3 sokukhipha imvume ngendlela ethile.

23.4.4 ngesinqumo senhloko yenhlangano ezimele -

23.4.4.1 sokwenqaba isicelo sokuthola ulwazi; noma

23.4.4.2 sokufuna kukhokhwe imali yesicelo, noma idiphozithi yokuthola ulwazi; noma

23.4.4.3 sokwelula isikhathi sokusingatha isicelo; noma

23.4.4.4 sokukhipha imvume ngendlela ethile.

23.5 Umuntu wesithathu angafaka isikhalazo kuMlawuli, uma engajabule -

23.5.1 ngomphumela wesikhalazo sangaphakathi kwisiphathimandla sezikhalazo emkhakheni kahulumeni othintekayo;

23.5.2 ngesinqumo seSikhulu Sezolwazi enhlanganweni yomphakathi engeyona ingxenye yanoma yimuphi umkhakha kahulumeni sokuvuma isicelo sokuthola ulwazi; noma

23.5.3 ngesinqumo senhloko yenhlangano ezimele sokuvuma isicelo sokuthola irekhodi laleyo nhlangano

## 23.6 Umuntu ukhalaza kanjani kuMlawuli?

- 23.6.1 Isikhalazo kuMlawuli kufanele sibhalwe phansi futhi nefomu lesikhalazo kufanele ligcwaliswe, kungaba ngesandla noma kwi-inthanethi. Ifomu lesikhalazo, iFomu 5, lingadonswa kuwebhusayithi yoMlawuli, <https://www.justice.gov.za/inforeg/>
- 23.6.2 Lokhu kusho ukuthi uMlawuli ngeke asamukele isikhalazo ngocingo; kodwa-ke, uMlawuli kudingeka ukuba anikeze usizo olufanele kunoma yimuphi umuntu ofisa ukufaka isikhalazo futhi lokhu kubandakanya usizo maqondana nokugcwalisa ifomu lesikhalazo.
- 23.6.3 Uma umuntu ephikisa isinqumo seSikhulu Sezolwazi enhlanganweni ezimele, kufanele anikeze ubufakazi obanele bokufakazela ukuthi irekhodi eliceliwe liyadingeka ekusetshenzisweni noma ekuvikeleni noma yimaphi amanye amalungelo. Ukutholakala kwamarekhodi enhlangano ezimele kungavunyelwa kuphela uma umuntu efakazela ukuthi uhlose ukusebenzisa noma ukuvikela noma yimaphi amanye amalungelo ngalelo rekhodi eliceliwe.

## 23.7 Kwenzekani ngemuva kokuthola isikhalazo?

23.7.1 Lapho ethola isikhalazo somuntu, uMlawuli kufanele -

23.7.1.1 aphenye isikhalazo futhi adlulisele lokho akutholile eKomidini Lezokuphoqelela ukuze kuthathwe isinqumo; noma

23.7.1.2 angathathi sinyathelo ngesikhalazo ngenxa yokuthi -

23.7.1.2.1 isikhalazo asithunyelwanga esikhathini esiyizinsuku eziyi-180 futhi kungekho zizathu ezizwakalayo zokuthethelela ukulethwa kwesikhalazo sekwedlule isikhathi;

23.7.1.2.2 isikhalazo asinasisekelo noma siyachukuluza noma asenziwanga ngezinhloso ezinhle; noma

23.7.1.2.3 ngokubheka zonke izimo zesicelo, noma yisiphi esinye isenyathelo asidingekile noma asifanele. Isibonelo, imininingwane eceliwe isiyatholakala kakade emphakathini.

23.7.1.3 lapho ukuxolelana okufanele noma ukusebenzisa imizamo yakhe engcono kakhulu yokuthola lesi sixazululo noma ukusiza izinhlangothi zixazulule izingxabano zazo; nokuba

23.7.1.4 eluleke umkhalazi kanye neSikhulu Sezolwazi, esithintwa yisikhalazo, ngesinyathelo okumele sithathwe.

