

**THE PROMOTION OF ACCESS TO  
INFORMATION ACT (PAIA)**

**AND**

**RECORDS MANAGEMENT**

**CONSOLIDATED AUDIT REPORT:**

**2008 -2012**

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RECORDS MANAGEMENT  
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Published in the Republic of South Africa by:  
THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)  
Braampark Forum 3, 33 Hoofd Street, Braamfontein  
Tel. 011 877 3600  
Website. [www.sahrc.org.za](http://www.sahrc.org.za)  
SAHRC Tip-Offs Hotline: 0800 222 618 (Toll-Free)  
Compiled by: Branch: PAIA Unit  
Distribution by: Branch: Communications Unit  
ISBN: XXX-X-XXX-XXXXX-X



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## Glossary

ATI	Access to Information
BPM	Best Practice Model
COJ	City of Johannesburg
DAFF	Department of Agriculture, Forestry & Fisheries
DIO	Deputy Information Officer
EDRMS	Electronic Documents & Records Management Systems
GDACE	Gauteng Department of Agriculture Conservation and Environment
IDP	Integrated Development Plan
IO	Information Officer
ODAC	Open Democracy Advice Centre
OSJI	Open Society Justice Initiative
PAIA	Promotion of Access to Information Act
PSC	Public Service Commission
SAHRC	South African Human Rights Commission
RM	Records Management
“the Commission”	South African Human Rights Commission

In terms of the constitutional mandate of the South African Human Rights Commission, we are obliged to promote, protect and monitor the attainment of the Right of Access to Information and the implementation of the Promotion of Access to Information Act 2 Of 2000 (PAIA). The Right to Access Information is a highly significant right that impact on other human rights such as the right to water and sanitation. The right to access information cross-cuts all human rights, holding government, businesses; private organisations and individuals to account. Thus, the right to access information is central to democracy.

Since the inception of PAIA, the Commission has reported consistent non compliance with PAIA and the absence of implementation to Parliament. This non-compliance reflects a lack of political will and prioritisation of PAIA within public institutions. Five years ago the Commission embarked on a process of addressing the impediments experienced in the implementation of PAIA in the public sector. The Commission initiated a process of consultation and auditing of public bodies. During these audits over the last five years, the Commission has consulted with Information and Deputy Information Officers, Records Managers, and other public servants responsible for PAIA. The Commission's objective has been to establish an effective and meaningful framework for the administration of PAIA in the public sector in order to advance good governance. The Audits focus areas include records management systems and processes, requests and application facilities and structures, reporting and evaluation processes. The recommendations provided in this consolidated audit report can contribute significantly to increased compliance and implementation of PAIA by public institutions. The Audit report is annexed to the annual report.

In a country with high levels of poverty and inequality the human rights of South African people is at stake. Access to information is a constitutional right that government must fulfil.



**Pregs Govender**

**Deputy Chairperson**

**South African Human Rights Commission**



## Executive Summary

The Promotion of Access to Information Act No. 2 of 2000 (PAIA) was passed by parliament in 2000 to give effect to the right of access to information enshrined in section 32 of the Constitution of the Republic of South Africa. PAIA came into force in 2001.

The South African Human Rights Commission (SAHRC) has a promotional and monitoring mandate on PAIA. As part of its work in monitoring implementation of PAIA, in 2008, the SAHRC began to conduct a series of PAIA and records management audits in order to support public institutions in identifying their key PAIA implementation challenges and proposing measures of addressing those challenges.

Since PAIA came into force in 2001, a number of stakeholders such as parliamentary committees, the SAHRC, the Public Service Commission and civil society organisations had been conducting studies aimed at testing the state of compliance with and implementation of PAIA. The common finding of all these assessments was that there was chronically low compliance with PAIA and poor implementation of PAIA was placing the legislation well beyond the reach of the majority of ordinary South Africans. With this context in mind, forty-three (43) public institutions were audited by the SAHRC between January 2008 and March 2012.

The SAHRC found during the audits that:

- In only little over a quarter of institutions audited did other officials know who their Deputy Information Officers (DIOs) were or know about the PAIA procedures in their institutions.
- Frontline officers – receptionists, access control personnel, *etc.* - in most institutions (87%) did not know who the Deputy Information Officers (DIOs) were in their institution and neither were they aware of their institution's PAIA procedures.
- Over 60% of the institutions audited had not formally designated their DIOs as is required in PAIA.
- Only 2 in every 10 institutions had incorporated PAIA implementation within their organisational strategic planning processes by building into these strategic plans, components/activities that related to PAIA implementation.
- The audits also found that less than 15% of the audited institutions had specifically budgeted for PAIA implementation and compliance requirements.
- Only a third of the audited institutions had established internal protocols for dealing with requests for information.

The SAHRC is recommending, *inter alia*, that:

- PAIA compliance and implementation should be incorporated into normal organisational strategic planning processes.
- Ordinary public participation processes, particularly at local government levels should be used to create public awareness about PAIA.
- Institutions have to budget specifically for PAIA compliances and implementation.

## 1. Introduction

The South African Human Rights Commission (SAHRC) is a constitutionally mandated organisation whose aim is to promote, protect and monitor human rights in South Africa. Its work is coordinated through the Head Office in Johannesburg and offices based in all of the nine provinces of the country. It fulfils its mandate through a broad number of educational activities, research, information and communication dissemination, legal advice and litigation.

One of the rights that fall within the mandate of the SAHRC is the right of access to information which is enshrined in the Constitution by section 32 which states:

*(1) Everyone has the right of access to –*

*(a) any information held by the state, and;*

*(b) any information that is held by another person and that is required for the exercise or protection of any rights;*

*(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.<sup>1</sup>*

The Promotion of Access to Information Act (PAIA) was passed by Parliament in February 2000 and came into force in March 2001.<sup>2</sup> PAIA gives effect to the right of access to information and is intended to “*foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information*” and “*actively promote a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights.*”

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<sup>1</sup> The Constitution of the Republic of South Africa, Act 108 of 1996. <http://www.polity.org.za/govdocs/constitution/saconst.html>

<sup>2</sup> Promotion of Access to Information Act, Act 2 of 2000. <http://www.gov.za/gazette/acts/2000/a2-00.pdf>. For a detailed analysis of the Act, see Currie and Klaaren, The Promotion of Access to Information Act Commentary (Siber Ink 2002).

Under the Act, any person can demand records from government bodies without showing a reason. State bodies have 30 days to respond.

The Act also includes a unique provision, required by the Constitution, which allows individuals and government bodies to access records held by private bodies when it is necessary to enforce people's rights. Private bodies are also required to respond within 30 days.

### **1.1 The Mandate of the South Africa Human Rights Commission in terms of PAIA**

The South African Human Rights Commission (SAHRC) has specific responsibilities as a lead monitoring agency on the implementation of the Act. Part V (5) of the Act lists the responsibilities and obligations of the SAHRC in relation to this Act, which are<sup>3</sup>:

- a) To make a copy of a guide on how to use the Act available to the public;
- b) 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;
- c) 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;
- d) To train information officers and deputy information officers of public bodies;
- e) To make recommendations to public and private bodies that they change the manner in which they administer PAIA, as the Commission considers advisable;
- f) To consult with and receive reports from public and private bodies on the problems they have encountered in complying with PAIA;
- g) 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

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<sup>3</sup> The Guide on how to use the Promotion of Access to information Act 2 of 2000, pg 13 – 14, South African Human Rights Commission, [http://www.sahrc.org.za/sahrc\\_cms/downloads/PAIA%20GUIDE%20english.pdf](http://www.sahrc.org.za/sahrc_cms/downloads/PAIA%20GUIDE%20english.pdf)

member of the public in connection with the Commission's functions in terms of PAIA;

- h) To receive reports from public bodies regarding the implementation of PAIA;
- i) 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;
- j) As stated above, the Commission is obliged to assist any person wishing to exercise the right contemplated in PAIA.

## **1.2 The PAIA and Records Management Audits**

Since 2008 the SAHRC has been conducting PAIA implementation audits in respect of its mandate in terms of Section 83(3)(b) and (d) of PAIA. This provision empowers the SAHRC to monitor implementation and make recommendation to private and public bodies on ways of administering and implementing PAIA.

These audits are intended to supporting public institutions in identifying their key implementation challenges and how to address them.

This consolidated audit report covers the period from January 2008 to February 2012. During this period, 43 public bodies from national government departments to provincial government departments and local government structures were audited. The report will reflect on the Commission's findings, outline common trends in the public sector, and reflect on measures taken to respond to the gaps identified during the audits. This report will also provide insight on the levels of implementation in the public sector and highlight the sector's readiness to fully deliver on the right to access information. The report will then provide insight on records management systems in public institutions that have been audited by the Commission.

Records management was included as a component of this audit following documented evidence from best practice models that those institutions that have incorporated PAIA compliance within their records management compliance framework tend to do better than those that have not. Records management is therefore regarded as a critical component and enabler of effective PAIA implementation.

### 1.3 Context of the Audits

The audits took place during a period when a number of stakeholders such as the Commission, parliament, other chapter nine and chapter 10 institutions and NGOs were beginning to assess the state and impact of PAIA ten years since it came into force. Prior to the commencement of the audits process, a number of official and unofficial assessments had been conducted by various stakeholders since PAIA came into force in 2001. Some of these key assessments include:

- a) The **2002** ODAC study that found, inter alia, that 54% of government officials were not aware of the existence of PAIA a year after it came into force. In their research report, Tilley & Meyer<sup>4</sup> (2002) stated that:

*“the results of the survey indicated that on the whole the PAIA had not been properly or consistently implemented, not only because of the newness of the act, but because of low levels of awareness and information of the requirements set out in the act. Where implementation has taken place it has been partial and inconsistent.”*

- b) The **2003** SAHRC PAIA Indaba<sup>5</sup> that highlighted major challenges with PAIA implementation. The Indaba highlighted poor reporting (less than 5%) by public bodies in terms of section 32 of PAIA. The Indaba also highlighted the Commission’s own challenges in fulfilment of its mandate such as lack of resources which limited the extent of public awareness programmes that the Commission could roll out.
- c) The **2003** ODAC survey<sup>6</sup> which highlighted that 62.5% of the public bodies that were asked for information did not respond to or acknowledge receipt of the request more than 2 months after the request had been made. 71.5% of the public bodies requested for information had not responded or acknowledged receipt of the request more than 1 month after the request was made and 64.2% of the public bodies sampled for the survey failed to comply with the current response time of 30days.

