

# THE PROMOTION OF ACCESS TO INFORMATION ACT

ANNUAL REPORT

2014 – 2015



south african  
**human  
rights  
commission**

TRANSFORMING SOCIETY. SECURING RIGHTS. RESTORING DIGNITY.



# The Promotion of Access to Information Act



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# EXECUTIVE SUMMARY

Although there have been improvements with levels of compliance in the 2014/2015 reporting period across all spheres of government, there is still room for much improvement, especially at local government level. More than a decade after the enactment of PAIA, technical compliance with the legislation should not be of continuing concern. It is therefore recommended that Parliament takes more decisive action against departments which consistently fail to comply with PAIA. The SAHRC also specifically calls upon the Office on Institutions Supporting Democracy to engage with Chapter 9 and 10 institutions regarding the continuing dismal levels of compliance with PAIA by these bodies. With regards to the continuing low levels of compliance by municipalities, an effective multi-faceted approach effort is required to influence significant improvements. With this in mind, the SAHRC will further explore existing and potential new partnerships with relevant government departments and organisations in an attempt to increase compliance by local government in future reporting cycles.

Compliance with Section 14 of PAIA remains low. In instances where manuals are submitted, the quality of content is not always satisfactory and existing manuals are not regularly updated. Various challenges have also been identified with regards to reporting in terms of Section 32 of PAIA. These include the absence of a sanction for non-compliance with the provision, in contrast to the sanction currently in place for failing to comply with Section 14 of PAIA. This gap in the legislation has the potential of further exacerbating non-compliance with the reporting provision in PAIA. Furthermore, the limited nature of the information required from public bodies in terms of Section 32 of PAIA prevents a substantive analysis of levels of compliance with the legislation. In addition, the limited statistical data does not provide a clear identification of challenges experienced by implementers of PAIA, thereby frustrating the development and imple-

mentation of effective interventions to address on-going concern .

The amendment of the Magistrates Court Rules that allows requesters to approach the Magistrates Court for further recourse in terms of PAIA brought with it the opportunity for increased access to justice. However, lack of certainty about how many magistrates have received the training necessary to adequately capacitate them to adjudicate PAIA related matters before these courts is of concern. This has the potential to directly impact the rights of litigants, especially those who are indigent. The SAHRC therefore intends engaging with the DOJCS and the Office of the Chief Justice to obtain greater clarity on the current status of the training of magistrates and to play a support role where possible. There is also a need to develop ways of ensuring that members of the public are aware of the court processes available to them and that they are confident enough to utilise them. The SAHRC's public outreach engagements across the various provinces will attempt to address this need.

In an attempt to move away from an assessment of purely technical compliance with PAIA to a more substantive analysis of the state of transparency within the country, the SAHRC will actively follow up on previous recommendations made across a number of different areas. These include recommendations emanating from investigations into access to water and sanitation, housing, mining, healthcare and the private sector generally. In addition, the status of recommendations submitted to the Minister of Justice and Correctional Services over the years in terms of Section 83(3)(a) of PAIA will also be scrutinised.

Whilst improvements in technical compliance with PAIA are acknowledged, more needs to be done to increase implementation of the legislation in a substantive manner and to further develop the constitutional right of access to information.

# PREFACE

In terms of Sections 83 and 84 of the Promotion of Access to Information Act 2 of 2000 (PAIA), the South African Human Rights Commission (the SAHRC) is required to fulfil a number of legislative duties. Amongst these is the tabling of a report to the National Assembly. The report must set out any recommendations the SAHRC has made in terms of Section 83(3)(a) relating to the “development, improvement, modernisation, reform or amendment” of PAIA (as well as any other legislation relating to access to information). In terms of Section 84(b) of PAIA, the report must also include what is for the most part, statistical data relating to the PAIA requests handled by public bodies. This includes the number of requests received, how these requests were dealt with and the outcomes thereof. This data is obtained through submissions made to the Commission on an annual basis in terms of Section 32 of PAIA, which is a mandatory requirement imposed on all public bodies.

# LIST OF ABBREVIATIONS



<b>CC</b>	Coordinating Committee
<b>DIO</b>	Deputy Information Officer
<b>DG</b>	Director General
<b>DDG</b>	Deputy Director General
<b>GKA</b>	Golden Key Awards
<b>IO</b>	Information Officer
<b>NIOF</b>	National Information Officers Forum
<b>MPAT</b>	Monitoring Performance and Assessment Tool
<b>PAIA</b>	Promotion of Access to Information Act, 2 of 2000
<b>POPI</b>	Protection of Personal Information Act, 4 of 2013
<b>PIOF</b>	Provincial Information Officers Forum
<b>PCC</b>	Provincial Coordinating Committee
<b>SALGA</b>	South African Local Government Authority
<b>SAHRC</b>	South African Human Rights Commission







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# 1. Foreword

Access to information is a right that cannot be seen as separate from other rights. It is not a discretionary commodity, it is a requirement. The Constitution of the Republic of South Africa, 1996 (the Constitution) and the Promotion of Access to Information Act 2 of 2000 (PAIA) calls on both public officials and private entities to recognise their role in making information easily accessible and readily available in their capacity as information holders. This entails creating a rights-based approach to access to information while continuously and proactively fostering a culture characterised by transparency, accountability and openness.