## 23.8 **Ukuxhumana kokuqala koMlawuli nomkhalazi neSikhulu Sezolwazi maqondana nesikhalazo esifakiwe**

23.8.1 Uma uMlawuli ethatha isinqumo sokungasathathi zinyathelo ngesikhalazo, uMlawuli uzokwazisa umceli ngaleso sinqumo nezizathu zokungasasithathi esinye isinyathelo ngesikhalazo.

23.8.2 Uma uMlawuli enquma ukusiphenya isikhalazo, umceli uzothola incwadi emazisayo ukuthi uMlawuli unqume ukwenza uphenyo.

23.8.3 Lapho isikhalazo sifika, uMlawuli uzodlulisela imininingwane yesikhalazo eSikhulwini Sezolwazi enhlanganweni ethintekayo, bese esicela ukuba sithumele kuMlawuli, impendulo ebhaliwe maqondana nesikhalazo.

## 23.9 **Amandla oMlawuli okuphenya**

23.9.1 UMlawuli unamandla, ngokwesigaba 77G(2) se-**PAIA** -

23.9.1.1 ukusebenzisa yonke imizamo yakhe engcono ukufinyelela lesi sixazululo;

23.9.1.2 ukubiza futhi aphoqebele ukuvela kwabantu phambi koMlawuli;

23.9.1.3 ukubaphoqa ukuba banikeze ubufakazi bomlomo noma obubhaliwe ngaphansi kwesifungo nokuba baveze noma yimaphi amarekhodi;

23.9.1.4 ukuthola nokwamukela noma yibuphi ubufakazi nolunye ulwazi, kungaba ngesifungo, nge-afidavithi;

23.9.1.5 angene futhi aseshe noma yiziphi izakhiwo ezihlala labo abathinyekayo;

23.9.1.6 enze ingxoxo yangasese nanoma yimuphi umuntu kunoma yisiphi isakhiwo angena kuso; nokuba

23.9.1.7 abuze noma yini noma yimiphi imibuzo kulezo zakhiwo uMlawuli ayibona ifanele.

## 23.10 **Ukuhlola ukuhambisana nezinhlinzeko ze-PAIA**

- 23.10.1 UMlawuli angahlola ukuthi ingabe inhlango yomphakathi noma ezimele ngokuvamile iyahambisana yini nezinhlinzeko ze **PAIA**.
- 23.10.2 UMlawuli angenza ukuhlola okungahleliwe kokuthi inhlango iyahambisana yini nezinhlinzeko, ngokuzithandela kwayo, kodwa-ke, uMlawuli angenza nokuhlola ukuhambisana nezinhlinzeko uma ecelwa noma enzela iSikhulu Sezolwazi enhlanganweni noma omunye umuntu. Lokhu kusho ukuthi noma yimuphi umuntu angacela uMlawuli ukuba ahlole ukuthi inhlango iyahambisana yini nezinhlinzeko. Umuntu futhi angafaka isicelo esingaziwa-mnikazi sokuba kuhlolwe ukuthi inhlango iyahambisana yini nezinhlinzeko, ngokusho ukuthi ucela ukuhlala engaziwa.
- 23.10.3 UMlawuli uzohlizeka umuntu ocele ukuhlolwa ukuhambisana nezinhlinzeko umbiko walokho kuhlola kanye nezincomo zezinyathelo okufanele zithathwe, uma zikhona.

## 23.11 **Isaziso Solwazi**

UMlawuli anganikeza iSikhulu Sezolwazi enhlanganweni iSaziso Solwazi esidinga leyo nhlangano ukuba inikeze uMlawuli imininingwane ebalulwe esazisweni. Isibonelo, uma isikhalazo esifakwe kuMlawuli siphathelene nokwenqatshwa kokutholakala kolwazi ngokwanoma yiziphi izizathu zokwenqaba, uMlawuli angacela, kwiSaziso Solwazi, amakhophi amarekhodi lawo esikwenqabele ukutholakala kwawo ukuze anqume ukuthi izizathu zokwenqaba ziyezwakala yini noma cha.