The ODAC survey confirmed the Commission’s own findings regarding publication of manuals wherein only 1% of those that responded said that they had internal implementation policy documents in relation to PAIA and 5%

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<sup>4</sup> Meyer, V, Tilley, A. “Access to Information Law and the Challenge of Effective Implementation: The South African Case” in *The Right to Know, The Right to Live: Access to Information and Socio-Economic Justice* by Richard Calland & Alison Tilley (eds.). Open Democracy Advice Centre, Cape Town, 2002

<sup>5</sup> A national stakeholders conference on PAIA

<sup>6</sup> *The Challenge of Implementation: The state of Access to Information in South Africa*, Open Democracy Advice Centre (ODAC), 2003, [http://www.opendemocracy.org.za/documents/results\\_SA\\_OSJI\\_study.doc](http://www.opendemocracy.org.za/documents/results_SA_OSJI_study.doc)

percent of the public bodies that responded indicated that they had submitted Section 32 Reports to the SAHRC.

- d) The **2004** ODAC-Open Society Justice Initiative (OSJI) study that found that 70% of oral requests could not be submitted, while a further 10% were given oral refusals. In particular, blind and illiterate requesters experienced severe obstacles in making requests. Though some departments, including the Office of the Premier of the Eastern Cape and the Department of the Defence displayed some commitment to assisting disadvantaged requesters, the study concluded that “PAIA is inaccessible for the illiterate.”
- e) The **2006** OSJI 14-country study<sup>7</sup> which found that only 13% of the requests received a reply within the 30-day limit set in the PAIA and a total of 63% of the requests were ignored.

The South African results of the OSJI study confirmed previous surveys, including the 2003 Open Society Justice Initiative five-country study. South Africa performed worse in 2006 survey than in the previous 2004 pilot project, with the number of mute refusals up 11% from the 52% of the 2004 pilot study.

- f) Parliament’s **2007** Report of the Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions<sup>8</sup> noted the problems of implementation of PAIA, particularly the failure of public institutions to cooperate with the Commission in its efforts to improve compliance with PAIA and concluded that because of this and the general lack of responsiveness to requestors, public institutions have placed PAIA well beyond the reach of ordinary citizens.
- g) The **2008** PAIA Implementation Report by the Public Service Commission<sup>9</sup> (PSC) which highlighted that almost a quarter (23%) of respondents reported that their institutions did not have Deputy Information Officers (DIOs). The PSC also indicated that the number of DIOs appointed per department varies, with forty-seven percent (47%) of departments having appointed one DIO, and six percent (6%) having appointed more than 10 DIOs.

In the report, the PSC also found that about fifty-four percent (54%) of the departments had PAIA manuals. The PSC expressed concern that *“five years after the enactment of the PAIA, 44% of departments still do not have the required PAIA manuals”*.

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<sup>7</sup> Open Society Justice Initiative. *“Transparency & Silence: A Survey of Access to Information Laws and Practices in Fourteen Countries”*. Open Society Institute, New York, 2006 [http://www.justiceinitiative.org/db/resource2/fs/?file\\_id=17488](http://www.justiceinitiative.org/db/resource2/fs/?file_id=17488)

<sup>8</sup> Parliament of the Republic of South Africa. *“Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions: A report to the National Assembly of the Parliament of South Africa”*. 2007. Cape Town, South Africa

<sup>9</sup> Republic of South Africa. Public Service Commission. *“Implementation of the Promotion of Access to Information Act, (Act 2 of 2000) in the Public Service”*. 2007. Pretoria, South Africa

It was the conclusion of the PSC that PAIA was not being implemented consistently within the public service.

- h) The **2008/2009** SAHRC Annual Report<sup>10</sup> which stated that as many as 10 national government and 71 provincial government departments did not submit section 32 reports as required.
- i) In its **2008** and **2009** PAIA General Audit Reports<sup>11,12</sup> the Commission identified low levels of awareness on PAIA by government officials which, in its view, has been one of the major contributors to non-compliance, the other one being lack of commitment at senior levels of leadership on access to information issues. The commission also identified the lack of penalties in PAIA for non-compliance. Other hindrances to “the delivery of this fundamental right [of access to information] were identified as:
  - i) High levels of uncoordinated internal processes for dealing with PAIA;
  - ii) Ad hoc processing of requests for information;
  - iii) Lack of resources (human and financial) for PAIA compliance functions;
  - iv) Lack of awareness on the importance of access to information to good governance
- j) The **2010** State of the Public Service Report<sup>13</sup> by the PSC which highlighted that compliance with the requirements of PAIA is generally not adequate in the Public Service. The PSC commented that:

*“One such basic requirement is that departments should develop a manual on access to information which should be made public... Compliance with this basic requirement remains unsatisfactory”.*

The PSC concluded that *“the manner in which requests for access to information are dealt with continues to require serious attention, and better internal coordination between records managers and information officers, and between departments which hold the same information (about one or more of the outcomes, for example) will be critically important”.*

This is the context within which the PAIA audits took place, a context in which patterns of chronically low compliance with PAIA by public institutions, particularly at local

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<sup>10</sup> Republic of South Africa. South African Human Rights Commission. *Annual Report. 2008/09*

<sup>11</sup> Republic of South Africa. South African Human Rights Commission, *“The Promotion of Access to Information Act (PAIA) and Records Management Audit Report: January-April 2008”*. [Undated, Unpublished Report]

<sup>12</sup> Republic of South Africa. South African Human Rights Commission, *“The Promotion of Access to Information Act (PAIA) and Records Management Audit Report: April 2008-March 2009”*. [Undated, Unpublished Report]

<sup>13</sup> Republic of South Africa. Public Service Commission. *State of the Public Service Report. 2010*



government levels, are quite evident. The audits are the Commission's response to the problems as described above.

#### **1.4 The objectives of the audits**

The key objective of the audit process is to monitor levels of implementation in the sector and to determine how institutions are delivering on PAIA. This is done primarily through the questionnaire and the face-to-face consultation with officials at the selected institutions. The other objects of the PAIA audits are to:

- provide the Commission with necessary insights to be able to develop effective interventions and internal systems aimed at supporting public institutions in their PAIA compliance efforts;
- inform the Commission's monitoring of mandatory compliance;
- to inform the Commission's recommendations on improving the law by identifying shortfalls and challenges within the legislation through consultations with officials tasked with implementation of the Act;
- identify focus areas;
- establish trends;
- determine challenges and impediments to implementation;
- identify best practice;
- raise awareness;
- secure the commitment of senior management in institutions;
- respond to fears and insecurities of officials tasked with implementation of PAIA.

#### **1.5 Methodology for the Audits**

Following a literature review on PAIA and consideration of key issues related to PAIA compliance, the Commission developed a questionnaire testing various areas impacting on implementation. The questionnaire was broadly divided into the following focus areas:

- a) Personnel and accountability
- b) Training and development
- c) Processing systems
- d) Tracking and Monitoring
- e) Appeals
- f) Compliance
- g) Strategic Planning
- h) Resource Allocation and PAIA based costing
- i) Records Management
- j) Challenges which were unanticipated

The questionnaire was distributed to officials tasked with PAIA implementation, a process that had been conducted annually from January 2008 to February 2012. In total, 43 public bodies were audited during that period. The Commission was alive to the time constraints faced by most Deputy Information Officers (DIOs) and was influenced further by the need to engage with implementers to identify implementation challenges. These factors determined the face-to-face consultations with PAIA implementers at identified departments as opposed to other means of eliciting responses.

The final consolidated sample was ten national departments; sixteen provincial departments and seventeen municipalities. The sampled institutions were:

- **National Government Departments:** National Departments of Health, Higher Education, Agriculture, Fisheries & Forestry, Defense, Environmental Affairs, Housing/Human Settlements, Public Works, Transport, Social Development and Basic Education.
- **Provincial Government Departments:**
  - Gauteng: Office of the Premier, Agriculture and Conservation, Community Safety, Housing/Human Settlements, Health & Social Development
  - Free State: Office of the Premier, Housing/Human Settlements
  - KwaZulu-Natal: Office of the Premier, Housing/Human Settlements
  - Limpopo: Office of the Premier, Health & Social Development
  - Mpumalanga: Office of the Premier
  - Northern Cape: Office of the Premier, Housing/Human Settlements

- Western Cape: Office of the Premier, Housing/Human Settlements
- **Local Government Departments:**
  - Gauteng: City of Johannesburg Metropolitan Municipality, Tshwane Metropolitan Municipality, Ekurhuleni Metropolitan Municipality, Kungungwini, Westonaria, Lesedi, Metsweding, Morafe, Emfuleni, Midvaal, Sedibeng, Motlosana and West Rand District Municipality
  - KwaZulu-Natal: Ethekwini Metropolitan Municipality
  - Mpumalanga: Emalahleni
  - North West: Rustenberg Local Municipality
  - Western Cape: Theewaterskloof Local Municipality.

Questionnaires were administered electronically and a 14 day period was given in advance to planned visits in order to facilitate adequate preparation of material and responses by DIOs and relevant personnel, including those representing the records management components of the entities.

Most responses were pre-recorded and communicated to the Commission. This permitted consultations to focus on issues requiring further clarity or more discussion on open ended questions.

## **2. Findings: PAIA Compliance & Implementation**

The findings per focus area as identified in the section above are detailed below:

### **2.1 Personnel and accountability**

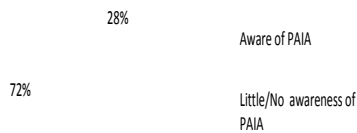
Within this category the audit sought to establish whether departments had appointed officials as per the requirements of section 17 of PAIA; to administer requests for information in terms of PAIA and to respond to the mandatory compliance requirements stipulated in sections 14, 15 and 32 of PAIA.

PAIA recognizes the head of public bodies as the accounting officer (Information Officer) and therefore requires that each public body (the information officer thereof) must designate deputy information officers (DIO) in writing<sup>14</sup> who will be responsible for the handling of requests and general administration of PAIA. This category therefore sought to establish whether executive management within each of the departments were aware of the requirements to appoint DIOs, the need to include their tasks in key performance agreements and within their job descriptions and to establish whether personnel appointed as DIOs were aware of their responsibilities and known to all staff. Furthermore the Commission sought to establish whether frontline personnel was aware of the presence of a DIO and that members of the public needing assistance with PAIA were being directed to the DIO. In addition to establishing whether DIOs were appointed, the audit enquiry sought to establish the levels of qualifications of officials appointed as DIOs and whether these officials have received training on PAIA.

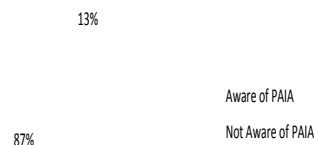
**a) “Who’s the DIO?”**

Responses given in the questionnaire on this area often reflect a positive response; however this is often not the case in practice. Most respondents indicated that there were identifiable Information Officers (IOs) and DIOs in their respective organisations, with institutions boasting 39 DIOs at the national level. However, we still found – more than 10 years after PAIA came into force – that there were still institutions that had not appointed DIOs. Most respondents also confirmed that IOs and DIOs were known to all staff. Despite this however, the vast majority of frontline staff were unable to identify or direct potential requesters to the appropriate service points. The majority of the participants also indicated that there were inadequate guidelines for their frontline officials on how to assist requesters.

