

INTER + RAUMA NEXUS

Incorporated under section 21 - 98-18673 000-232 NPO

✉ 36308, Menlo Park, 0102
Operational Office: 99 8th Street, Menlo Park, Pretoria,
Tel 012 346 3655 Fax 012 346 0585 Cell: 083 700
E-mail: info@itn.org.za
Website: www.itn.org.za



Information Manual in terms of section 51 of PAIA

1. Introduction

How to obtain access to the Information Manual

A copy of the information manual will be available at the following place:

- The office of South African Human Right Commission
- The operational of Inter Trauma Nexus
- On the Inter Trauma Nexus web site

2. Administrative information

Postal address: PO Box 36308, Menlo Park, 0102

Street address: 99 Eighth Street, Menlo Park, Pretoria, Gauteng.

Tel 012 346 3655

Fax 012 346 0585

E-mail info@itn.org.za

Web site www.itn.org.za

3. Description of the guide on how to use the Promotion of Access to Information Act (Act 2 of 2000) as compiled by the South African Human Right Commission.

3.1 INTRODUCTION

Section 32(1)(a) of the Constitution of the Republic of South Africa Act, No. 108 of 1996 (hereinafter referred to as “the Constitution”) provides that everyone has a right of access to any information held by the state and any information held by another person that is required for the exercise or protection of any rights.

3.1.1 The Constitution

The 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. The system of government in

South Africa before 27 April 1994 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.

3.1.2 The Promotion of Access to Information Act

The Promotion of Access to Information Act, No. 2 of 2000 (hereinafter referred to as "PAIA", or "the Act" interchangeably) is the national legislation that was enacted to give effect to the constitutional right of access to information. PAIA came into operation on 9 March 2001, with the exception of sections 10, 14, 15 and 51, which came into operation on 15 February 2002.

3.1.3 The Regulations

In terms of Section 92 of PAIA, the Minister may by notice in the Government Gazette, make regulations among others regarding any matter required or permitted by PAIA to be prescribed, any matter relating to fees payable and any notice required by the Act.

The following is a list and brief description of Government Notices containing the Regulations made in terms of Section 92 of PAIA.

3.1.3.1 Government Notice: No. R. 1244

Date: 22 September 2003

Subject: Amendment to the Regulations published by Government Notice No. R187 with regard to availability of manuals by public bodies and availability of manuals by private bodies. In terms of the amended regulations, the information officer of a public body must immediately after the manual has been compiled, make available a copy of the manual in each of the three official languages to the South African Human Rights Commission, every office of that public body, and make the manual available on the website, if any, of the public body. The information officer may publish the manual in three official languages in the Gazette.

Immediately after a manual has been compiled by a private body, the head of a private body must make a copy of the manual available to the South African Human Rights Commission, to the controlling body of which that private body is a member, if applicable; must make the manual available on the website, if any, of the private body and the head of a private body may publish the manual in the Government Gazette.

3.1.3.2 Government Notice: No. R. 187

Date: 15 February 2002

Subject: Regulations 187 of 15 February 2002 promulgated in terms of section 92 of PAIA makes provision for procedures pertaining to the availability of the section 10 Guide, availability of the manuals of public and private bodies, request fees and reproduction fees in respect of public and private bodies, and request forms.

3.1.3.3 Government Notice: No. R. 223

Date: 9 March 2001

Subject: The Notice contains Regulations promulgated in terms of section 92 of PAIA relating to fees payable for the records of public bodies and private bodies.

3.1.4 The South African Human Rights Commission

The South African Human Rights Commission ("the Commission") is a national institution, responsible for promoting respect for human rights and a culture of

human rights; for promoting the protection, development and attainment of human rights; and for monitoring and assessing the observance of human rights in the Republic.

3.1.4.1 The role and responsibility of the South African Human Rights Commission in terms of PAIA

As a national institution responsible for protecting, promoting and monitoring the enjoyment of human rights, the Commission is obliged to assist where reasonably possible any person who wishes to exercise a right in terms of PAIA.