## 23.12 **Ukusungulwa KweKomidi Lokuphoqelela**

- 23.12.1 UMlawuli kudingeka ukuba asungule iKomidi Lokuphoqelela<sup>38</sup>, elinamandla -
- 23.12.1.1 okucubungula zonke izindaba ezidluliselwe kulo nguMlawuli ngokwe-**PAIA** bese lisho elikutholile ngazo; nokuba
- 23.12.1.1 lenze noma yiziphi izincomo kuMlawuli maqondana nanoma yisiphi isinyathelo okufanele sithathelwe iSikhulu Sezolwazi kuleyo nhlangano.

## 23.13 **Isaziso Sokuphoqelela**

- 23.13.1 UMlawuli, ngemuva kokubheka izincomo zeKomidi Lokuphoqelela, anganikeza iSikhulu Sezolwazi kuleyo nhlangano iSaziso Sokuphoqelela -

<sup>38</sup> Isigaba 50 se-POPIA

23.13.1.1 eqinisekisa, echibiyela noma esichitha isinqumo esikhalazelwayo; noma

23.13.1.2 edinga ukuba iSikhulu Sezolwazi sithathe isinyathelo noma singathathi isinyathelo njengokusho koMlawuli Wezolwazi esazisweni.

#### 23.14 **Iyini imiphumela yokungahambasani neZaziso Zokuphoqelela?**

23.14.1 ISikhulu Sezolwazi enhlanganweni esenqaba ukuhambisana nesaziso sokuphoqelela siba necala futhi sizohlawuliswa noma sigqunywe ejele isikhathi esingeqile eminyakeni emithathu noma sigwetshe kokubili inhlawulo nokugqunywa ejele.

23.14.2 Isigaba 77K se-**PAIA** siqokomisa ukubaluleka kwelungelo lokuthola ulwazi noma amarekhodi. Lesi sigaba siqinisa nokubaluleka koMlawuli maqondana nokugqugquzelwa kwelungelo lokuthola ulwazi.

### 24. **UKUFAKA ISICELO ENKANTOLO**

#### 24.1 **Ubani ongafaka isicelo enkantolo ephikisa isinqumo?**

24.1.1 Umceli noma umuntu wesithathu angafaka isikhalazo enkantolo sokuthola usizo olufanele ngokwesigaba 82 kulezi zimo ezilandelayo kuphela:

24.1.1.1 ngemuva kokuba lowo mceli noma lowo muntu wesithathu esekwenze konke okusenqubweni yesikhalazo sangaphakathi okukhulunywe ngayo esigabeni 22.3 ngenhla; noma

24.1.1.2 ngemuva kokuba lowo mceli noma lowo umuntu wesithathu esekwenze konke okusenkambisweni yezikhalazo okukhulunywe ngayo esigabeni 77A.

24.1.2 Ngokwesigaba 78(1) se-**PAIA**, umceli noma umuntu wesithathu unezinketho ezimbili, kungaba ukudlulisela isinqumo, esishiwo ezigabeni 22.2.4, 23.4 no-23.5 ngenhla, kuMlawuli noma eNkantolo. Yize umuntu engaphoqelekile ukuya kuMlawuli ngaphambi kokuya eNkantolo, kutuswa ukuba umuntu acabange ngokuya kuMlawuli, njengoba uMlawuli enezindlela eziningi futhi ezisheshayo zokuxazulula izingxabano, ngokungafani neNkantolo.

24.1.3 Kodwa-ke, ukuze iNkantolo ibe negunya lokwahlulela udaba, umceli noma umuntu wesithathu kufanele -

24.1.3.1 kube ukuthi akavumelani nezinqumo, ezishiwo esigabeni 22.2.4, 23.4 noma u-23.5 ngenhla; noma

24.1.3.2 kube ukuthi usekwenze konke okusenkambisweni yezikhalazo noMlawuli noma ehoxisa isikhalazo kuMlawuli. Lokhu kusho ukuthi umuntu akakwazi ukuya eNkantolo uma isikhalazo sakhe sisesezithebeni zoMlawuli.