**Fig. 1: Awareness of PAIA procedures by other officials**



**Fig. 2: Awareness of PAIA procedures by frontline officials**



<sup>14</sup> S17(1) Promotion of Access to Information Act 2 of 2000

This point was illustrated in the researcher's note in the unpublished Carter Centre assessment report on the state of access to information in South Africa, wherein the researcher described his experience with one of the major public institutions as follows<sup>15</sup>:

*"The National Treasury (NT), falling within the responsibility of the Minister of Finance, is a critically important department, some even call it a government within a government, yet it has consistently showed weak implementation efforts on ATI. The prevailing sentiment within the National Treasury (NT) is that its clients are not individual members of the public but institutions and therefore there is no need for them put in place mechanisms to make ATI easier for members of the public. The prevalence of this idea was confirmed in a peer review bilateral discussion with the SAHRC.*

*When the researchers conducted a site visit to the NT offices in Pretoria, it was clear how much behind the NT lags in comparison to such departments as DAFF. A comedy of errors ensued when the researcher visited the NT offices on 240 Vermuelen Street and 40 Church Square to verify the whether there were any public reading rooms and to assess the levels of awareness of NT's ATI procedures among staff.*

*Firstly the frontline official at both sites are not internal employees of the NT but contracted security officials who were not aware of the NT's ATI procedures and certainly had never heard the term "PAIA" or "Promotion of Access to Information Act" before. Needless to say, they were not in a position to assist the researcher posing as a member of the public who wanted to know who to talk to if he wanted to know more about the NT's ATI procedures (the researcher's assumption is that the researcher would ultimately be referred to the DIO) . Even though they did not know how to assist the requestor the security officials were most courteous and helpful, even making numerous calls throughout the building in order to find out who can assist the researcher. A total of 9 NT internal staff members were interacted with either through phone calls by the security officials or a*

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<sup>15</sup> Dimba, M. *"The Carter Centre Narrative Report On the Implementation Assessment Tool"*. 2011. [Unpublished paper obtained from the author]

*random sample of officials that were stopped by the security officials to find out if they knew who could help the requestor. What was a concern is that none of those officials knew who the department's DIO was.*

*It was during one of these random approaches that a member of staff suggested that the researcher should try the Communications Unit because they "think access to information may have something to do with Communications".*

*The Communications Unit is housed at the NT's other site – 40 Church Square - which is about 500 metres from 240 Vermuelen. Upon arrival at 40 Church Square the researcher discovered that the front-desk there too was manned by security officials and not by internal members of staff. The security official did not know anything about the NT's ATI procedure or who was responsible for these. However, she called the Communications Unit who suggested that the issue is handled by the Knowledge Management Unit based at 240 Vermuelen!*

*The security official was kind enough to call the reception at 240 Vermuelen in order to find out who at the Knowledge Management Unit would be able to assist. A name of an official was given and the security official called this official a number of times but there was no answer. When the researcher asked the security official for this official's number so that he could try calling the official himself, he was informed that the security officials are not allowed to give out office telephone numbers of officials!*

*Yet another number was tried by the security official and it turned out to be the number for the Human Resources office! After close to two hours of trying to see if the officials at NT would be able to transfer the researcher to the DIO at NT, the researcher finally gave up."*

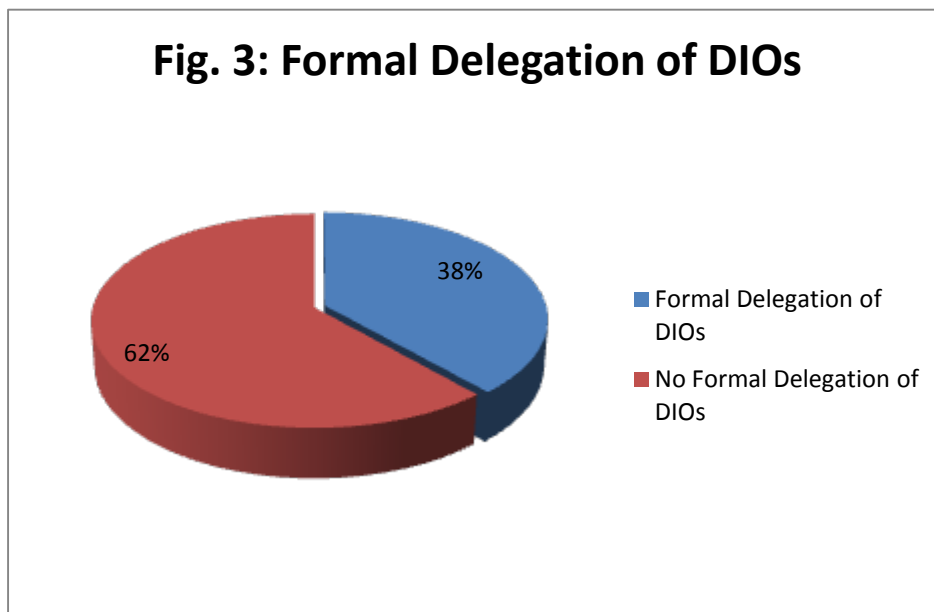
**b) Skills, responsibilities "and other activities that might be required from time to time"**

Most DIOs have post graduate degrees and were appointed for more than two years. The stated response to job descriptions and performance contracts were answered primarily in the affirmative until explored further. At this point, it

became apparent that most regarded PAIA as being adequately addressed in their job descriptions because it was assumed to be encompassed by the output reading “other” in their job descriptions.

DIOs also regarded themselves in the majority as being quite clear about their roles. Some openly demonstrated a purely formalistic approach to interpretation and application of the legislation, focusing largely on compliance as a formality.

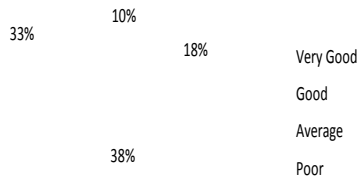
The Commission is deeply concerned that all of the personnel consulted indicated that PAIA was an added function to their existing functions. In other words, everyone in the sample had shared portfolios. These are primarily corporate services, records management, IT or legal services. There was even one example where officials from Supply Chain Management services were acting as coordinating DIOs in a national department, a perfect example of an unusual sharing of portfolios. In the case of the latter department, PAIA was shared amongst a variety of other staff too.



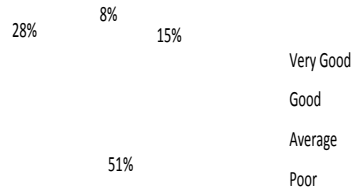
One of the institutions in the sample did not have a DIO and PAIA duties were handled by the legal adviser. In this case the legal adviser dealt with PAIA matters on an ad hoc basis. His responsibility rested solely on compliance and reporting obligations in terms of section 32 and responding to requests. During a consultation with this institution, it became clear that the absence of a DIO impacted negatively on the institution’s delivery on PAIA. From the discussions held and the Commission’s own monitoring of compliance, it became evident that this particular department had not compiled and submitted a manual in terms of section 14. Frontline officials at this institution were also not aware that members of the public could request for information, thus on inspection of the institution,

request forms and general information on PAIA was not available. Officials of this department indicated that not having a dedicated person to handle PAIA impacted negatively on the institution’s ability to deliver effectively and efficiently on PAIA.

**Fig. 4: Formal Compliance**



**Fig. 5: State of implementation**



It is evident from the results of the audit that most institutions did not achieve more than the formalistic compliance with specific requirements of PAIA such as production of manuals, submitting section 32 requests to the Commission and submitting section 15 notices for automatically available records. However, the majority even faltered on these requirements as is demonstrated in Fig. 4 above. Because of this approach, other critical elements of implementation such as creating internal public awareness regarding PAIA procedures and training on internal PAIA protocols tend to fall by the wayside. This is shown in Fig. 5 above.

The City of Tshwane is a good reference point on the issue of poor compliance as result of weaknesses in implementation. At the time of the 2009 audit, the City of Tshwane Municipality indicated in their questionnaire that they had a DIO; however during our consultations with the city it was obvious that the city did not fully understand the significance of having a DIO and the responsibilities of a DIO. In the case of the City of Tshwane, PAIA requests were handled by the legal department; however the city did not have systems to track and requests for information made in terms of PAIA. From basic discussions, the city could not determine the number and nature of requests received on an annual basis. Monitoring of the City’s compliance also showed that the City had not complied with the requirements of section 14, 15 and 32. On inspection, the City did not have request forms available at reception although they had indicated that these were available. Furthermore, frontline officials were reluctant to provide guidance on how a member of the public can access information from the municipality using PAIA, thus accessing the building was difficult.



The above scenario is not uncommon in the sector. Audits conducted by the Commission during this reporting period have consistently revealed that departments are not investing in human capital for the administration of PAIA. The culture of secrecy from which South Africa comes is one of the major contributors to the reluctance of officials within the public sector to invest resources in PAIA and to share information with the public. The fear of being vulnerable to litigation and being held accountable for delivery or non delivery on promises made is often the reason why officials prefer to withhold information from members of the public.

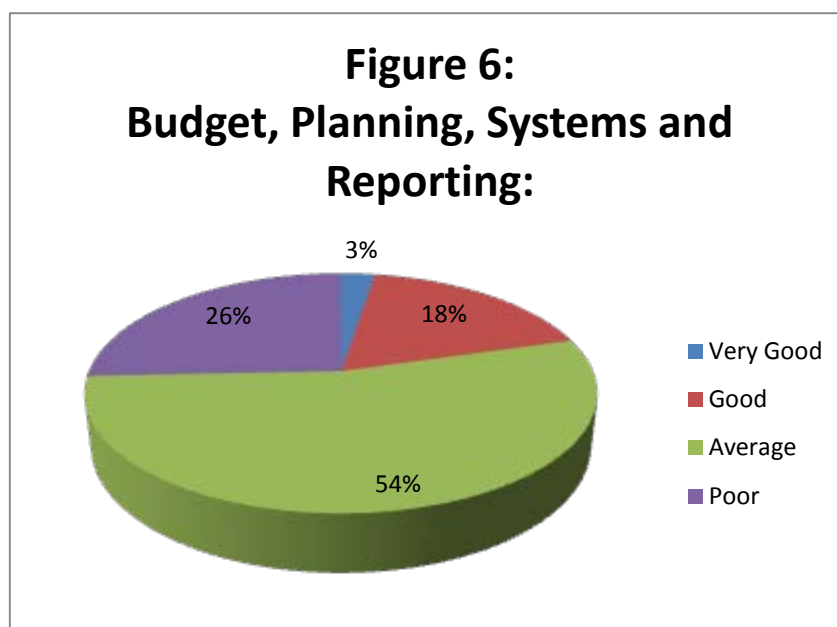
General audits of the public sector have shown that the absence of personnel to administer PAIA is one of the greatest impediments to efficient delivery on the right to access information.