3.1.4.1.1 The following are the functions and obligations of the Commission:

- To make a copy of the Guide available to the public;
- To the extent that financial and other resources are available, develop and conduct educational programmes to advance the understanding of PAIA by the public, in particular to teach disadvantaged communities about PAIA and how to use it and how to exercise their rights in terms thereof;
- To the extent that financial and other resources are available, encourage public and private bodies to participate in these programmes, and undertake their own educational programmes on the understanding of PAIA;
- To train information officers and deputy information officers of public bodies;
- To make recommendations to public and private bodies that they change the manner in which they administer PAIA, as the Commission considers advisable;
- To consult with and receive reports from public and private bodies on the problems they have encountered in complying with PAIA;
- To obtain advice from and to consult with, or receive and consider proposals or recommendations from any public or private body, official of such a body or member of the public in connection with the Commission's functions in terms of PAIA;
- To receive reports from public bodies regarding the implementation of PAIA;
- To compile and submit a report to Parliament annually on the enjoyment of the right of access to information in the Republic and the implementation of PAIA in general;
- As stated above, the Commission is obliged to assist any person wishing to exercise the right contemplated in PAIA.

The following definitions and interpretations are used to define various terms used in the Act. They have been attached here to assist with the meaning, which should be attached to these words in the Act and in this Guide.

“access fee” means a fee prescribed for the purposes of reproduction and for search and preparation, and for time reasonably required in excess of the hours prescribed to search for and to prepare the record for disclosure;

“court” means –

- (a) the Constitutional Court acting in terms of section 167 (6) (a) of the Constitution of the Republic of South Africa, 1996; or
- (b) (i) a High Court or another court of similar status; or
- (ii) a Magistrate's Court, either generally or in respect of a specified class of decisions in terms of PAIA, designated by the Minister; by notice in the Gazette and

presided over by a magistrate or an additional magistrate designated in terms of section 91A, within whose area of jurisdiction –

(aa) the decision of the information officer or relevant authority of a public body or the head of a private body has been taken;

(bb) the public body or private body concerned has its principal place of administration or business; or

(cc) the requester or third party concerned is domiciled or ordinarily resident;

“Guide” means the book produced by the Human Rights Commission in terms of s10 of the Promotion of Access to Information Act, No. 2 of 2000, for the purposes of reasonably assisting a person who wishes to exercise any right in terms of the Act;

“head” of, or in relation to, a private body means –

(a) in the case of a natural person, that natural person or any person duly authorized by that natural person;

(b) in the case of a partnership, any partner of the partnership or any person duly authorized by the partnership;

(c) in the case of a juristic person –

(i) the chief executive officer or equivalent officer of the juristic person or any person duly authorized by that officer; or

(ii) the person who is acting as such or any person duly authorized by such acting person;

“Human Rights Commission” means the South African Human Rights Commission;

“Information officer” of, or in relation to a public body means –

(a) in the case of a national department, provincial administration or organizational component –

(i) mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3 opposite the name of the relevant national department, provincial administration or organizational component or the person who is acting as such;

(ii) Not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organizational component respectively or the person who is acting as such;

(b) in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act, No. 117 of

1998) or the person who is acting as such; or

(c) in the case of any other public body, means the chief executive officer or equivalent officer, of that public body or the person who is acting as such;

“Minister” means the Cabinet Minister responsible for the administration of justice;

“official” in relation to a public body or private body means –

(a) any person in the employ (permanently or temporary and full time or part-time) of the public or private body, as the case may be, including the head of the body, in his or her capacity as such; or

(b) a member of the public or private body, in his or her capacity as such;

“person” means a natural or a juristic person;

“personal requester” means a requester seeking access to a record containing personal information about the requester;

“private body” means –

(a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;

(b) a partnership which carries or has carried on any trade, business or profession;

or (c) any former or existing juristic person; but excludes a public body;

“public body” means –

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere; or

(b) any other functionary or institution when –

- (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any other legislation;
- “record”** of, or in relation to, a public or private body, means any recorded information –
- (a) regardless of the form or medium;
 - (b) in the possession or under the control of that public or private body respectively; and
 - (c) whether or not it was created by that public or private body, respectively;
- “relevant authority”** in relation to:
- (a) a public body referred to in paragraph (a) of the definition of “public body” in the national sphere of government, means –
 - (i) in the case of the Office of the Presidency, the person designated in writing by the President; or
 - (ii) in any other case, the Minister responsible for that public body or the person designated in writing by that Minister;
 - (b) a public body referred to paragraph (a) of the definition of “public body” in the provincial sphere of government, means –
 - (i) in the case of the Office of the Premier, the person designated in writing by the Premier; or
 - (ii) in any other case, the member of the Executive Council responsible for that public body or the person designated in writing by that member; or
 - (c) a municipality, means –
 - (i) the mayor;
 - (ii) the speaker; or
 - (iii) any other person, designated in writing by the Municipal Council of that municipality;
- “request for access”** in relation to:
- (a) public body, means a request for access to a record of a public body in terms of section 11 of PAIA;
 - (b) a private body, means a request for access to a record of a private body in terms of section 50 of PAIA;
- “requester”** in relation to –
- (a) a public body, means –
 - (i) any person (other than a public body contemplated in paragraph (a) or (b) (i) of the definition of “public body”, or an official thereof) making a request for access to a record of that public body; or
 - (ii) a person acting on behalf of the person referred to in subparagraph (i);
 - (b) a private body means –
 - (i) any person, including, but not limited to, a public body or an official thereof, making a request for access to a record of that private body; or
 - (ii) a person acting on behalf of the person contemplated in subparagraph (i);
- “third party”** in relation to a request for access to –
- (a) a record of a public body, means any person (including, but not limited, to the government of a foreign state, an international organisation or an organ of that government or organisation) other than –
 - (i) the requester concerned; and
 - (ii) a public body or
 - (b) a record of a private body, means any person (including, but not limited to, a public body) other than the requester, but for the purposes of section 34 and 63 of PAIA, the reference to “person” in paragraphs (a) and (b) must be construed as a reference to “natural person”;
- “working days”** means any days other than Saturdays, Sundays or public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act, No. 36 of 1994).
In this Guide, words importing any one gender shall include the other two genders, and the singular shall include the plural, unless the context indicates otherwise.