24.1.4 Uma umuntu ephikisa isinqumo seSikhulu Sezolwazi enhlanganweni ezimele, kudingeka ukuba anikeze ubufakazi obanele bokufakazela ukuthi irekhodi eliceliwe liyadingeka ekusebenziseni noma ekuvikeleni noma yimaphi amanye amalungelo.

## 24.2 Umuntu angasifaka nini isikhalazo eNkantolo esiphikisa isinqumo senhlangano noma soMlawuli?

24.2.1 Isikhalazo esifakwa eNkantolo ngumceli noma ngumuntu wesithathu, ongaphumelelanga esikhalazweni sangaphakathi kwisiphathimandla sezikhalazo emkhakheni othintekayo kahulumeni noma engavumelani nesinqumo seSikhulu Sezolwazi enhlanganweni ethile (esishiwo ku-22.2.4 , 23.4 noma ku-23.5 ngenhla) noma lesa soMlawuli, kufanele sifakwe kungakapheli izinsuku eziyi-180 kusukela ngosuku lwaleso sinqumo.

24.2.2 ISikhulu Sezolwazi enhlanganweni ethile noma isiphathimandla sezikhalazo kuHulumeni, kuye ngohlobo lwesikhalazo, singavumelani nesinqumo soMlawuli, singafaka isicelo enkantolo ukuze sithole usizo olufanele ngokwesigaba 82, zingakapheli izinsuku eziyi-180<sup>39</sup>.

24.2.3 Umceli, umuntu wesithathu, noma inhlangano, bangafaka isikhalazo enkantolo sokuba iNkantolo ibuyekeze noma yiziphi izinqumo abangavumelani nazo.

24.2.4 Ukufaka isikhalazo eNkantolo ngaphansi kwe-**PAIA** kwenziwa ngezinkambiso zomthetho, futhi kufanele kube yisinyathelo sokugcina.

24.2.5 Amacala okuthola ulwazi angalalelwa phambi kweNkantolo KaMantshi, njengenkantolo yokuqala<sup>40</sup>, kanye neNkantolo Ephakeme enamandla afanele.

24.2.6 Ukwehluleka ukufaka isikhalazo kungakapheli izinsuku eziyi-180 kungavunyelwa yiNkantolo uma umuntu ebonisa ukuthi izidingo zobulungiswa zifuna kanjalo. Lokhu kusho ukuthi inkantolo ingasamukela isikhalazo esifike sekwedlule isikhathi uma udaba

<sup>39</sup> Isigaba 78(4) se-PAIA

<sup>40</sup> Isigaba 91A se-PAIA neMithetho Yokugqoquzelwa kokutholakala kolwazi, 2019

oluzokwahlulelwa lutholakala lunezinhloso zobulungiswa. Uma amarekhodi aceliwe ezosiza umuntu ekufakeni isikhalazo sokuboshwa noma ezosiza umuntu ekutholeni olunye usizo lwezokwelashwa, ngokwesibonelo, inkantolo kungenzeka imnikeze ushwele kulokhu.

24.2.7 Isicelo singalethwa ngokuhambisana nenqubo ebekwe kumthetho 53 weMithetho YeNkantolo Ephakeme noma ngokomthetho 55 weMithetho YeNkantolo KaMantshi uma kungekho marekhodi noma irekhodi elingaphelele elilethwe ngumphathi.

24.2.8 Uma irekhodi selilethiwe kakade, isikhalazo siyoletwa ngokomthetho 55 weNkantolo KaMantshi, uma nje kunesizathu sokuthi umceli uyakholelwa ukuthi irekhodi eliphelele lezinqubo kungenzeka ukuthi alizange lihlinzekwe ngumphathi, umkhalazi angaqhubeka ngokulandela inqubo ebekwe kuMthetho 53 weMithetho YeNkantolo Ephakeme, ngokukhetha kwayo, kepha abonise kwi-afidavithi yakhe ukuthi kungani kunesizathu sokukholelwa ukuthi irekhodi eligcwele alizange lilethwe<sup>41</sup>.