### **c) Why can't institutions develop capacity to deal with PAIA?**

Three primary factors that contribute to lack of capacity have been identified. The three factors discussed below are not conclusive; however these are the most common at present.

- i) The first is lack of awareness. Levels of awareness on PAIA and the obligations it places on public bodies is the primary cause for the absence of personnel within public institutions. Not only has a lack of awareness led to a shortage of personnel in institutions to administer PAIA, but it has contributed and continues to contribute to the failure of institutions to acknowledge the right to access information and PAIA as a deliverable by government to the people. The second factor; the absence of executive management commitment to PAIA and delivery on its mandate is directly connected to and is a result of a lack of awareness. The lack of commitment from management has a direct impact on resources that are allocated for PAIA and the capacitating of personnel within institutions with the necessary skills and expertise to handle requests for information. Absence of executive management commitment to PAIA means that PAIA is not accounted for in departments. An alarming factor is that in some institutions, DIOs are appointed as mere compliance to PAIA; however no real commitment is made to ensure that the appointed official is delivering on PAIA. In such instances, departments often appoint junior personnel as DIOs. In such instances, the designated DIO is often unable to interpret and apply the Act and because he or she is not senior in ranking, is unable to exercise discretion when making a decision on a request for information.

- ii) An institution's internal readiness to deliver on PAIA is also affected by lack of buy in from senior management. The Commission has through its audits found that 90% of executive management consulted during the audits are not aware of PAIA, have not made any financial commitments to the administration of PAIA within their departments, have not included PAIA in their strategic plans and budgets and PAIA is not reported on in institutions' annual reports. Very few of the institutions surveyed had a clear indication of how PAIA would be administered and financed. In particular these institutions had designated DIOs and further provided the DIOs with both human and financial resources to ensure that execution of the PAIA mandate is possible. These are some of the very few institutions which have made tangible commitments to PAIA and they amounted to a little over 20% of the institutions surveyed, as shown in Fig.6.



- iii) Increasing staff overturn within the sector is a third contributor to the decrease or lack of human capital. Staff turnover often results in a lack of continuity and in most instances abandonment of the PAIA portfolio. Within the sample, one institution indicated that within one year, three individuals who had been appointed as DIOs had left the institution and since then no new appointments were made. With this particular institution, the absence of a DIO led to the institution's failure to compile and submit a manual in terms of section 14 of PAIA.

Whilst compliance with reporting in terms of section 32 was fulfilled, the institution did not have systems in place to practically administer requests for information. This exemplifies a common challenge within the sector.

While many institutions may comply with the mandatory compliance requirements, many of these institutions do not have mechanisms to ensure that requests for information are handled correctly and that the institution is accessible to the public at large. This then affects the accuracy and credibility of section 32 reports submitted by departments to the Commission.

## 2.2 Training and development

The majority of respondents identified the need for training on an ongoing basis as a critical element in helping them fulfil their obligations in terms of PAIA. Specific areas for training were similarly common and focused on application and interpretation of the provisions of PAIA and in some cases on implementation, regulations, appeals and case law. Many felt that despite engaging with PAIA they would require refresher courses through workshops etc. However, the general view was that comprehensive training was necessary.

We found that very few Information Officers had been trained on PAIA.

Most respondents had identified largely the Commission and the Department of Justice and Constitutional Development (DOJCD) as providers of their training on PAIA while some had obtained training from independent service providers.

The participants who had not been trained indicated that they relied on an interpretation of the Act itself and that application was done largely through trial and error. Of the respondents that had received any training, positive outcomes were listed as significant enhancement of processing and a decrease in response rates of less than 30 days. Some also indicated that records management training had been factored into the PAIA training offered and that this was their sole training on records management.

Most institutions had not conducted their training 'in-house' for larger groups of officials due to time and financial constraints and a lack of human resources. However, most participants indicated that PAIA training would in the future be factored in training development plans. The majority of institutions had not developed specific PAIA training manuals for their staff, but this was factored into future plans. Some of the best practice models (BPMs) had even indicated that they owned their own training manuals.

## 2.3 Processing systems

In this category of analysis, the Commission sought to determine how requests for information were being processed. The audit therefore sought to establish whether institutions had developed new systems specifically for PAIA or had used existing systems and modified them to suit PAIA administration.

The annual Access to Information Index compiled by ODAC and used by the Commission and ODAC as basis for awarding the Golden Key Awards has consistently shown that best performing institutions in terms of PAIA tend to be those that have established “built-for-purpose” internal systems and structures to support compliance and guide implementation.

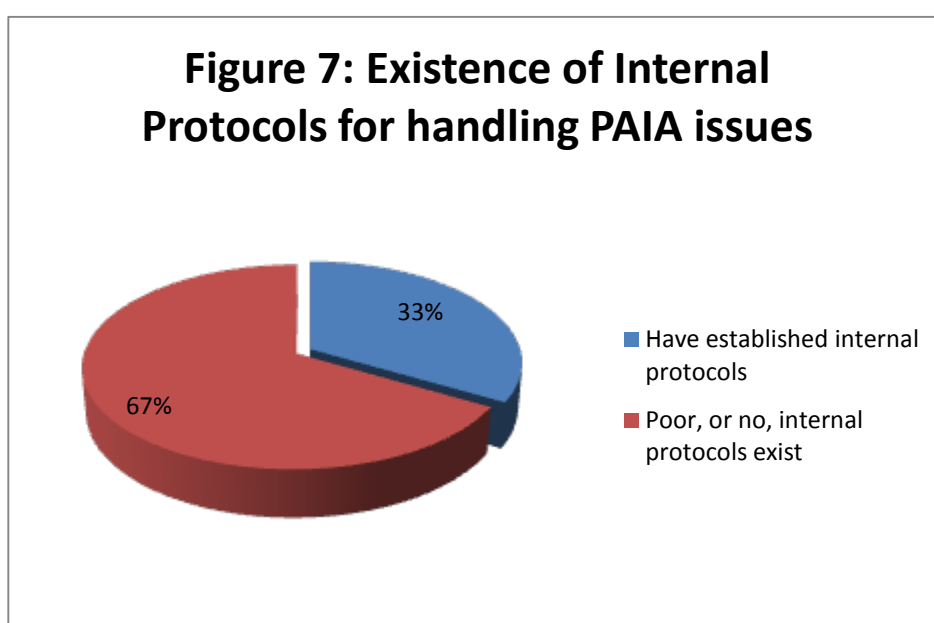


Fig. 7 above shows that two-thirds of institutions audited had indicated an absence in systems to administer requests for information and very few of the respondents to the audit questionnaires had these structures. Despite this however, some of the institutions indicated that this was being reviewed and that motivations for an independent unit had been submitted to senior management for consideration. It was estimated that the approval process and ultimate structuring of independent PAIA units would take approximately two years to culmination.

**a) “Where have all the requests gone?”**

The majority indicated that information requests received are administered by records management units such as internal registries. Some indicated that they were placed under corporate services and one under city administration and secretariat.

Within the audit sample, most institutions indicated that a manual system to receive, track and process requests was used. Others indicated that no specific system was used; however requests were filed and recorded as per the basic records practices.

**b) Manual processing of requests**

We found that the majority of the requests for information were tracked manually. One national department indicated that all PAIA based records from its regions were submitted to it in the same manner as legal cases were reported. PAIA requests then had to be physically separated from other matters with which the legal department was seized for the purposes of monitoring. Many were of the opinion that the manual system of monitoring was adequate and did not need to be addressed because of the low volumes of requests being processed.

One provincial department conducted a demonstration of the electronic tracking and monitoring system devised for PAIA specifically. The efficient records management resulting impacted positively on their turnaround times with PAIA requests. Another national department demonstrated how the manual system using tracking numbers had been enhanced by providing specific timelines for responses and accountability trails for quality assurance.

This department was also able to use their tracking and monitoring process to ensure timeous correspondence and updates to requesters and other personnel involved in the request process. The opposite extreme of this best practice was demonstrated by a national department which could initially see no rationale for tracking or monitoring PAIA requests!

**c) Electronic processing of requests**

The City of Johannesburg (COJ) has developed an electronic system which is connected to its people and customer care centres. The system allows the COJ to electronically record and reference requests received. These requestors are then channelled through to the DIO and monitored. The system is programmed which places a thirty day timeframe as prescribed by PAIA within which the request must be processed. In addition to a thirty day tracking device, the

system used by the COJ allows the DIO to insert notes on the request form as a means of tracking and recording progress made on the request. Furthermore, the COJ has developed a unique email address [accesstoinfo@joburg.org.za](mailto:accesstoinfo@joburg.org.za) which allows requestors to lodge requests via email. This email is also used to track all correspondence made. The COJ has also created a database with standard templates that are used when communicating with requestors.

Internal guidelines have been developed for officials; furthermore, officials have been trained on how to use the systems.

Officials in the municipality indicated that the system worked effectively and allowed the municipality to deliver timeously on requests. Despite the outstanding systems and process adopted by the COJ, officials indicated that there were a few challenges faced by the municipality when processing requests. One of the challenges was the referral of requests to the municipality's legal department for assessment before information is released. This has potential to delay processes and cause the municipality to miss the thirty day deadline. Although this has not happened, the COJ envisages that it has the potential to cause delays in the future as requests for information increase.

The Gauteng Department of Agriculture Conservation and Environment (GDACE) gave a description of the system used to process requests for information. Requests are received either by email, post or directly at the office. Upon receipt of the request, a letter of acknowledgment is sent to the requester. The system used by the department is manual. Electronic modes of communication are used to communicate interdepartmentally. The PAIA administration team has developed templates for correspondence with requestors as well as notices for time frames used internally.

In addition to these systems, the GDACE has developed a training manual to train officials internally on PAIA. The dedication demonstrated by the GDACE and COJ is admirable and illustrates how commitment to PAIA can be achieved by making use of existing resources.

Information searches are generally conducted by personnel working with the subject matter of the request. DIOs are sometimes tasked with sourcing the requested documents from relevant managers. Generally however, most of the sample examined referred requests to records management personnel. The inter-departmental referrals were later cited as being time consuming and difficult to manage.

## 2.4 Tracking and Monitoring

Most respondents felt that there were effective internal procedures for processing requests. Most also agreed that their response times were within the 30 day period provided for in PAIA. Some of the respondents indicated that they were unhappy with existing turnaround times. One of them indicated that the system itself was problematic and another indicated that they were unclear since they had no system at all. One of the municipalities raised voluminous requests as a critical test to the existing system.

Some of the factors listed as impacting negatively on turnaround times in responses to requests are:

- Incomplete forms
- Late payments
- Complex applications
- Inadequate resources
- Delays in responses from third parties
- Nature of requests – overly broad, ambiguous
- Sourcing the correct information
- Slow interdepartmental responses

Despite these factors, the majority of the respondents indicated that they were able to meet the 30 day time frames. In cases where this was not possible, BPM DIOs made follow-ups and communicated progress with the requester, while continuously monitoring feedback from sourcing personnel.