4. Records kept by Inter Trauma Nexus in compliance with other legislation.

In compliance with the Companies Act 1973

- 4.1 Annual financial statements (Section 284)
- 4.2 Company registration document
- 4.3 Register of Directors and Officers (Section 215)
- 4.4 Register of Directors and Officers interest in contracts (Section 240)
- 4.5 Register of Members (Section 105)
- 4.6 Register of pledges, cessions and bonds (Section 127)
- 4.7 Fixed assets register. (Section 284)
- 4.8 Minute book of general meetings (Section 204 and Companies Administrative Registration 29)
- 4.9 Minute book of Directors and Managers meetings (Section 242)
- 4.10 Directors and managers attendance register (Section 245)
- 4.11 Register of documents
- 4.12 Directors reports
- 4.13 Disclosure of Director's endorsements and pensions

In compliance with NPO Act

- 4.14 Constitution
- 4.15 NPO narrative report

- 4.16 Basic Conditions of Employment Act

- 4.17 Income Tax Act

5. Procedure for requesting access to records held by Inter Trauma Nexus.

A request for access to a record is made by completing a request form called **Form C** for private bodies. A copy of the forms is attached at the back of the Guide. The request forms must be completed and submitted to the information officer of the public body or head of the private body from which access to a record is sought. The information officer of a public body or the head of a private body must respond to the request within 30 days.

5.1 Manner of request

A requester has a right of access to a record of a public body or a private body and must be given access to a record of a public body or private body if the requester complies with the following procedural requirements:

- That the request is made on the request form to the information officer of the public body or head of a private body;
- That the completed request form is faxed or electronically mailed or hand delivered to the information officer of the public body or head of the private body concerned;
- That access to the requested record is not refused in terms of any of the grounds for refusal under PAIA.

5.1.1 How to fill in the request form - public and private bodies

A request for access to a record of a private or public body is made, by filling in a form called a request form. The request must be made to the information officer of the public body or head of the private body at his address, fax number or electronic mail address.

In the request form, the requester is required to provide the following information:

- Sufficient particulars to enable an official of the public body or the head of a private body to identify the requester;
- Sufficient particulars to enable an official of the public body or head of a private body to identify the record, including the reference number, if the requester

knows that. If the space in the request form is not adequate, the requester may continue on a separate folio and attach it to the request form.

The requester must sign all additional folios;

- ❑ Clearly indicate the form of access or nature of the record in which the record should be provided;
- ❑ The preferred language in which the record should be provided in the case of a public body;
- ❑ The postal address or fax number of the requester in the Republic;
- ❑ State the manner in which the requester would like to be informed about the decision on the request;
- ❑ If the request is made on behalf on another person, to submit proof of the capacity in which the requester is making the request.
- ❑ In the case of a private body the requester must state the right that is to be exercised or protected and why the record requested is required for the exercise or protection of such right.

Note: Requesters who cannot read or write can make oral requests to the information officer of a public body who must fill in the request form for the requester.

5.3.1.2 Who can make a request for access to a record?

A requester may make a request for access to records of a private or public body. The requester's right of access to a record of a private or public body includes a right of access to a record containing personal information about the requester, or a person on whose behalf the request is made.

A public body may make a request for access to a record of a private body for the exercise or protection of any rights other than its rights, only if it is acting in the public interest.