Recognising the potential for private actors to violate human rights, the SAHRC identified Business and Human Rights as one of its strategic focus areas for 2014/2015. In this regard, the private sector is not exempt from upholding the right of access to information. The importance of this extension in the Constitution and PAIA is critical when one considers the role and reach of the private sector beyond its own business operations into for example, the realm of partnerships with government for the provision of basic services.

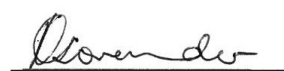
Unfortunately, lack of compliance and poor implementation of PAIA within government and the private sector continues more than a decade after the enactment of the legislation. The reasons for this are varied and vast. In the public sphere, lack of political will at the most senior level has been identified as a key problem which perpetuates the disregard for the right of access to information. With regards to private bodies, legislative gaps in PAIA such as the lack of an internal appeal mechanism can be used as an opportunity for private bodies to show indifference towards compliance with PAIA.

Reasons such as those mentioned above have formed the foundation of the South African Human Rights Commission's (SAHRC) PAIA and access to information related work over the years. In fulfilling its legislative and constitutional tasks, the SAHRC remains alive to the important leveraging power that the right of access to information provides to citizens who wish to engage with the state, those who wish to proactively participate in their own democracy and those who wish to have their voices heard. In doing so, the SAHRC will continue to

actively follow up on the recommendations it has made regarding the need for increased transparency. This includes recommendations submitted to the Minister of Justice and Correctional Services over the years in terms of Section 83(3)(a) of PAIA. Other recommendations flowing from various other investigations conducted by the SAHRC relating to transparency will also be pursued. Amongst these is the investigation undertaken in respect of access to water and sanitation where government was called upon to make important documents such as integrated development plans, budgets and contracts readily and easily accessible to the public.

The SAHRC welcomes the new role that the Information Regulator will soon play in increasing levels of compliance across the private and public sectors through its enforcement powers and the imposition of sanctions where necessary. However, this development in the protection of the right to privacy must be seen in a holistic manner. The right of access to information must continue to retain its stature as an important leveraging right that must not and cannot be unduly compromised. As a new era is set to commence with regards to the access to information landscape, the SAHRC cautions information holders to be mindful of the careful balancing act they will be required to maintain between upholding the right to privacy on the one hand and respecting the right of access to information on the other.

Empowering people through the free flow of information is critical in sustaining and growing our democracy and must be upheld, respected and honoured by all. This duty is especially important for those who hold information, and as such, power. This is the message that the SAHRC sought to convey through its PAIA related work in 2014/2015. I am pleased to table the SAHRC's 2014/2015 PAIA Annual Report to Parliament.



**Pregs Govender**

Deputy Chairperson (South African Human Rights Commission)

The background features a diagonal design with a yellow stripe at the top right, a purple stripe in the middle, and a yellow stripe at the bottom left. The purple area is filled with various sizes of dark purple triangles. At the bottom, there are faint silhouettes of a girl, a boy, and a dog.

## 2. INTRODUCTION

## 2. Introduction

The South African Human Rights Commission (SAHRC) is the guardian of all rights in the Bill of Rights contained in the Constitution. It is also the custodian of PAIA and in this regard, has been bestowed with a number of important legislative duties.

Over the years, the SAHRC has undertaken work aimed at encompassing all aspects of its mandate in terms of PAIA. This includes promoting the right of access to information, monitoring the observance and implementation of PAIA and attending to PAIA related complaints and requests for information. These different facets of the SAHRC's mandate are seen as interrelated and complementary, each impacting on the other to various degrees.

The annual report of the SAHRC sets out the work of the SAHRC in the 2014/2015 financial year in respect of PAIA specifically and the right of access to information more generally.

## 3. Mandate of the SAHRC

In terms of the Constitution, the SAHRC has a threefold constitutional mandate: promotion; protection; and monitoring of human rights. Section 83 of PAIA sets out the mandate of the SAHRC with respect to PAIA in as far as advancing the right of access to information is concerned.

The PAIA Unit located within the Secretariat of the SAHRC is charged with carrying out the SAHRC's obligations relating to PAIA. In fulfilling these obligations, the SAHRC develops and implements a holistic strategy that is continually adapted to meet the changing needs of both implementers and users of PAIA.

## 4. Promotion of the right to access information

One of the important roles of the SAHRC as contained in Section 83 of PAIA is to promote the right of access to information. The promotion strategy adopted by the SAHRC is directed at maximising impact for stakeholders within the public and private sectors and society at large while relying on limited resources. In terms of Section 10 of PAIA, the SAHRC is required to compile a guide to assist both implementers and users of PAIA to comply with and properly apply the legislation. In 2014, the guide was updated and uploaded on the SAHRC's website.

The promotional work of the SAHRC broadly aims to advance the right of access to information through the following means:

- Educating public and private bodies about the objectives of PAIA, their duty to implement and comply with PAIA in their respective institutions and to encourage them to operate in a transparent manner through making information available to members of the public; and
- Educating members of the public, in particular members of disadvantaged communities, about their right to access information, the means of asserting the right and the potential the right creates for the realisation of other rights.