## 2.5 Appeals

Most respondents indicated that request and appeal forms were not available at their entry points. Most also indicated that the forms had not been translated. All the respondents however indicated that requesters were advised of their right to appeal if dissatisfied with the outcome of their request. Only one respondent indicated that this was communicated at the point of receiving the request. Some indicated that the

information was contained in the manual and should suffice. Some of the respondents even displayed the process information and process-flow diagrams on the notice boards of the entity. Twenty percent of the respondents did not have internal appeal mechanisms for appeals arising from dissatisfaction on the application of the Act.

On discussing appeals to the courts, the majority indicated that none of their requests had gone on appeal to the courts. Some municipalities confirmed appeals and one of them indicated that appeals and court findings were closely monitored. Only a small percentage of the sample indicated that they were influenced by the findings of the courts on PAIA matters.

Respondents also indicated that moneys received or refunded for access and searches were receipted and that funds were either treated as departmental revenue or as part of the municipalities' financial system. Through this process, funds were indirectly accounted for in the audit process.

## 2.6 Mandatory Compliance and Reporting Obligations

PAIA places a number of compliance and reporting obligations on public institutions. Sections 14, 15 and 32 are the provisions wherein these obligations are listed. Section 14 of PAIA requires public bodies to compile and publish a manual. A manual in terms of section 14 of PAIA is a critical tool that facilitates sharing of information by public bodies. Section 14 requires that the manual should list the name and contact details of the information and deputy information officer, lists of records generated by the department and the availability of these records, a description of the services provided by the department and how a member of the public can access these services. The manual must describe the request procedure, the fees applicable and remedies available to requestors whose request for access has been declined.

### a) Section 14: The PAIA Manuals

The section 14 manual is often referred to as a roadmap to an institution. The purpose of a section 14 manual is to provide requesters with as much information about the department as possible, educate them about PAIA and the right to access information and to enable requestors to use PAIA.





## Fig. 8: Existence of Sec. 14 PAIA Manuals

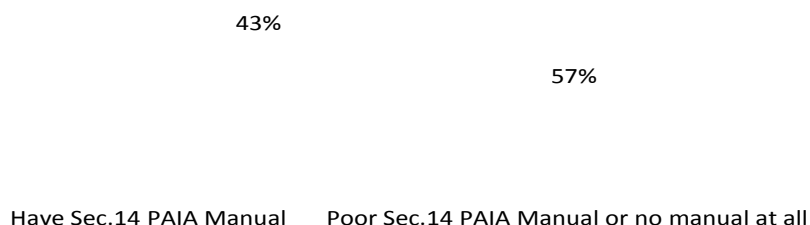


Fig. 8 above shows that the majority of the sampled institutions indicated compliance with section 14, while some national departments conceded to having to make major amendments to their manuals. Some national departments had to revise their manuals to increase accessibility and usefulness of the information contained in the manuals.

It was very common during the audit consultations to have many institutions presenting manuals of questionable quality. In most instances, the manuals are outdated and did not meet the requirements of section 14. Some manuals were found not to be very user friendly. The language used in these manuals is often too complex for the ordinary man on the street and therefore defeats the purpose of PAIA.

Concerns were raised by DIOs that requests were broad and often vague. This could largely be attributed to the ambiguity in the section 14 manuals. As a result, instead of promoting public access and transparency, the manuals end up presenting challenges and frustrations to members of the public.

There are some public institutions that have produced manuals in English only, while the official requirement is a minimum of three official languages. A respondent from one of the national departments stated that that the translations had not been complied with because it would take too long to process. The latter also indicated that they had experienced challenges in updating the manual because of the need to consult various managers for the relevant information. Some BPMs had compiled manuals which were translated into five of the official languages. These BPMs also indicated that their manuals were updated annually or whenever there was new information.

When the Commission casts its net wider than the sample, it becomes clear that many institutions still do not have section 14 manuals; others have outdated manuals that were compiled when PAIA had just come into operation. As stated

earlier, a lack of awareness on the right to access to information is one of the contributors to the lack of delivery on access to information in the public sector. Failure to comply with section 14 is also as a result of a lack of awareness and commitment to PAIA.

It is not uncommon to find these problems with manuals produced by state institutions. In response, the Commission urges DIOs to work collaboratively with records personnel when developing the manual. This will ensure that the category of records are listed in line with the institutions file plan and accurately reflect records that are available automatically and those available on request.

To promote the objectives of the legislation and for the purposes of expeditious processing of requests, manuals should be designed with emphasis on;

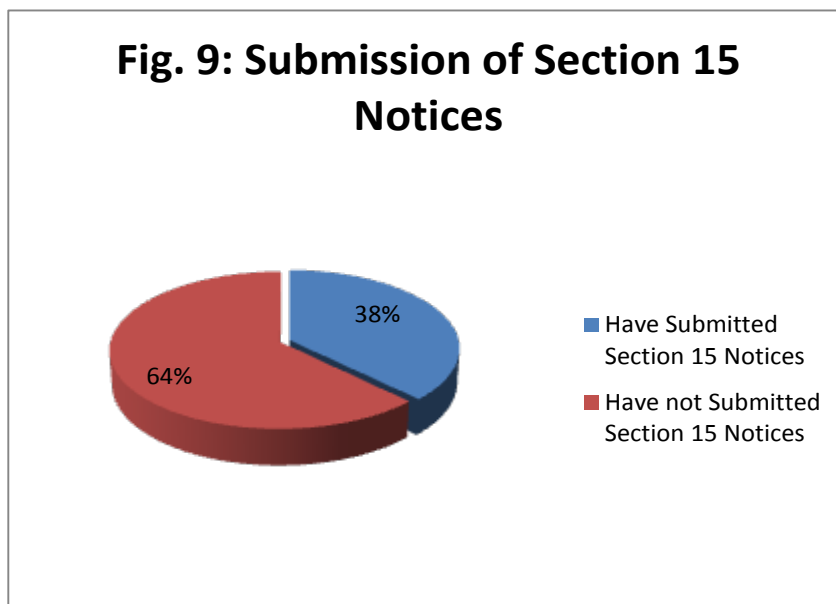
- The description of categories of records in the manuals reflecting linkages to the records identified in the various records classification systems.
- All departmental programmes/functions (support and line) being reflected in the manual, together with the categories of records generated in terms of these functions.
- The levels of access to the different categories of records indicated symbolized in the manual. This would include records related to specific individuals, personnel, etc. This will inform the requester about the entity and its services, information it has automatically available and information that can be requested.
- Updating manuals regularly, or at least once a year, in line with amendments or additions to the systems that exist in the entities.
- Including closed/past and terminated records as they still form part of institutions' corporate records.

The Commission has further developed guidelines for developing section 14 manuals to assist departments.

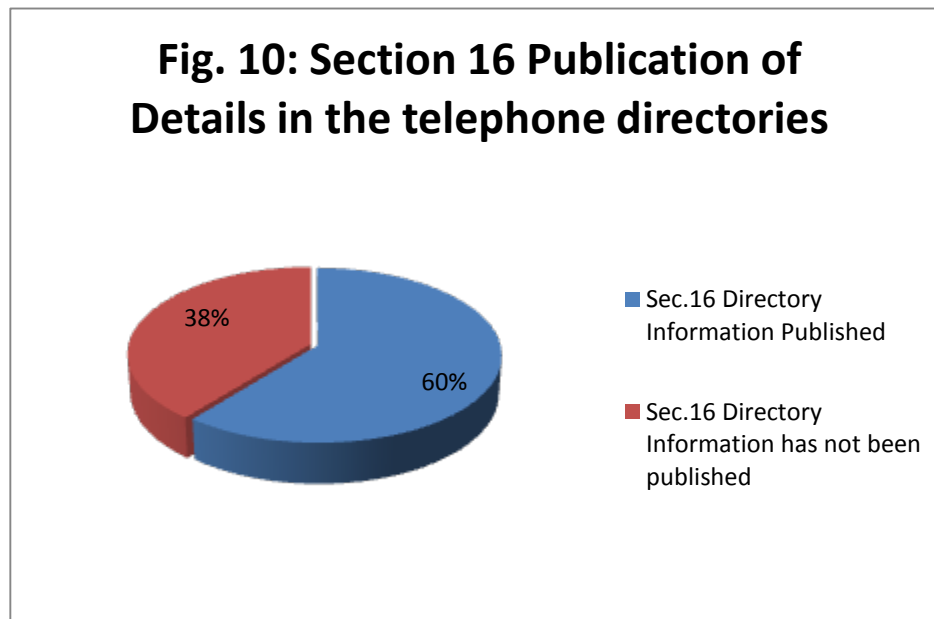
Lastly the issue of public access to the section 14 manuals was identified during the audits. The majority of institutions did not have manuals readily available in sections of the departments that are frequently visited by the public. However some exceptions to these were picked up, for example, the Western Cape Department of Human Settlements, wherein the Commission's auditors noted that the manual was made available to the public at information desks and public entry points of the department.

**b) Section 15: Notices for automatically available information**

Section 15 of PAIA requires that Information Officers submit to the Minister of Justice and Constitutional Development (MoJ&CD) a list of records that are available automatically or on request. We found during the audits that very few public bodies are complying with this requirement. Fig. 9 below shows the extent of compliance with this provision among the sampled institutions.

**c) Section 16: Publication of details in the official telephone directories**

This provision requires the submission by public entities of the postal and street addresses, phone and fax numbers and electronic address of IOs and public entities to Government Communication and Information Systems (GCIS) for publication in the telephone directory. One national department did not comply for lack of knowledge of the requirement. Other respondents have complied to varying degrees, but only a few of them, as shown in Fig. 10, have published the stipulated information in telephone directories.

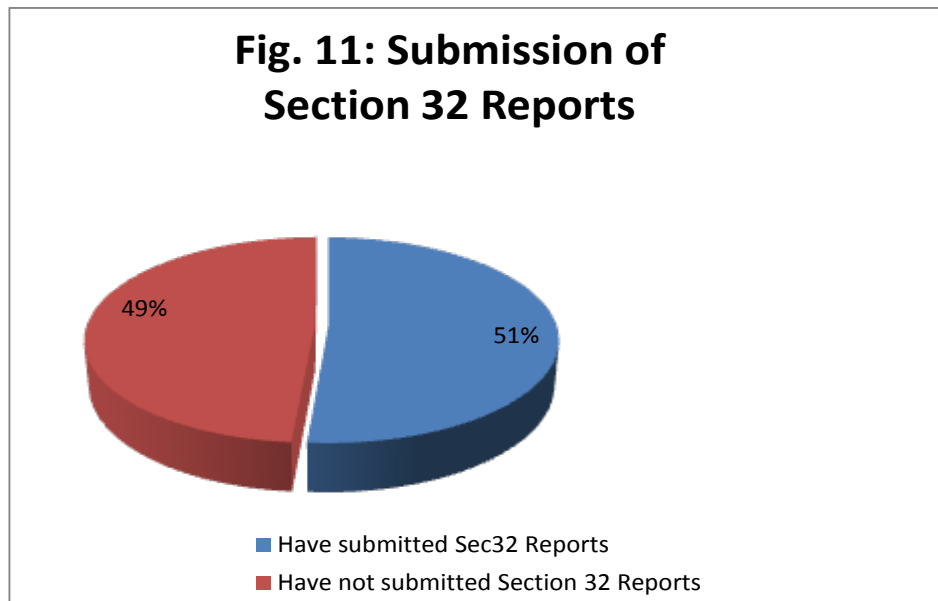


#### **d) Section 32: Reports to the South African Human Rights Commission**

One of the most important and critical compliance requirements listed is section 32. Section 32 of PAIA places a mandatory obligation on all public bodies to submit annually to the Commission a report on all requests received. This report focuses on formal requests lodged in terms of PAIA. Through this report, the Commission is able to assess the levels of activity on PAIA and determine the trends in requests for information submitted by requestors. The report serves as a tool or mechanism through which challenges experienced by DIOs can be highlighted; it also serves as a means to identify gaps and shortfalls in the legislation.