### 24.3 **Siyini isimo esingokomthetho sesinqumo soMlawuli lapho kusalindwe isinqumo seNkantolo?**

Amandla oMlawuli atholakala ikakhulu kuMthethosisekelo, i-**POPIA** ne-**PAIA**. Ngenxa yalokhu, isaziso sokuphoqelela esikhishwa uMlawuli sinemiphumela yezomthetho, okusho ukuthi siyabopha kuze kube yilapho inkantolo yomthetho inquma okwehlukile. Izinqumo zoMlawuli ziyasebenza futhi ziyaphoqeleka ngaphandle uma kuneNkantolo efanele esho okwehlukile.

### 24.4 **Yimiphi imiyalelo engakhishwa yiNkantolo elalela isikhalazo?**

24.4.1 Inkantolo (kungaba ekaMantshi noma iNkantolo Enkulu) elalela isikhalazo ingenza le miyalelo elandelayo -

24.4.4.1 ukuqinisekisa, ukuchibiyela noma ukuchitha isinqumo seSikhulu Sezolwazi, noma seSiphathimandla Sezikhalazo noma soMlawuli Wezolwazi;

24.4.4.2 ukuyalela iSikhulu Sezolwazi noma iSiphathimandla Sezikhalazo ukuba sithathe isinyathelo esithile noma singasithathi isinyathelo esithile ngokubona kweNkantolo phakathi nesikhathi esithile esishiwo kulowo myalelo.;

24.4.4.3 ukukhipha incwadi evimbelayo yesikhashana noma usizo oluthile oluqondile, umyalelo oyisixazululo noma umyalelo wesinxephezelo;

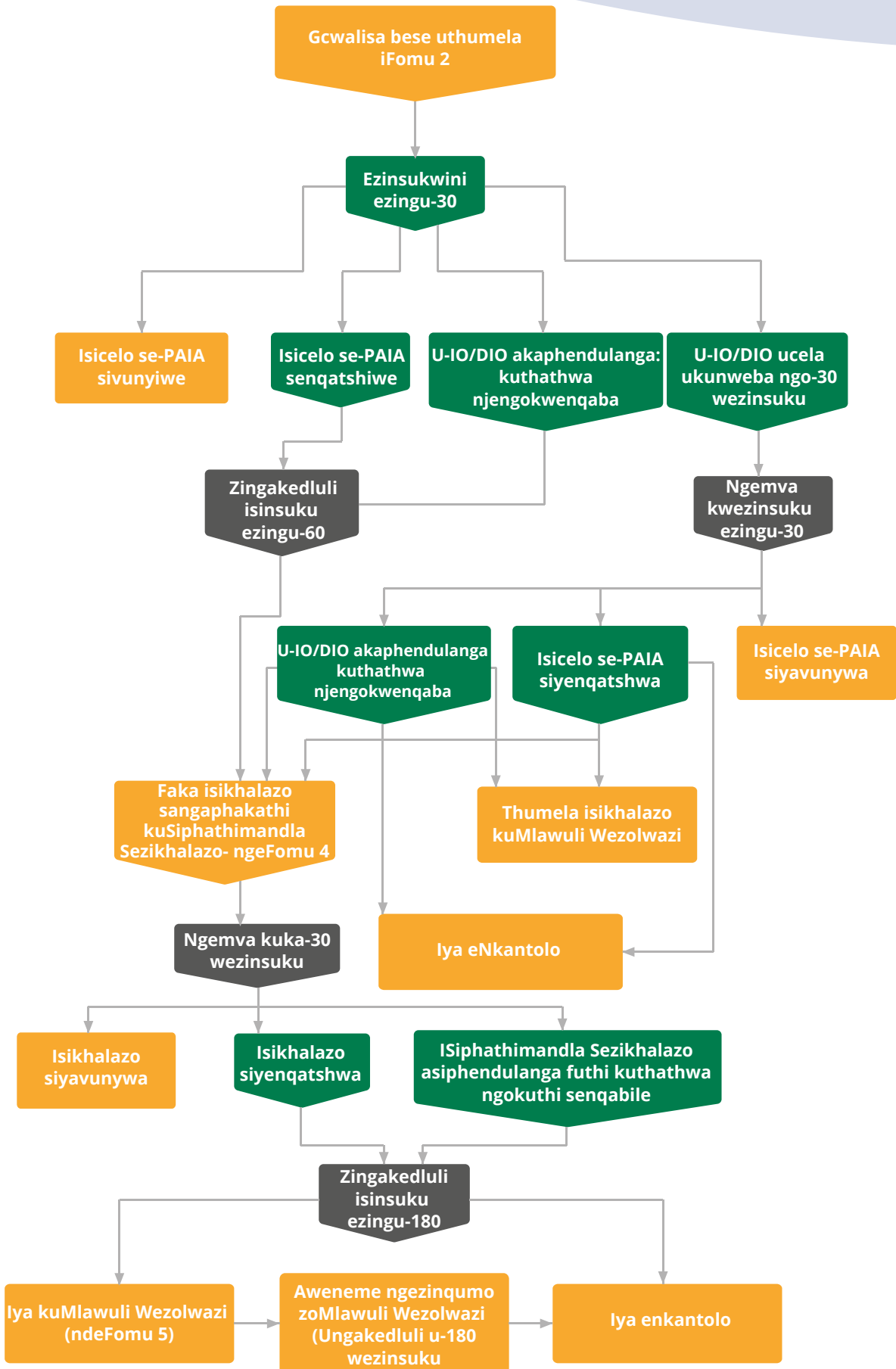
<sup>41</sup> UMthetho 4 IMithetho yokugququzelwa kokutholakala kolwazi, 2019