## 4.2. Training of Information and Deputy Information Officers

The obligations of the SAHRC with respect to advancing the right of access to information as set out in Section 83 of PAIA, includes training<sup>1</sup> of information officers (IO) and deputy information officers (DIO) of public bodies.<sup>2</sup> Since the inception of PAIA, the SAHRC has largely focused its efforts and resources on training public officials on the basis that they are in most instances, the primary holders of information required by the public. Training interventions are also geared towards encouraging compliance with PAIA where implementation is lacking and providing a networking opportunity for the SAHRC, IOs, DIOs and other important stakeholders.

The training programmes developed by the SAHRC are informed by the outcomes of research, compliance assessments and information received from members of the public and the state, amongst others. Analysis of these sources indicates that since the inception of PAIA, there has been a general reluctance and / or inability within the public sector to respond to requests for information. A number of factors may contribute to this state of affairs. They range from lack of understanding of the relevant legislation, poor implications for non-compliance and general attitudes of indifference.

Noting these gaps in the public sector and the detrimental effect these shortcomings have on the realisation of the right of access to information, the SAHRC conducted various training and awareness raising interventions for public officials. Beyond training on the content and application of the legislation, the training interventions encourage the inclusion of PAIA in the operational plans of public bodies with a view to ensuring the substantive, effective and efficient implementation of the legislation. The PAIA Unit continues to review and enhance its training programmes to ensure that attendees receive the intended benefit. In this regard, workshops conducted during the current reporting period included presentations on PAIA, the importance of records management as well as the Protection of Personal Information Act 4 of 2013 (POPI). The expanded workshop parameters were necessitated by the impact of POPI on the right of access to information. Discussions on POPI focused largely on the need for public bodies to improve operational readiness with respect to processes, systems and policies relevant to the management of personal information under their control. Considering the critical link between the protection of personal information, access to information and effective records management, the training initiatives also sought to encourage an enhanced appreciation of the interrelatedness of these aspects and the need to equally comply with all.

In the period under review, the PAIA Unit conducted 16 training workshops for the public sector:

1. National LIASA Workshop
2. National Archives Workshop
3. City Of Tshwane Municipality

<sup>1</sup> Section 83(3)(e) of PAIA


<sup>2</sup> Public body: any functionary or institution when-

(i) Exercising a power or performing a duty in term of the Constitution or a provincial constitution; or

(ii) Exercising public power or performing a public function in terms of legislation

4. Free State, State Law Advisors Forum
5. National Department Of Social Development
6. Eastern Cape Department Of Correctional Services
7. Gauteng Department Of Correctional Services
8. Mpumalanga Department Of Correctional Services
9. KwaZulu Natal Department Of Correctional Services
10. University Of The Western Cape
11. Department Of International Relations And Cooperation
12. Department Of Communications
13. National School Of Government
14. Service Seta
15. North West Directorate Of Library, Information And Archives Services
16. National Department Of Agriculture, Forestry And Fisheries

#### 4.2.1. Trends analysis

Approximately 600 public officials participated in the various training workshops conducted by the SAHRC during the reporting period. Notably, only one municipality approached the SAHRC for training on PAIA. This is disconcerting considering that local government consistently remains the least compliant with PAIA of all spheres of government but at the same time  the most direct contact with members of the public. In the period under review, almost 80% of municipalities failed to comply with PAIA.

The number of training requests received from national and provincial government departments remains relatively unchanged from 2013/2014. A notable example of a department which has fully embraced training on PAIA is the Department of Correctional Services (DCS), which has consistently requested training on an annual basis. During 2014/2015, the DCS launched a training initiative for a number of its provincial offices, with 4 of their provincial offices completing the training workshops.

The North West Provincial Archives requested training for all record managers in the province. This is a particularly important intervention as the North West province had consistently remained one of the least compliant provinces, with only 1 department submitting its Section 32 report in a four year period. The SAHRC hopes that this training request is an indication of an increased recognition within the province of the significance of PAIA and that the workshop will be the first in a series of initiatives to increase levels of awareness in the North West.<sup>3</sup>

While the SAHRC is cautiously optimistic that its training interventions have increased awareness and stimulated commitment to PAIA, continuous low levels of overall compliance indicate that much still needs to be done.

3

Examples include the Minimum Information Security Standards and the National Archives Act (i.e. PAIA requires that records that are older than 20 years should be

### 4.3. Community law clinics

Recognising the benefit of promoting PAIA through the channels of higher education and legal training, the SAHRC developed the PAIA Law Clinic pilot project in the 2013/2014 financial year. It was envisaged that the project would provide students and community members with substantive knowledge to facilitate the use of PAIA to access information. The pilot project was seen as a mutually beneficial initiative for both the students and the targeted communities as it allowed community members to access free legal advice and also sensitised the students about PAIA. Objectives of the law clinics included the following:

1. To enhance understanding of PAIA by university students with the intention of increasing interest in the right of access to information and inspiring mainstream use of PAIA;
2. To bolster monitoring of PAIA by using university students to assess how PAIA is being implemented and understood by both public and private bodies;
3. To recruit university students to participate in the promotion of the right of access to information;
4. To increase community members' understanding of how to use PAIA and to empower them to use PAIA in their individual capacities to gain access to information required for the protection or exercise of their human rights;
5. To foster working relationships with tertiary institutions; and
6. To raise awareness amongst lecturers, students and community based organisations on issues of access to information, open democracy and good governance as a means of achieving improved service delivery.