The Commission's annual report to Parliament on PAIA is based on submissions of section 32 reports. Reporting in terms of section 32 has been alarmingly low across the sector but there are marked improvements emerging, as shown in Fig. 11 below. This improvement is largely the result of the Commission's non-compromising stance in enforcing compliance with this requirement. While less than 5% of public bodies reported in terms of section 32 of PAIA ten years ago, now a little more than half of the institutions sampled have to submit Section 32 reports. While this is a major improvement, the Commission is not satisfied with this outcome because of the critical importance of section 32 reports in fulfilment of the Commission's monitoring mandate.

Over the past few years, the Commission has submitted to Parliament a report on institutions that have submitted, however since 2007/2008, the Commission has reported both on institutions submitting and those not submitting. This has highlighted the high volumes of institutions within all tiers of government that are not complying with mandatory requirements. The highest rate of non-compliance rests with the local sphere of government.



Some of the entities that indicated that they had not submitted stated that the reason for their failure to submit is because they were unfamiliar with the reporting requirements of Section 32. One of the reasons cited for the above was that they had received no training on the compilation of the report.

From the institutions that had submitted reports to the Commission, it was evident that the absence of personnel responsible for PAIA had led to incorrect reporting in terms of section 32 by institutions. This is often a result of the absence of systems to track and monitor requests received and processed by the various institutions. Analysis of data captured in the section 32 reports reflects that officials completing the report in certain instances are not familiar with PAIA. Statistics captured often do not correspond with the requirements and numbers of requests received do not tally. This emphasizes the need to have trained personnel dedicated to PAIA.

## 2.7 Strategic Planning

In this category the Commission sought to establish how PAIA had been factored into the strategic plans of institutions. This forms a critical component of the audit, because incorporation of PAIA into the strategic plans of institutions determines how PAIA will be implemented by an institution.

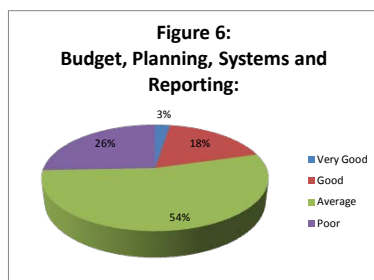


Fig. 6 again shows responses to this category in the questionnaire are not different to responses given in the category on personnel capacity and accountability. Once again institutions indicated that PAIA had not been factored into the strategic plan.

Most of the institutions sampled had not factored PAIA within their strategic plans but some of the responding municipalities stated that PAIA was reported on in the service delivery implementation plan as part of the Municipal Systems Act and one even stated that it did report on PAIA insofar as it formed part of the good governance in their Integrated Development Plan (IDP). One of the provincial departments stated that it formed part of the departmental objectives for information and records management. Apart from one of the BPM, most in respondents agreed that PAIA is not directly reported on in their annual reports. However, as best practice models, the City of Johannesburg and the Gauteng Department of Agriculture and Conservation have factored PAIA into their strategic plans and the Northern Cape Office of the Premier has included PAIA implementation in its Implementation Plan for Outcome 12 for 2013. A brief analysis of the above mentioned departments' operational plan will be used to illustrate how PAIA has been factored into each institution's outputs.

**a) Best Practice Model: The word on Johannesburg...**

During our consultation with officials from the City of Johannesburg they indicated that PAIA is not an independent unit, and is housed or supported within the Information and Communication Technology Framework. Strategic plans for PAIA

were therefore incorporated within the Information and Communication Framework. This led to the development of systems to administer requests; (this will be discussed below under the heading “systems and processes”. Discussions with the City evidenced that the city had made means to structure its operations in a manner that complement the City’s ability to deliver on PAIA.

#### **b) Best Practice Model: GDACE**

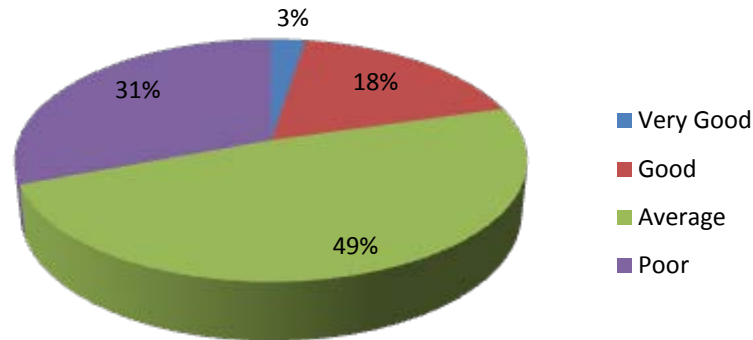
Discussions with the Department of Agriculture revealed a similar structure to that of the COJ. The GDACE also indicated that PAIA was not an independent unit; however it was a subprogram within the Knowledge and Project Management Directorate. Within this directorate personnel from records management and legal services were appointed as the PAIA administration team to support the DIO in the administration of PAIA. The GDACE had devised strategies for PAIA; and these were presented during the audit. (Details of the systems presented at the audit were described in detail under the heading systems and processes below).

Most of the other institutions in the audit sample did not have PAIA factored in their strategic plans. Reasons given were that the number of requests received by departments was low and therefore the need to create a specific portfolio for PAIA was unnecessary. This kind of thinking is common and is cause for concern. Whilst it is understandable that establishing independent units for PAIA is not a goal that can be realized immediately; departments should at the very least make some commitment to ensuring that PAIA is accounted for and delivered on accordingly. With the increase of public awareness about the right to access information, departments will see an increase in requests, therefore future plans for PAIA need to be initiated. Consultations with the public sector at large continue to reveal that PAIA is not recognized as a deliverable therefore no operational commitments are made for delivery on PAIA.

## **2.8 A question of integration of processes**

The lack of personnel capacity and accountability is a common challenge within the sector and of grave concern to the Commission. What is of greater concern is that municipalities such as the City of Tshwane and many others who are at the coal face of service delivery had not, at the time of the audits, committed to delivery on a fundamental right which is at the forefront of a healthy democracy. Even more important at local government level is the integration of PAIA processes with other governance processes such as participatory governance processes and IDP processes. Fig. 13 below shows that the audits found that only a little over 20% of institutions that were audited had done this.

**Fig. 12: Integration of PAIA compliance with other organisational processes**



What is more troubling is not only the ability to integrate spirit and letter of PAIA into participatory governance processes but the tendency to see PAIA as irrelevant to the existing participatory governance framework perfectly illustrated by an assertion by a senior official from one of the municipalities. According to this official “the mayoral imbizo (has) been working so efficiently that constituents had no further need for information”. This assertion is a difficult one to accept in light of the fact that the municipality had been plagued by turmoil since 2006 which began as a result of citizens’ unhappiness with their demarcation of their cross-border locality under one province instead of the one of their choice. These protests which at time became violent made the municipality one of the flashpoint areas where community protests became prevalent. Recently the municipality has been back in the news headlines following a spate of service delivery protests when communities were protesting, among other things, against the lack of proper sanitation facilities. All of these cases illustrate the lack of validity of the assertion that municipalities can do sufficiently without having to consider the spirit of PAIA, particularly those that relate to proactive disclosure of information. A number of research institutions have averred that one of the causes of these community protests is the lack of information regarding delivery of services, lack of participation in decision-making processes particularly at local government level and the weaknesses in the representative governance systems. This is indeed the case in this municipality and many others like it that have experienced service delivery protests.

The situation therefore requires a transformation of the mindsets of those in leadership of state institutions. Management of institutions need to take strides to ensure that PAIA is accorded the priority it deserves and accounted for; personnel to deliver on PAIA should be appointed and held accountable for delivery or non delivery on their respective mandate.



## 2.9 Resource Allocation and PAIA based costing

This category is dependant largely on how institutions factor PAIA into their strategic plans. When looking at the question of financial resources, a consideration of two factors is conducted. Firstly the audit considers whether a budget is set aside to cover costs of administering PAIA. The administration of PAIA involves how an institution is processing requests for information, the systems it invests in to process requests, compiling and publishing of section 14 and 15 manuals and resources invested in making these manuals available to the public. Furthermore, administration is concerned with the initiatives taken by institutions to educate its officials on PAIA and the constituencies it serves. The second consideration is on the costs incurred by institutions when processing requests and how monies received from requestors are accounted for.

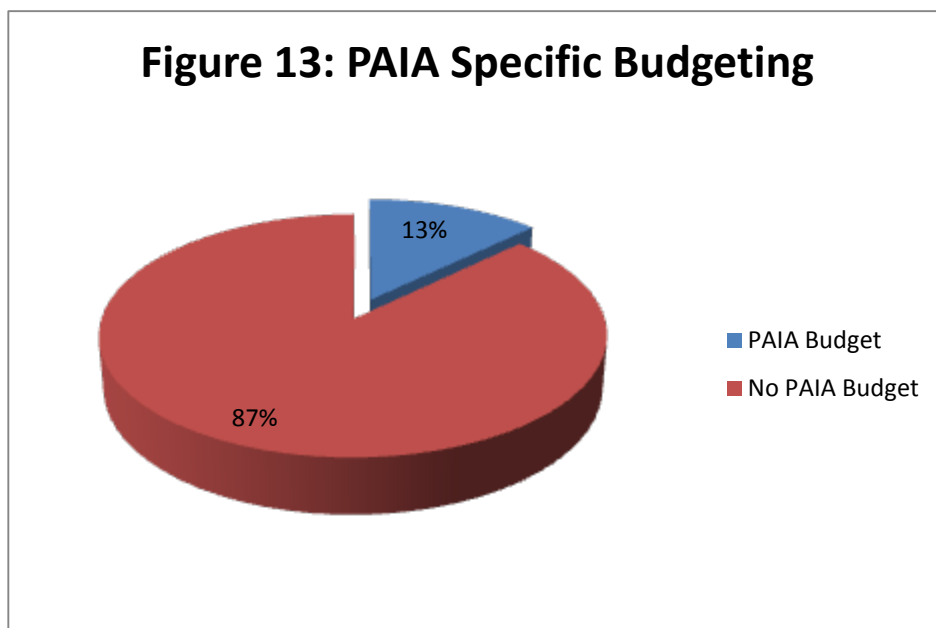


Fig. 13 shows that most institutions in the audit sample again indicated that no budget allocations had been made for PAIA. Others also indicated that they were not charging requestors for information. The culture of giving information is encouraged and welcomed, however during consultations, institutions were encouraged to familiarize themselves with the provisions of PAIA in so far as request fees were concerned. This would provide assistance to institutions when processing voluminous requests. Institutions were urged to ensure that all monies receipted were accounted for, for the purposes of accountability and transparency.