5.4 The following records are automatically available.

In compliance with the Companies Act 1973

- 5.4.1 Annual financial statements (Section 284)
- 5.4.2 Company registration document
- 5.4.3 Register of Directors and Officers (Section 215)
- 5.4.4 Register of Members (Section 105)
- 5.4.5 Fixed assets register. (Section 284)
- 5.4.6 Directors and managers attendance register (Section 245)
- 5.4.7 Directors report to financial statements

In compliance with NPO Act

- 5.4.14 Constitution
- 5.4.15 NPO narrative report

5.5 Costs of requests - private bodies

The head of a private body to which the request is made will notify you in writing to pay the prescribed request fee, if any, before processing the request. If you require access to records of your personal information, you do not have to pay a request fee.

The following is a breakdown of the fees structure for the purposes of determining the manner in which fees relating to a request for access to a record of a private body are to be calculated.

Part III of Regulation 187 published in the Government Gazette on the 15 February 2002:

1. The fee for a copy of the manual as contemplated in regulation 9(2)(c) is R1, 10 for every photocopy of an A4-size page or part thereof.
2. The fees for reproduction referred to in regulation 11(1) are as follows:
 - (a) For every photocopy of an A4-size page or part thereof 1,10
 - (b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form 0, 75
 - (c) For a copy in a computer-readable form on -
 - (i) Stiffy disc 7, 50
 - (ii) Compact disc 70,00
 - (d)
 - (i) For a transcription of visual images, for an A4-size page or part thereof 40,00
 - (ii) For a copy of visual images 60,00
 - (e)
 - (i) For a transcription of an audio record, for an A4-size page or part thereof 20,00
 - (ii) For a copy of an audio record 30,00
3. The request fee payable by a requester, other than a personal requester, referred to in Regulation 11(2) is R50.00.
4. The access fees payable by a requester referred to in Regulation 11(3) are as follows:
 - (1)
 - (a) For every photocopy of an A4-size page or part thereof 1,10
 - (b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form 0,75
 - (c) For a copy in a computer-readable form on -
 - (i) Stiffy disc 7,50
 - (ii) Compact disc 70,00
 - (d)
 - (i) For a transcription of visual images, for an A4-size page or part thereof 40,00
 - (ii) For a copy of visual images 60,00
 - (e)
 - (i) For a transcription of an audio record, for an A4-size page or part thereof 20,00
 - (ii) For a copy of an audio record 30,00
 - (f) To search for and prepare the record for disclosure, R30.00 for each hour or part of an hour reasonably required for such search and preparation.
 - (2) For purposes of section 54(2) of the Act, the following applies:
 - (a) Six hours as the hours to be exceeded before a deposit is payable; and
 - (b) one third of the access fee is payable as a deposit by the requester.

5.6 Legal remedies

You have a right to take further legal steps if the information officer of a public body or head of a private body refuses you access to a record you have requested, and you had complied with all the requirements of the Act in making the request.

5.6.1 Private bodies

Where a requester or a third party is aggrieved by a decision of the head of a private body to refuse a request for access, or by a decision taken in terms of section 54 relating to fees payable for and in connection with access to records of a private body, section 57(1) relating to the extension to deal with the request, or section 60 relating to the form of access, the requester may within 30 days, and by way of an application, apply to court, for appropriate relief. The court will then review the request and decide whether in fact the head of the private body should give you the information you requested or not.

5.6.2 Decision on applications to court

The court hearing an application in terms of PAIA may grant any order that is just and equitable including orders:

- ❑ Confirming, amending or setting aside the decision, which is the subject of the application;
- ❑ Requiring the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action, as the court considers necessary within the period mentioned in the court order;
- ❑ Granting an interdict, interim or specific relief, a declaratory order or compensation;
- ❑ Granting an order as to costs.

6. WHEN ACCESS TO INFORMATION MAY BE REFUSED

PAIA balances the requester's constitutional right to information against the information officer's or a head of a private body's right to refuse access to information, if granting the information would harm the public or private body in question on any of the grounds mentioned below.

6.1 Grounds for refusal of access to records of a private body

The information contained in this section is a summary of the grounds upon which a private body is entitled to raise, as grounds for the refusal of access to its records. The information is intended to provide a requester with clarity as to the reasons why a request may be refused by the private body. The list is a summary of the grounds contained in Part 3, Chapter 4 of PAIA, and is by no means exhaustive.