Following the inception of the pilot project in 2013, the PAIA Unit continued its collaboration with the University of Witwatersrand Law Clinic (WLC) and the University of the Western Cape Street Law programme (UWC SLP) in the 2014/2015 financial year. In the period under review, the PAIA Unit hosted eleven (11) PAIA law clinics in the following areas:

1. Ruyterwacht, Western Cape
2. Pollsmoor Correctional Centre, Western Cape
3. Ethwathwa Community Care Centre, Gauteng
4. Soweto Hospice and Community Centre, Gauteng
5. Phiri, Gauteng
6. Diepsloot, Gauteng
7. Benoni Community Concern Group, Gauteng
8. Zandspruit, Gauteng
9. Rabie Ridge, Gauteng
10. Barcelona, Gauteng
11. Orange Farm, Gauteng
12. Structure of the law clinics

### 4.3.1. Structure of the law clinics

The PAIA law clinics generated interest from students at both universities, most of whom were in their final year of study. Prior to the hosting of clinics for communities, the SAHRC conducted briefing sessions for the students covering the applicable constitutional framework, jurisprudence, application and procedural aspects of PAIA. Law clinics were subsequently hosted in various communities in the Western Cape and Gauteng provinces.

During the law clinics, presentations on PAIA provided community members with an overview of basic human rights concepts, how the right of access to information plays a role in the realisation of other rights and how it can be used to address certain social ills and hold government accountable. Community members were encouraged to participate in matters affecting them and to engage with the state on matters pertaining to service delivery by, for example, scrutinising policies and budgets. Community members were also provided with an opportunity to consult with the students under the guidance and supervision of SAHRC staff and / or supervising attorneys from their respective tertiary institutions. Where appropriate, students were encouraged to make use of PAIA to resolve matters.

### 4.3.2. Trends analysis

The impact of the clinics was assessed by the level of participation and engagement by attendees. Approximately 230 participants attended the PAIA law clinics and approximately 50 students participated in the programme from the two universities.

Complaints that emanated from the law clinics revolved primarily around service delivery, with a particular emphasis on housing and access to basic services such as water and sanitation. Other complaints were family related and included issues relating to social grants and identity books. A common concern appeared to be the lack of transparency at local government level. In this regard, specific reference was made to poor information sharing by local ward councillors, who are meant to be the first port of call between government and its citizens. This is echoed in the poor compliance levels within this sphere of government as noted by the SAHRC through its other PAIA related work.

A further form of monitoring and evaluation was conducted by assessing the independent use of PAIA by communities after they attended the law clinics. By way of example, a community in Phiri in Soweto (Gauteng) demonstrated a great understanding of PAIA after participating in the intervention. With guidance from the SAHRC, community members lodged a number of PAIA requests with their local municipality for information relating to housing and the provision of water. Leaders of the Phiri community also actively encouraged members of the community to make use of PAIA.

The Benoni Community Concern Group, a community based organisation operating in Gauteng, also responded positively to the law clinic. Since receiving training, the group has assisted members of the public to lodge PAIA requests and has also begun proactively liaising with local authorities to address matters affecting their community.



It is hoped that the communities reached through the law clinics will continue to make use of PAIA as a means of engaging with public bodies and that through increased access to information, they will actively participate in decision making that directly impacts on their daily lives.

### 4.3.3. Way forward

Community law clinics formed an integral part of the SAHRC's advocacy strategy insofar as empowering both the youth and communities about the power of the right of access to information and PAIA. The clinics provided an opportunity for communities to consider adopting an information seeking approach when attempting to resolve issues affecting them as opposed to engaging in other more adversarial avenues, such as protest action.

Due to shifts in the strategic and operational focus of the SAHRC arising from the upcoming establishment of the Information Regulator, it was resolved that the SAHRC will discontinue the PAIA law clinics pilot project in the 2015/2016 financial year. The SAHRC will instead dedicate its resources to preparing for the upcoming handover of its legislative PAIA related functions to the Information Regulator. The SAHRC will however continue training communities on access to information and PAIA through public outreach engagements that will be conducted in the various provinces.

## 4.4. Provincial community interventions

During the period under review, the SAHRC's provincial offices conducted PAIA related community training interventions in their respective provinces. Over 400 community members attended workshops hosted across the country in the 2014/2015 financial year.

A common theme which emerged from the majority of the provincial workshops was the stark lack of knowledge of PAIA, especially amongst those living in more rural areas. Use of the video documentary commissioned by the SAHRC in 2013/2014 relating to PAIA assisted the facilitators to bring alive what could have otherwise been seen as quite technical aspects of the legislation. By linking service delivery related issues and the role that access to information can play as an alternative to protest action, the SAHRC was able to create awareness around the potential PAIA presents for the realisation of other rights.