Budgetary allocations for implementation varied from nil to approximately R 200,000. Most respondents were unable to estimate costs for implementation primarily because none of the sample had independent PAIA units, nor were there independent PAIA personnel.

Projections submitted were based primarily on printing costs for manuals and in one case an amount was factored for promotional material such as posters and training.

PAIA administration costs were estimated in some of the cases, but were not supported by further evidence confirming the estimates. Most indicated that these costs were minimal and were at present absorbed by the existing administration budget.

A lack of financial commitment to PAIA, as shown in Fig. 13, is very common in the public sector and greatly impacts on officials' commitment to the objectives of PAIA. An alarming fact is that most departments that have been audited by the Commission do not see the need to create budgets for PAIA and to include PAIA in their strategic plans. Officials are often of the opinion that the numbers of requests received by institutions do not justify having specified budgets and operations for a PAIA portfolio. Although this may be true, state institutions need to commit to PAIA because the right to access information is as much a public service delivery as is the right to housing or health.

**a) Best Practice Model: More lessons from Johannesburg**

Although the general overview on financial commitment to PAIA in the public sector seems negative, there are examples of institutions that are exemplary. Discussions with officials of COJ indicated that no individual budget had been created for PAIA; however PAIA was accommodated as a line item within the Enterprise Information Management operational budget. Officials further informed the Commission that implementation of PAIA was not an additional cost for the City, as it was accommodated in the IT framework.

On the question of cost incurred when processing a request, COJ indicated that on average per month costs per request are estimated at +/- R500.00, the cost is largely determined by the nature of the request and the volume of records requested. This cost is charged in the IT sundry account. Requester's fees are directed at creating systems to receive and process requests for information; these will be discussed in detail under the heading systems and processes.

**b) Best Practice Model: More lessons form GDACE**

The Gauteng Department of Agriculture Conservation and Environment (GDACE) is also one of the institutions which have committed financial resources to PAIA. Discussions with the PAIA administration team highlighted that the department had allocated a budget for the implementation of PAIA and capacitating of personnel. The department allocated a budget of +/- R106 000 for the period 2009/10 for the administration and implementation of PAIA. Budgetary needs

for PAIA implementation are funded collaboratively between legal services, records management and senior management.

COJ and GDACE continue to illustrate outstanding commitment to PAIA. What is of concern is that institutions that were part of the audit sample included municipalities and various service delivery agencies, whose core function is to ensure that constituencies are informed and able to access public services. The absence of a real commitment to PAIA by these institutions greatly impacts on their commitment to the Batho Pele (People First)<sup>16</sup> principles, good governance and service delivery at large.

### **3. Findings: Records Management**

The records management component of the audit looks at the records practices adopted by institutions. In this category, focus rests on whether institutions have had their respective inspections from Provincial archives and National archives, received destruction certificates and developed file plans for their respective institutions. The records management inspection also has a specific focus on the section 14 manual, the availability of storage space for records generated by the institution and the use of electronic records management systems.

During the discussions held with DIOs, Records Managers, Registry Heads and other designated records management officials, the following aspects/challenges became apparent:

#### **3.1 Records Control Mechanisms/ Programmes**

In general many records management (RM) mechanisms were found to be lacking, largely attributable to a lack of knowledge by the bodies concerned of the need for sound mechanisms regulating records management in their structures.

There is generally very little buy-in and support from senior management in ensuring effective proper RM practices in their institutions.

Essentially, there are very little or no dedicated budget allocations for the roll out and management of effective records management programmes.

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<sup>16</sup> Batho Pele is the government blueprint charter for service delivery.

### **3.2 Records Management Inspection by the Archives**

In most cases, institutions indicated that they had not been inspected by either the National or Provincial archival institutions and had in turn not received destruction certificates. Institutions indicated that this posed a problem in so far as storage space is concerned. Most institutions audited had electronic document management systems in place and had either established or were in the process of developing file plans.

### **3.3 Records Managers**

In most instances, institutions have designated records managers. However, most of the Records Managers have not received sufficient training to deal with their records management responsibilities.

### **3.4 Records Management Policies and Procedure Manuals**

Most institutions indicated that there are policies in place, they are however, not necessarily followed to the letter. Non-compliance with established policies by personnel remains a challenge. Some institutions are using the National Archives prototype, and were not even aware that they are supposed to put such control mechanisms in place. Most institutions do not have customized procedure manuals.

The effectiveness and benefits of these control mechanisms have also not been monitored or evaluated in any of the entities.

### **3.5 Approved Records Classification Systems**

Most institutions admitted to having systems in place that are not well managed or necessarily aligned to their business processes.

They also raised concerns on effectively processing requests lodged in terms of PAIA, particularly where requests were vague and broad. This in effect delays public entity responses to requests and is largely attributable to the lack of efficient record keeping mechanisms. In essence, information is being generated on a daily basis but is not properly managed. Public entities often have no idea what information is in their custody as a result.

Exacerbating this situation is the fact that manuals produced to facilitate access are not aligned at all to already existing classification systems.

### **3.6 File Plan**

In most instances, file plans are in place, but these appear to be outdated, with no amendments or additions done or have simply not been submitted to the Archives for approval. Some institutions had no file plans at all.

Most institutions indicated that there are deviations from their file plans, in terms of actual records being generated, and they encountered varying levels of resistance from staff to comply with proper use of these systems. It is for this reason that in most institutions it was not clear whether such plans are mirror reflections of actual records management practices.

There are several large service delivery institutions which have very diverse functions, classified under one file plan. This may pose challenges in the effective management of these records due to the nature of these records, the administrative processes, and the information they contain.

Several institutions are however, in the process of drafting the file plans in line with their changed functions and processes.

During discussions with records management personnel, it became evident that the adoption and use of file plans was a challenge within the sector. Many indicated that non-compliance with the file plan requirements by their officials meant that documents were not referenced accordingly and requests received were at times affected by this. This poses a challenge for reporting in terms of section 32 and in the compilation of section 14 manuals. Often many manuals presented during the audit were not compiled in line with the file plan of those institutions and a number of records were often not listed in terms of the functions and operations of the institutions. This results in departments producing lengthy and tedious documents which are not user friendly.

### **3.7 Records Control Schedule**

Most bodies were not aware that information in their custody that contains media also constituted a record. Almost all bodies visited did not have such a classification system for their "Other Records". If such schedules are in place, they are neither inclusive of electronic nor audio-visual records, neither are they approved by the Archives. Thus,

there are currently, no control lists or registers for other records like audio-visual records, microfilms, photographs, maps and plans.

It was recommended that institutions develop these for the control of their other records, and where sub-offices exist out of the Head Office, provisions should be made for the inclusion of other records in these sub offices as well. Such schedules would include the various information systems like the Supply Chain Management Systems (BAS, LOGIS), Personnel (PERSAL), Medical, Financial, Core Function Registers, Electronic Document and Records Management Systems, etc.

### **3.8 Electronic Records Management Systems**

Almost all entities audited have more than one electronic system in place, which was previously not regarded as part of the traditional information systems.

Most of the entities do not have Electronic Documents & Records Management Systems (EDRMS) in place as yet, but are working towards the E-era. It is however very crucial that all the entities engage in business analysis processes, to ensure that they understand their specific needs for information management systems, and that the systems they acquire, talk to their business needs and processes.

It is also crucial that sufficient investment is made on their user training.

### **3.9 Control Registers for the Classification, Use, Maintenance and disposal of Records**

Most institutions indicated that registers exist, however there are sections within various institutions which do not make enough of an effort to ensure that the records they generate are recorded in control registers.

### **3.10 Systematic Disposal programme**

The shortage of storage space for records was raised as a challenge in all of the respondents sampled. As much as records have been disposed off in most entities, disposal has not been very systematic. Most institutions have never received or sought disposal authorities from the National Archives and Records Services. Records have been cleared off nonetheless in most institutions, either through destruction, transfers to Archives, or to commercial storage facilities. Most of the commercial facilities used by the entities were never approved or endorsed by the National Archives.

In the majority of the sample, there were no registers in place for the Disposal Authorities, Destruction and Transfer of records.

### **3.11 Safe Custody and Care of Records (Registries and Records Storage Areas)**

Almost all entities indicated that they have:

- a) Records Storage Areas including registries which more often than not are not effectively utilized. They sometimes are used to store Terminated/Closed Records, which are not necessarily recorded/listed and controlled at a central place. Some institutions have provided strong rooms and mini archives facilities for the storage of their closed and terminated records.
- b) Records have not been disposed of, because institutions have no idea of how to go about it.

The records component of the audit is very broad, however from the consultations it is clear that departments need to invest in resources and develop strategies that encourage and enhance sound records practices.

## **4. Good Practice**

Good practices cited were the appropriate channelling of requests; increased awareness; monitoring and filing and that legal compliance requirements had, at a minimum, been met. Good practice processes were deemed to be working primarily because of staff training on these issues.

The City of Johannesburg, the Gauteng Office of the Premier, the Department of Agriculture, the national Department of Agriculture, Forestry and Fisheries, the Department of Defence, Limpopo Department of Health and Social Development and the Western Cape Department of Human Settlements have demonstrated outstanding commitment and dedication to the implementation of PAIA. All these institutions have allocated resources for PAIA and obtained senior management buy in for proper administration and implementation of PAIA. These institutions have not only committed financial resources but have deployed human capital to ensure that access to information is made a reality for requestors. The institutions have adopted systems to receive, process and monitor requests, have complied with reporting obligations in

terms of section 32 and developed internal guide lines to train officials within their entities on PAIA.

The Information Officers Forum has evidently contributed to a large extent to the creation of the BPM. These exemplary models have been consistently monitored by the Commission. The DIOs at these entities are active participants in the DIO Forum activities. The DIOs evidenced a fair degree of sharing systems and processes to facilitate and enhance implementation in their entities. The commitment to effective implementation was witnessed in the creativity displayed in the promotional materials and systems developed in the region. In particular, staff displayed a good working knowledge of PAIA and shared expertise with all levels of personnel.

