

ACCESS DENIED:

A procedural guide to information requests under the Promotion of Access to Information Act

In this guide, we briefly set out the procedure to be followed for requests to access records of private and public bodies in terms of the Promotion of Access to Information Act No. 2 of 2000 (“PAIA”) and the steps that are required to be followed if such a request is refused.

Records can be requested in terms of section 11 (public bodies) and 50 (private bodies) of PAIA.

For public bodies requests are made to the Information Officer of the public body.

For private bodies requests are made to the head of the private body.

Both private and public bodies have 30 days in which they must respond to the request, either granting or denying access to the requested records.



Note: This can be extended by a further 30 days if for example there are a large number of records requested, or the requester consents to the extension. The requester is also entitled to lodge a complaint with the Information Regulator against any extension.



WHEN ACCESS TO RECORDS CAN BE DENIED:

1

Protecting the privacy of a third party

2

Protecting the commercial information or research information of a third party

3

Protecting confidential information in terms of an agreement

4

Protecting the safety of a person or juristic person and their property

5

Protecting information privileged from production in legal proceedings

6

Protecting the interests of national security

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WHEN ACCESS TO RECORDS CANNOT BE REFUSED:



Where records are already publicly available



Where the third party concerned has consented in writing to their disclosure



Where the disclosure of records would reveal a serious breach of law or a serious public safety or environmental risk and public interest outweighs potential harm to the public body
(The public interest override)

But did you know?

According to *GJ Plumbing and Industrial Solutions (Pty) Ltd v Casper le Roux Inc Attorneys and another [2023] JOL 58155 (GJ)*, a requester of records of a private body who is aggrieved by the decision of a private body to refuse access to its records cannot immediately apply to court for relief but must first exhaust the complaints procedure provided in PAIA regarding complaints to the Information Regulator.

Submitting complaints to the Information Regulator when access is denied

Section 77B of PAIA - A complaint to the Information Regulator must be submitted in writing within 180 days of the decision of the relevant body to refuse access to the requested records.

Section 77C of PAIA - Once a complaint is received by the Information Regulator, the Information Regulator must first investigate the complaint.

Section 77I(1) of PAIA - The Information Regulator can issue a notice to a private body's information officer or head, demanding specific information within a set timeframe and format.

Section 77D(1) of PAIA - Once the investigation is complete, the Information Regulator may decide to take no action or require no further action in respect of the complaint if, in the Information Regulator's opinion:

1. the complaint has not been submitted within the 180 day time period and there are no reasonable grounds for condonation;
2. the complaint is frivolous or vexatious or is not made in good faith;
3. or it appears to the Information Regulator that further action is unnecessary or inappropriate.

Section 77F of PAIA - A complaint received by the Information Regulator may also be settled.

Section 77J(1) of PAIA - The Information Regulator may serve a private body with an enforcement notice, confirming, amending or setting aside the decision which is the subject of the complaint; or requiring the private body to take specific action.

Section 77J(2) of PAIA - An enforcement notice must be accompanied by reasons for the notice; and particulars of the right to make an application to court in respect of a party aggrieved by the decision of the Information Regulator.

Section 77K of PAIA - The head of a private 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.

Authored by Partner Jesicca Rajpal, Associate Wesley Fletcher and Candidate Attorney Alyssa Farrand.



Jesicca Rajpal
Partner
+27 11 586 6048
jrajpal@fasken.com



Wesley Fletcher
Associate
+27 11 586 6041
wfletcher@fasken.com



Alyssa Farrand
Candidate Attorney

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