24.4.4.4 ukukhipha umyalelo wezindleko kunoma obani abathintekayo;

24.4.4.5 ngenxa yezobulungiswa, ukuxolela ukungalandelwa kwenkathi yezinsuku eziyi-180 zokufaka isikhalazo. Njengoba kushiwo ngenhla, izizathu ezanele zokuhluleka ukulandela isikhathi esinqunyiwe kufanele zichazwe kabanzi esikhalazweni esihambisana nesicelo sikashwele.

## 25. ISHADI LENQUBO YESICELO SE-PAIA

Sicela ubheke ukulandelana kwezinyathelo zenqubo ngothi lwazo, ezinqubweni okumele zilandelwe lapho usebenzisa ilungelo lokuthola ulwazi.



## 26. IMITHETHONQUBO EYENZIWE NGOKWESIGABA 92 SE-PAIA

- 26.1 Ngokwesigaba 92(1) no-92(4) kwi-**PAIA**, uNgqongqoshe wenza iMithethonqubo emayelana nokuGqugquzelwa Kokutholakala Kolwazi, ehlanganisa izindaba ezilandelayo
- 26.1.1 Izibopho zoMlawuli Wezolwazi (**umthethonqubo 2**);
  - 26.1.2 Izibopho zeZikhulu Zezolwazi (**umthethonqubo 3**)
  - 26.1.3 Ukutholakala ngokuzenzakalelayo kwamarekhodi athile ezinhlangano zomphakathi (**umthethonqubo 4**)
  - 26.1.4 Ukudalula ngokuzithandela nokutholakala ngokuzenzakalelayo kwamarekhodi athile ezinhlangano ezizimele (**umthethonqubo 5**)
  - 26.1.5 Ukutholakala kwamarekhodi amaqembu ezepolitiki (**umthethonqubo 6**)
  - 26.1.6 Isicelo sokuthola ulwazi (**umthethonqubo 7**)
  - 26.1.7 Umphumela wesicelo nezinkokhiso (**umthethonqubo 8**)
  - 26.1.8 Isikhalazo sangaphakathi sokuphikisa isinqumo sesikhulu sezolwazi senhlangano yomphakathi (**umthethonqubo 9**)
  - 26.1.9 Ukufaka izikhalazo (**umthethonqubo 10**)
  - 26.1.10 Inqubo ephathelene nokuphenywa kwezikhalazo (**umthethonqubo 11**)
  - 26.1.11 Ukuxazululwa kodaba (**umthethonqubo 12**)
  - 26.1.12 Ukulanyulwa kodaba (**umthethonqubo 13**)
  - 26.1.13 Ukucubungula (**umthethonqubo 14**)
  - 26.1.14 Ukuxhumana ngezobuchwepheshe (**umthethonqubo 15**)
  - 26.1.15 Amacala nezinhlawulo (**umthethonqubo 16**)
- 26.2 Ngokwesigaba 79(1) se-**PAIA**, iBhodi Lemithetho yeZinkantolo Zomthetho, ngemvume kaNgqongqoshe, lenza imithetho yenqubo -
- 26.2.1 yenkantolo maqondana nezicelo ngokwesigaba 78 se-**PAIA**; neyokuba
  - 26.2.2 inkantolo ithole izethulo zabathintekayo okukhulunywe ngazo esigabeni 80(3)(a).