6.1.1 Mandatory protection of privacy of a third party who is a natural person

The head of a private body must refuse a request for access to a record of that body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual. However, a record may not be refused if it consists of information:

- ❑ About an individual who has consented in writing to the disclosure of the information;
- ❑ Already publicly available;
- ❑ Given to the private body by the individual to whom it relates, and that individual was informed by the private body before it is disclosed that the information belongs to a class of information that may already be publicly available;
- ❑ About an individual's physical or mental health, or well-being, who is under the care of the requester, and who is under the age of 18 years or incapable of understanding the nature of the request, and further if the disclosure would be in the individual's best interests;
- ❑ About an individual who is deceased and the requester is the individual's next of kin, or is making the request with the written consent of the individual's next of kin;
- ❑ About an individual who is or was an official of a private body, and the information relates to the position or functions of the individual.

6.1.2 Mandatory protection of commercial information of a third party

The head of a private body must refuse a request for access to a record of that private body if it contains:

- ❑ Trade secrets of a third party;
- ❑ Financial, commercial, scientific or technical information of a third party, other than trade secrets, where the disclosure thereof would be likely to cause harm to the commercial or financial interests of that third party;
- ❑ Information supplied to the third party in confidence, and if disclosed would place the third party at a disadvantage in contractual or other negotiations, or prejudice the third party in commercial competition.

However, a record may not be refused if it consists of information:

- ❑ About a third party who has already consented in writing, to its disclosure to the requester;
- ❑ About the results of any product or environmental testing or other investigation supplied by the private body or the results of any such testing or investigation carried out on by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.

6.1.3 Mandatory protection of certain confidential information of a third party

The head of a private body must refuse a request for access to a record of that body, if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

6.1.4 Mandatory protection of safety of individuals, and protection of property

The head of a private body must refuse a request for access to a record of that body, if its disclosure could reasonably be expected to endanger the life or physical safety of an individual.

The head of a private body may refuse a request for access to a record of that body if its disclosure would be likely to prejudice or impair:

- ❑ The security of a building, structure, or system, including a computer or communication system; a means of transport or any other property;
- ❑ The methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme; the safety of the public or part of the public or the security of a building, structure, or system, including a computer or communication system, a means of transport or any other property.

6.1.5 Mandatory protection of records privileged from production in legal proceedings

The head of a private body must refuse a request for access to a record of that body, if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived such privilege.

6.1.6 Commercial information of a private body

The head of a private body may refuse a request for access to a record of that body if the record:

- ❑ Contains trade secrets of the private body;
- ❑ Contains financial, commercial, scientific or technical information, other than trade secrets of the private body, and the disclosure thereof would likely cause harm to the commercial or financial interests of that body;
- ❑ Contains information, the disclosure of which could reasonably be expected to put the private body at a disadvantage in contractual or other negotiations; or prejudice the body in commercial competition;
- ❑ Is a computer programme as defined in the Copyright Act, No. 98 of 1978, which is owned by the private body, unless it is required to give access to a record in terms of PAIA.

However, a record may not be refused if it consists of information:

About the results of any product or environmental testing or investigation (excluding the results of preliminary testing or investigations conducted for developing methods of testing), carried out by or for the public body, and the disclosure thereof would reveal a serious public safety or environmental risk.

6.1.7 Mandatory protection of research information of a third party, and protection of research information of a private body

The head of a private body must refuse a request for access to a record of that body, if the record contains information about research being carried out or to be carried out, by or on behalf of a third party, and if this were to be disclosed, it would be likely to:

- ❑ Expose the third party or the person carrying out the research or will be carrying out the research on behalf of the third party, or the subject matter of the research, to a serious disadvantage.
- ❑ The head of a private body may refuse a request for access to a record of that body, if the record contains information about research being carried out or about to be carried out, by or on behalf of the private body, and if this were to be disclosed, it would likely:
- ❑ Expose the private body or the person carrying out the research or will be carrying out the research on behalf of the private body, or the subject matter of the research to a serious disadvantage.

6.1.8 Mandatory disclosure in the public interest

Despite the above listed grounds for refusal, the head of a private body must grant a request for access to a record of that body if, the disclosure thereof 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; and the public interest in the disclosure of the record, outweighs the harm contemplated under the ground for refusal.

7. Description of the subjects on which Inter Trauma Nexus holds records and the categories of records held on each subject.

7.1 Company registration records (See section 4A)

7.2 Financial records (See section 4A)

7.3 Income tax records:

7.3.1 Registration

7.3.2 UIF

7.3.3 SDL

7.3.4 PAYE

7.3.5 SITE

7.4 NPO Records

7.5 Employee records

7.6 General client records

7.7 General training participation records

7.8 Donor records

7.9 Contracts and service level agreements

7.10 Volunteer supporter records

7.11 Training material records

7.12 General resource lists and contact lists

Signature

Date