The BPMs are however only an isolated pocket of public entities spurring implementation in the sector. Alarming levels of uncoordinated processes were evident throughout the sample range. Co ordination was absent in inter-department work and in those instances where processing for regions were required as well.

## 5. Impact of Audits

There are important lessons that can be learnt from institutions that, as a result of the audits have gone on to improve their PAIA compliance and implementation systems. One such institution is DAFF. They are exemplary in this regard because they did not do so well during their audit but quickly moved to improve their implementation efforts afterwards. The result of this is that when the Carter Centre assessment was conducted 9 months later, they emerged as an exemplar of best practice.

The Carter Centre researcher<sup>17</sup> notes that:

*“This (DAFF) is a fairly new department following the restructuring of the public service by President Jacob Zuma when he became the President of South Africa in 2009. It is made of the agriculture component from the former Department of Land (DLA) Affairs, the forestry component from the former Department of Water Affairs (DWA) and the fisheries component from the Department of Environmental Affairs and Tourism (DEAT). All these former departments are not departments that had distinguished themselves in terms of best practice on ATI implementation. This means that the new DAFF practically had to start from the bottom up in setting up enabling systems for better ATI practices and compliance.*

*Within a short space of time DAFF has done a lot to improve its compliance efforts on ATI. This began with:*

- *the drafting of a new manual for the new department,*

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<sup>17</sup> *Ibid*, page 3



- *the construction of a new PAIA website for the department,*
- *the relocation of the Deputy Information Officer (DIO) functions to the Communications Department which combines both IT and communications components.*
- *the incorporation of PAIA compliance procedures within the IT systems framework of the department, and*
- *the compilation of PAIA training materials that are available not only to members of staff but the public as well.*

*DAFF was also one of only two institutions where the researchers were easily transferred to the relevant official in a simulated exercise aimed at testing the awareness of frontline members of staff of the department's ATI procedures".*

## **6. Challenges**

Key challenges in implementation were cited as the lack of buy-in from senior management; lack of capacity to administer PAIA and inadequate training; absence of systems to receive and process requests; lack of public awareness and lack of adequate financial resources.

The issue of lack of buy-in is the central cause of most of the challenges identified above; the unpublished Carter Centre report focuses closely on this topic wherein the researcher notes that:

*"... not a single of the six Ministers responsible for the six institutions sampled was available to be interviewed by the researchers as is required of the protocol. This is largely because the matter of ATI implementation is largely regarded as an operational matter and not a policy matter and therefore falls within the scope of responsibilities of the political heads of the institutions – the Ministers. The assumption is that this issue falls within the scope of the responsibilities of the administrative heads of the institutions – the Directors-General.*

*However in practice it is evident that the Directors-General themselves further delegated this responsibility to their subordinates such as Directors and Chief-Directors. In none of the institutions sampled is the responsibility delegated to a Deputy-Director General. The delegation of responsibility to the levels of Director or Chief Director does not help promote the necessary political will to invest in effective implementation efforts. It also means that ATI does not enjoy the benefit of champions senior enough to make meaningful interventions to bolster compliance and implementation."<sup>18</sup>*

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<sup>18</sup> *Ibid*, page 3.

The Commission's response to these challenges has been the provision of support to institutions. This has been done primarily through the provision of training and awareness raising and meeting with executive management to discuss the factoring of PAIA into strategic plans of state departments. The Commission also provides general assistance to DIOs on application and interpretation of PAIA and guidelines on developing and compiling section 14 manuals. The National Information Officers Forum and the Golden Key Awards hosted annually by the Commission and ODAC have played a critical role in providing a platform for DIOs to share their experiences on PAIA and to be kept abreast with local and international developments on PAIA. Other platforms such as seminars and round table discussions hosted by the Commission provide additional support and continue to expose DIOs to expert and academic opinions on PAIA and related matters.

## **7. Outcomes and Recommendations: PAIA**

The audits conducted during this reporting period illustrate that compliance with PAIA in the sector is still very weak and that challenges identified in the Commission's own previous reports and assessments done by other governmental and non-governmental structures are still prevalent.

### **7.1 Recommendations for the Commission**

The outcomes of the audit demonstrated a need for the Commission to:

- a) continue the consultation nationally through wider samples at all levels;
- b) target key priorities, like service delivery agencies, district and local municipalities;
- c) collaborate with entities to inform and establish best practice;
- d) design and implement train-the-trainer initiatives;
- e) develop and distribute training material and tools more extensively;
- f) increase resource base to execute identified recommendations.
- g) continue with awareness raising interventions, and
- h) employ strategies that will enhance and increase compliance with PAIA in the sector.

## 7.2 General recommendations for public institutions

The empirical data evidenced areas of concern for successful implementation to occur. These areas were concentrated on basic operational inadequacies which were rooted in the lack of dedicated PAIA units. Resources too, impacted on implementation to the extent personnel shared portfolios and were overworked, and were, in most cases, overwhelmed by PAIA implementation, compliance and application requirements.

We are of the opinion that the following interventions would assist in improving the situation:

- a) Inclusion of PAIA within strategic plans of institutions;
- b) Appointment of DIOs;
- c) Allocation of budgets for PAIA administration;
- d) Basic training of all personnel; including frontline officials on PAIA and the development of internal training manuals is a key tool to facilitate this process;
- e) Development of systems to receive, process and monitor requests for information;
- f) Compliance with sections 14, 15 and 32 of PAIA;
- g) Use of customer care and people centres for the distribution of request and appeal forms, promotional material on PAIA and the section 14 manual;
- h) Co-ordination of inter-departmental referrals;
- i) Co-ordination of regional and local information as resource base;
- j) Monitoring trends and developments in requests and records management, for the purposes of reporting and for accountability;
- k) Enhanced systems and processes through consultation with experts;
- l) Particular attention needs to be paid to communication systems governing progress *etc.* with requesters;
- m) Monitoring, tracking and assessment of data generated from regions and provinces;
- n) Provinces to monitor, track and assess data from local government structures;
- o) Structure and develop public participation and awareness raising initiatives regarding PAIA;

- p) Operational requirements must be reviewed and addressed;
- q) Service delivery agents to address capacity issues urgently;
- r) Compliance to form only one aspect in practical implementation and needs to be viewed in this way;
- s) Manuals need to be reviewed for user friendly content and accessibility;
- t) Information that is automatically available must be well defined and increased;
- u) Motivate and prioritise PAIA on departmental agenda;
- v) The accurate collation of statistics is essential for the mandatory reporting requirements.

## **8. Recommendations for Records Management**

- a) Most of the entities need to engage in the analysis of the status of their business records (Records Audit), to determine, what resources they have, in terms of information keeping systems, determine whether those systems are addressing their entities' business needs and processes, identify the challenges and risks they are facing in terms of getting these systems effective for internal and external stakeholders, what improvement strategies they need to put in place, and to plan accordingly for it, financially and otherwise.
- b) All institutions need to develop long term strategies for the management of records and information. These strategies should be included in the strategic plans.
- c) Accordingly, there is a need to establish records management programmes. This should include developing policies, procedures, classification systems, systematic disposal programmes and other control mechanisms. Policies should include punitive measures for non-compliance. There is a need for ensuring consistency in the implementation of these mechanisms.
- d) More crucial, is the attainment of senior management buy-in into these strategies and their support for proper funding and ensuring effective implementation and overall compliance.

- e) Entities must also invest in employee capacity building with regard to the principles, policies, practices and processes being implemented and practiced in their entities. This includes changing the attitude that the management of corporate records and information is solely a registry responsibility.

## 9. Conclusion

Tribute must be paid to the cooperative spirit with which most participants entered the audit consultations. They demonstrated their challenges quite clearly, but also displayed visible signs of being overwhelmed by PAIA in its technical form and by the operational constraints within which they work. This type of situation stifles motivation and creativity. The increased work loads are also shaping the responses and attitudes to requests. The BPMs are currently processing extremely low volumes of requests. They are able to attend training and education events, able to develop materials and facilitate implementation in their departments; other DIOs are extremely restrained in this regard. The fact that this group represents the majority and that their primary objective is to at a minimum meet reporting obligations as a nod to compliance is cause for concern.

Audits conducted have given an overview of the levels of implementation of PAIA in the sector at large. The low levels are an indication that more needs to be done to ensure that levels of awareness are increased in the sector. At present, low public awareness has created the misleading impression that ad hoc responses to requests and inefficient systems and processes are sufficient to meet PAIA obligations. This is a dangerous premise, the lull in the volumes of requests is not indicative of operational design necessary for a firm foundation implementing PAIA. A few municipalities are in fact already experiencing the outcomes of such attitudes.

This lack of commitment was evidenced by the ad hoc manner in which requests are processed and the absence of committed PAIA units, staffed with experts. Clearly the absence of focused experts with sound technical knowledge and the ability to apply DIO discretion will have a huge impact on rights assertion. In effect, the result will be increased appeals and as the current system stands – it will in effect mean the denial of

access for requesters who cannot assert their rights in a court of law. The implications of a continued state of ad-hoc implementation and formal compliance have dire implications for the right to access information. Realistic solutions to accelerated implementation are vital. This can only be achieved if at a minimum, senior management and policy makers in general share a priority commitment to realistic implementation in their departments.

While awareness has been a major contributor to non compliance by entities, a lack of commitment to access information continues to hinder delivery of this fundamental right. The issue of political commitment and buy-in at the senior levels will also impact significantly in priority adjustments in the sector. PAIA implementation in the sector must therefore be supplemented by both financial resources and 'buy - in' at the senior management levels for success.

Service delivery agencies like municipalities are particularly vulnerable to being under resourced and ill-equipped to process voluminous requests for want of adequate operational support. This challenge is exacerbated in the short-term while local government structures focus on the consolidation design dictated by the new legislation.

The lack of human and financial resources impacts on how the public is served and the degree of transparency and good governance desirable in the sector.

While principles of good governance are well established in terms of financial accounting, the sector does not appear to have made a clear connection between information accessibility and good governance.

Policies and practice in related components like records management also warrant review. The latter is inextricably linked to PAIA but suffers its own challenges for the information it has inherited and information currently being generated. These support components have to be working efficiently and requires a collective effort at the highest policy level for PAIA to work optimally.

One other factor that has contributed to non compliance is that penalties provided for by PAIA have not been imposed on entities that have not complied. This has caused institutions to ignore compliance with PAIA because non compliance has not had negative impacts on the institutions.

One of the initiatives taken by the Commission to respond to this has been to request the office of the Auditor General to include PAIA compliance in its audits of the public sector. Through this intervention, the Commission is of the opinion that greater compliance can be secured.

The Commission will continue to raise awareness on access to information; however the failure of institutions to commit resources to PAIA will continue to have a dire impact on a right that is central to the principles of accountability and transparency on which our democracy is built.

Departments are urged therefore to prioritize accordingly and commit to good governance by adopting and implementing policies that will see to the realistic implementation of PAIA and promotion of transparency.