Feedback received after the workshops that further awareness raising initiatives are required on PAIA points to an acknowledgement from communities that access to information can lead to empowerment. Following the workshops, many community members indicated that they would make use of PAIA in the future and / or that they felt more equipped to use the legislation should the need arise. Communities also expressed the view that education on PAIA should be extended to public officials and members of ward committees. Communities therefore recognised that the right of access to information is two-sided: the requester of information on the one hand and the holder of information on the other. In respect of the latter, community members / organisations who had previously attempted to utilise PAIA raised practical concerns such as the unavailability of PAIA forms at municipal offices (and

other public spaces, like libraries) and the real or perceived inability of some DIOs to deal with PAIA requests. Challenges such as these appear to have created perceptions amongst communities that government information is not easily accessible. This demonstrates that legislation alone is not sufficient and that what is required is effective implementation of the law.

## 4.5. Other interventions

### 4.5.1. National Coordinating Committee

The National Coordinating Committee (NCC) comprises of DIOs from all spheres of government. Committee members are selected bi-annually at the National Information Officers Forum (NIOF). The members each serve a two year term and the SAHRC serves as the secretariat. Objectives of the NCC include identifying challenges faced by DIOs in implementing and complying with PAIA. Such information informs the development of the SAHRC's own interventions, training workshops and other awareness raising events. In this way, the work of the SAHRC responds directly to the actual needs and challenges faced by DIOs. The current NCC's tenure will end in September 2015 when newly elected members will continue the important work of bringing the daily challenges of PAIA implementers to the fore in an attempt to increase compliance with the legislation.

For the period under review, the SAHRC and the NCC hosted the NIOF in October 2014 as well as a joint meeting for all PAIA related provincial structures in March 2015.

### 4.5.2. National Information Officers Forum

Since 2003, the SAHRC has annually hosted the NIOF in celebration of the international 'Right to Know' day. The event is aimed at creating a discussion platform for implementers of PAIA across all spheres of government. Other key players such as academics and civil society organisations involved in access to information are also invited to take part in the event. Key objectives of the NIOF include creating opportunities for information sharing and networking, raising awareness of the right of access to information and developments in respect thereof and identifying challenges faced by implementers in complying with the legislation.

In 2014, the SAHRC hosted the 11<sup>th</sup> NIOF in celebration of the International Right to Know Day under the theme "Advancing Transparency in Public Bodies". The theme sought to not only address the need to advance transparency and compliance of PAIA compliance by public bodies, but to also link the right of access to information to human dignity and social justice.

The keynote address of the Honourable Deputy Minister for Cooperative Governance and Traditional Affairs (COGTA), Mr Andries Nel, focused on transparency in public bodies with specific reference to COGTA's 'Back to Basics' theme. The 'Back to Basics' seeks to enhance service delivery and transparency in local government. In his opening remarks, Honourable Deputy Minister Nel underscored the constitutional principles of transparency, accountability and human dignity as the pillars which support democracy. He explained that a democrat-

ic state is one that recognises the importance of the voice of its citizens in their capacity as both stakeholders and beneficiaries and emphasised the role of access to information in securing the realisation of socio-economic rights. Presentations by Advocate A. Louw from the South African Law Reform Commission (SALRC) and Ms Gabriella Razzano, head of research at Open Democracy Advice Centre (ODAC), focused on POPI and automated request portals, respectively. In respect of the latter, Ms Razzano pointed out that technology has been identified as an effective means through which information can be easily accessed (in line with the principles of the Open Government Partnership which South Africa is a founding member of). While resource limitations may prevent complete implementation of technologically based information portals across all spheres of government, the potential of technology in increased access to information cannot be denied. In this regard, the presentation by Ms Razzano provided delegates with an opportunity to consider the implementation of similar, suitably adapted systems within their own environments.



## Golden Key Awards

The event culminated in the Golden Key Awards (GKA) where the work of public sector DIOs and institutions who had demonstrated excellence in respect of complying with PAIA was recognised. The awards also aim to inspire non-compliant public bodies to increase their levels of implementation.

In 2014, the SAHRC, in consultation with the Department of Performance, Monitoring and Evaluation (DPME), identified best performing institutions. The collaborative approach was based on DPME's role in monitoring compliance of national and provincial departments with their respective legislative mandates, including compliance with PAIA.

## Awards Categories

### Best performing National Department

This department was rated the highest for compliance with PAIA in terms of MPAT. The department complied with Sections 32, 14 and 15 of PAIA, had a duly appointed a DIO and had policies in place to ensure the proper implementation of PAIA.

Department of Science and Technology

### Most improved Deputy Information Officer

This DIO made efforts to ensure that his institution complied with PAIA. Compliance improved within the province during his tenure as DIO, with more than 80% of the provincial departments in the Eastern Cape complying with PAIA.

Mr R Fortune - Eastern Cape Office of the Premier

### Best Deputy Information Officer

This DIO made attempts to ensure that her institution was compliant with PAIA. She also facilitated compliance across the province, including within various provincial structures, thus leading to 100% compliance with Sections 32 and 14.

Advocate Swanepoel – Free State Office of the Premier

A number of important issues were raised through the various engagements at the NIOF. The two main areas of focus however included the low compliance rate within the public sector and the need for proactive disclosure of information. Recommendations included the increase of awareness raising activities, developing appropriate partnerships with civil society, the sharing of best practices and developing peer review mechanisms. It was also recommended that the Monitoring Performance Assessment Tool (MPAT) be extended to include local government as well as standards applicable to records management.