## 27. IMITHETHO ESEMQOKA, IMITHETHONQUBO, IZAZISO NESIVUMO

### Imithetho, njengoba iyaye ichitshiyelwe ngezinye izikhathi

UMthetho Wokugqugquzelwa Kokutholakala Kolwazi, uMthetho 2 ka-2000

UMthetho Wezobulungiswa Bokuphatha, uMthetho 3 ka-2000

UMthetho Wokuchitshiyelwa Komthetho Wokugqugquzelwa Kokutholakala Kolwazi, uMthetho 54 ka-2002

UMthetho Wokuvikelwa Kwemininingwane Yabantu, uMthetho 4 ka-2013

UMthetho Wokuchitshiyelwa Komthetho Wokugqugquzelwa Kokutholakala Kolwazi, uMthetho 31 ka-2019

UMthetho Wokuxhaswa Ngezimali Kwabaqembu Ezepolitiki, uMthetho 6 ka-2018

### Imithethonqubo Nezaziso

Isaziso SikaHulumeni	Usuku lokushicilelwa	Isihloko nencazelo
<b>Isaziso SikaHulumeni R. 757 esikwi-GG Nombolo 45057</b>	27 Agasti 2021	Imithethonqubo ehambisana Nokugqugquzelwa Kokutholakala Kolwazi, 2021
<b>Isaziso SikaHulumeni R.991 ku GG 28107</b>	14 Okthoba 2005	Imithethonqubo echaza izizathu zokukhululwa komuntu ekukhokheni izinkokhiso.
<b>Isaziso SikaHulumeni 397 esikwi-GG Nombolo 44785</b>	30 Juni 2021	Ukukhululwa kwezinhlangano ezithile ezizimele ekwenzeni iBhukwana Le- <b>PAIA</b> .
<b>Isaziso SikaHulumeni 1217 ku GG 42717</b>	19 Septhemba 2019	Ukuqokwa kweziNkantolo ZikaMantshi njengezinamandla okulalela izindaba ze- <b>PAIA</b> .
<b>Isaziso SikaHulumeni R. 1284 ku GG 42740</b>	4 Okthoba 2019	Imithetho yenqubo yezicelo ezizokwenziwa ngokwe- <b>PAIA</b> phambi kweNkantolo Ephakeme noma iNkantolo KaMantshi.

## ISIVUMO

Lo Mhlahlandlela obuyekeziwe wokusetshenziswa kwe-**PAIA** ekuqaleni wahlanganiswa yiKhomishini Yamalungelo Abantu YaseNingizimu Afrika (i-**SAHRC**) futhi uMlawuli lapha uyawuvuma umsebenzi wokuqala we-**SAHRC**, kubandakanye nayo yonke imithombo yayo.

Ukhishwe ngu

**MLAWULI WEZOLWAZI**