The level of participation and number of delegates at each NIOF is encouraging as it indicates a certain level of interest in upholding the right of access to information. Although compliance levels are not ideal, commitment to at least engage on issues relevant to PAIA and access to information is promising.

### 4.5.3. Provincial Information Officers Forum

The SAHRC, the NCC and ODAC resolved to implement a pilot project to organise provincial implementers through Provincial Information Officers Forums (PIOF). PIOFs are intended to emulate the work of the NCC at a more localised level. It was envisaged that the work of the PIOFs would be coordinated by a Provincial Coordinating Committee (PCC) operating in each province. Since the launch of the first PIOF in KwaZulu Natal in 2010, the SAHRC has hosted a total of eight PIOFs in different provinces. The SAHRC has noted improvements in the levels of compliance in the monitoring cycle following the establishment of a PIOF within those provinces where PIOFs have been established, such as Eastern Cape, KwaZulu Natal and the Free State provinces.

In the period under review, the SAHRC and the NCC hosted a joint meeting of PIOFs from across the country. In recognition of the low compliance levels within this sphere of government, the thematic focus for the 2015 programme was enhancing compliance of PAIA amongst municipalities. The theme was supported by presentations by representatives from the Auditor General of South Africa (AG), COGTA and the South African Local Government Association (SALGA).

The opening address by the SAHRC's Deputy Chairperson, Pregs Govender, noted that lack of accountability and transparency at local government level remains a critical hindrance to the right of access to information, with the public experiencing challenges accessing information as non-contentious as budgets and integrated development plans. This lack of transparency resulted in poor budget choices which in turn gave rise to a number of severely prejudicial consequences. The Deputy Chairperson emphasised the need to move beyond technical compliance to a more substantive approach in order to ensure meaningful consultation with and participation of citizens in the work of government.

In delivering her keynote address, Mangi Mulaudzi, the Head of Information Knowledge Management at the AG emphasised that the absence of sound records management systems results in grave violations of the right of access to information and non-compliance with PAIA. In recognition of this reality, Ms Mulaudzi referred to the AG's intention to commence auditing the records management systems of public bodies. Thinavuyo Skosana from COGTA addressed participants on the "Back to Basics" policy, mirroring the presentation of Honourable Deputy Minister Nel at the SAHRC's 2014 NIOF. Some challenges identified by COGTA with regards to the implementation of PAIA included the following:

- Limited capacity to deliver on mandates;
- Uncertainty as to which department the PAIA functionary should be placed in; and
- Lack of awareness and insufficient training on PAIA and records management.

Sonwabo Gqegqe from SALGA pointed out that even in the absence of PAIA, the state has an obligation to ensure that government is based on the will of the people and that it must be accountable, responsive and transparent. He identified the lack of a firm high level commitment to implement PAIA and financial constraints as possible hindrances to increasing compliance of PAIA at local government level. As a means of bridging the existing gaps and

improving service delivery, a multi-faceted approach and inter-governmental collaboration was required to effectively increase compliance with PAIA. On this basis, SALGA has engaged with both COGTA and the Department of Justice and Correctional Services (DOJCS), a partnership that the SAHRC will further explore in its own work in the 2015/2016 financial year.

The Chairperson of the NCC, Advocate Chipu, provided delegates with a brief background regarding the NIOF and the work of the NCC. Initiatives considered by the NCC during its current term included engaging with National Treasury regarding the inclusion of PAIA compliance in the annual reports of all national and provincial departments, the local government sector and state owned companies and enterprises, engaging with the AG regarding auditing compliance with PAIA in the public sector and introducing PAIA reporting as a guideline for annual reports to Parliament for all public bodies. Provincial forums represented at the NIOF provided the following feedback to delegates regarding their respective structures:

PROVINCE	STATUS
Gauteng	A PCC was established in 2014.
Eastern Cape	A structure known as the DIO Forum (DIO Forum) has been established. It meets twice a year and its membership consists of the heads of all provincial departments who have been appointed as DIOs by the Director-General in the Office of the Premier as well as the DIO in the Office of the Premier. The implementation of PAIA in the province is also discussed at the Provincial Legal Advisors Forum, which consists of legal advisors of the provincial departments, public entities and municipalities.
Kwazulu Natal	A provincial structure is in place, although it is not constituted as a PCC. The structure is known as the KwaZulu Natal Records Managers and Deputy Information Officer Forum (KRMADIOF). The forum meets on a monthly basis (or more often, as required). All DIOs and records managers in the province are automatically deemed to be members of the forum by virtue of the positions which they hold. Elections for the main coordinating committee members are held every 3 years. The forum does not receive formal funding but does secure donations where possible by for example, hosting events. KRMADIOF appears to represent a best practice model which can be suitably adapted by other provinces.
Mpumalanga	The PCC was launched in 2013. All DIOs who are members of the PCC are legal officers. A draft action plan has been prepared by the members and further guidance has been sought from the NCC in respect of finalising and implementing the proposed action plan.
Limpopo	A provincial structure is in place, although it is not constituted as a PCC. The forum is currently responsible for the coordination and implementation of records management, PAIA and PAJA throughout the provincial departments and has been allocated a dedicated budget with which to fulfill its objectives. PAIA compliance forms part of the annual performance plans and strategic plans of most departments in the province. This level of senior management buy in has contributed to a 100% compliance rate in respect of submission of Section 32 reports, Section 15 notices and Section 14 manuals within the province. This forum also appears to represent a best practice model which can be suitably adapted by other provinces.
Northern Cape	Although a PCC was launched in 2012, members were not elected at that time. The SAHRC and NCC will provide necessary support to ensure that the PCC becomes functional.
Free State	The PCC is fully functional and the province is 100% compliant with its Section 32 reporting obligations.
Western Cape	Due to the existence of a provincial structure which functioned in fundamentally the same manner as a PCC, a separate PCC was not established.
North West	No PCC has been established in the North West province notwithstanding attempts by the NCC to set up such a structure.

Various recommendations emanating from the PEOF will be considered by the SAHRC and the new NCC members who will be elected in 2015. Noting that the majority of problems faced by PCCs are similar to those of the NCC, it was recommended that the national and provincial structures work more closely together in the future. It was also recommended that best practices from existing structures, such as Limpopo and KwaZulu Natal, serve as an avenue for peer mentorship amongst existing and still to be established provincial structures. Emphasis should also be placed on consistently non-compliant provinces which should be earmarked for more focused intervention by the NCC. It was also deemed desirable for existing provincial structures, whether or not a formal PCC, to be incorporated into the broader PAIA project as envisaged by the SAHRC and the NCC. Such approach would go some way to ensuring consistent understanding of PAIA, open and widespread engagement on important access to information issues and the on-going exchange of best practices.

## 4.6. Private sector interventions

When PAIA was enacted in 2000, it entered the unfamiliar territory of providing an individual the right of access to information held in private hands where that information relates to the exercise or protection of rights. While a commendable extension of the right of access to information, the higher threshold of requiring an explanation of the rights which are sought to be protected by requesting information, together the absence of an internal appeal mechanism for PAIA requests lodged with private bodies, exacerbates the potential prejudice to individuals who wish to access information held by private bodies.

### 4.6.1. PAIA training for private bodies

Considering low levels of utilisation of PAIA insofar as private bodies are concerned and the SAHRC's strategic focus area for the 2014/2015 financial year i.e. Business and Human Rights, the PAIA Unit offered training to various private sector bodies. However, the willingness to engage and / or to accept such offers was unfortunately low and a total of approximately only 40 individuals from 4 private entities participated in PAIA training hosted by the SAHRC in the reporting period. Training sessions were conducted for Clinix Group, Sanlam Investment Management, Heinrich Boll Foundation and the Women's Legal Centre.

### 4.6.2. Transparency in the Mining Sector

The SAHRC's mandate in respect of transparency and access to information coincides with certain elements of the United Nations (UN) Guiding Principles on Business and Human Rights which were adopted to guide states and businesses on their various roles and responsibilities in upholding human rights.

On both local and international platforms, various initiatives have been developed to foster greater transparency in the private sectors as a means through which stakeholders can hold powerful private actors to account. However, notwithstanding clear advantages of transparency and accountability insofar as good business practice is concerned, challenges continue



to exist within the mining sector around how to adequately translate the issues of human rights, transparency, open data and generally, access to information. Against this background, the SAHRC hosted a seminar aimed at creating a platform for discussion around transparency within the mining sector due to the key role extractive industries play in the South African economy and its potential to cause the human rights violations of large groups of people. The SAHRC also wished to interrogate the levels of commitment and understanding within the mining industry with regards to transparency and access to information and to discuss the potential of developing a minimum set of transparency standards for the sector.

Although it was envisaged that the seminar would take the form of a joint meeting with various relevant stakeholders, including mining companies, the Chamber of Mines and government departments, no government departments or mining companies were in attendance. The notable absence of these key role players was unfortunate as their contributions would have greatly enriched discussions around the status quo of transparency within the mining sector and how best to craft an all-inclusive approach to effectively move forward.

In delivering her opening address, the Deputy Chairperson of the SAHRC, Pregs Govender, spoke about the importance of transparency in the mining sector and the potential impact of the seminar as a platform for discussion amongst key stakeholders. Ms Razzano from ODAC echoed her message from the 2014 NIOF about the value of open data portals. She also recognised that while there are areas of grave concern, a strong foundation has been laid by South Africa in terms of ensuring greater transparency through open data. By way of example, she cited South Africa's founding role in the Open Government Partnership (OGP) and the country's commitment to develop an open data environmental portal. Melissa Fourie from the Centre for Environmental Rights (CER) emphasised the role of the law in promoting the disclosure of environmental and social records in the mining sector and also made reference to the importance of litigating on the right of access to information. In doing so, she made mention of successful cases handled by the CER which provided both the promise of results but also confirmed the stark reality of the lengths to which organisations are required to sometimes go in order to secure information. Ms Fourie noted that the majority of refusals and the general lack of cooperation appear to be based on amongst other factors, fear, alleged administrative, financial and logistical burdens associated with making information available and the potential harm to commercial interests and competitiveness. Unfortunately, due to the absence of mining houses to provide delegates with their practical challenges and concerns, further productive discussion on these points was stunted.

Community members were of the view that any information affecting them should be readily available and easily accessible. This included social and labour plans, details of community meetings and consultations, general and strategic annual plans and social, budgetary and environmental reports. Information regarding the management, ownership and shareholding of mines, licensing information and records relating to rehabilitation were also deemed important in terms of disclosure. There was general consensus that government should aim to develop and maintain an easily accessible database of publicly available information relating to all mining companies and their operations.

With regards to PAIA, participants were of the view that greater public awareness and grass-roots education was required with specific focus on how it can be practically used to assist communities affected by mining operations. Greater understanding was also required amongst private actors regarding their role in upholding the constitutional right of access to information, the mandatory nature of the provisions of PAIA, the potential benefits to their own business operations if transparency and openness were enhanced and the negative perceptions that arise where there is repeated non-compliance with PAIA.


It was resolved that further stakeholder engagements on business and transparency will be hosted by the SAHRC in 2015/2016 to ensure continuity of focus on these issues over a period of time. It is intended that this will promote greater information sharing, reflection and planned action steps to be taken and measured in phases.

## 4.7. Support to the African Commission on Human and Peoples Rights

The African Commission on Human and Peoples Rights (ACHPR) committed through Resolution 167 (XLVII) to secure the Effective Realization of Access to Information in Africa. The SAHRC formed part of a group of expert drafters who supported the work of the ACHPR in developing a model law on access to information as a part of this process. The model law was subsequently adopted on the 23<sup>rd</sup> of February 2013 and launched during the 54<sup>th</sup> session of the ACHPR on the 12<sup>th</sup> of April 2013.

Since its adoption, the model law has come to be recognised as a landmark soft law for the ACHPR. Since its adoption, the SAHRC has provided support to the special rapporteur of the ACHPR in advocating the development and adoption of access to information laws based on the framework advocated in the model law. During the 2014 period, the SAHRC participated in 3 such advocacy missions to support states including Mozambique, Botswana and the Seychelles.

In Mozambique, the mission engaged with the Chair of the Committee on Public Administration and Social Communication; Minister of Justice and President of the Supreme Court. Mozambique subsequently adopted its access to information legislation after a number of years, increasing the number of states which had adopted access to information legislation since the adoption of the model law from 6 to 15 states.

In July the mission met with the Southern African Development Community Secretariat in Botswana. The outcomes of this mission saw an agreement to convene a technical group of experts to support the adoption of the model law as a standard for the region. This meeting also saw an undertaking to develop a plan of action for the implementation of access to information laws in thern Africa.

His Excellency, President James Michel, provided strong commitments to the special rapporteur and the delegation that the Seychelles would be the first among Africa's island states to adopt access to information legislation. A number of stakeholders were engaged during this

country visit, including Ministers, members of Parliament, civil society organisations, journalists and other stakeholders. The SAHRC, as a part of the core support group to the special rapporteur is continuing its support to the Seychelles as it develops its legislation.

The model law and advocacy missions have undoubtedly improved the access to information landscape in Africa, providing states with a best practice frame of reference and support in the development of their legislation on this critical right. The missions have deepened the understanding of the impact and relevance of access to information on democracy, participation and development. As a result, diverse sectors appear to be increasingly willing to embrace the model law as a tool toward increasing protections for human rights.

The SAHRC will continue providing support to the ACHPR in working toward effective realisation of the right to access information in the coming year.

## 5. The Protection Mandate

The protection aspect of the SAHRC's constitutional mandate is replicated in Section 83 of PAIA. It entails providing assistance to individuals who are attempting to exercise their right of access to information through the use of PAIA. The PAIA Unit regularly attends to enquiries received directly from members of the public or complaints transferred to it by the various provincial offices. Complaints lodged with the SAHRC are dealt with in terms of the South African Human Rights Commission Act 40 of 2013 (HRC Act), the SAHRC's Complaints Handling Procedures (CHP), PAIA and other applicable policies of the SAHRC.

Assistance to members of the public range from completing PAIA request and appeal forms, guidance on the interpretation and application of provisions of the legislation and engaging with information holders on behalf of requesters. These forms of assistance also serve as awareness raising and educational tools as it empowers complainants to engage with PAIA on their own should the need arise in the future, and to pass on such knowledge to their wider communities.

The individual complaints dealt with by the SAHRC provide an opportunity to identify key trends in the application and implementation of PAIA, both from the perspective of the user as well as implementers of the legislation. In certain instances, complaints give rise to novel issues regarding the practical application of PAIA. Such matters may ultimately lead to recommendations being made to the DOJCS regarding the reform of PAIA and / or the institution of strategic impact litigation. In line with Section 83(3)(c) of PAIA, due to its own resource constraints, the SAHRC is not able to engage in litigation on behalf of complainants in all PAIA related matters, unless exceptional circumstances warrant such an intervention. As previously reported, this presents the unembellished reality of the SAHRC's lack of enforcement powers and the impact thereof insofar as compelling compliance with PAIA is concerned.

Some notable trends identified in the SAHRC's handling of PAIA related complaints during the period under review are briefly dealt with below.

### 5.1. Complaints relating to the public sector

When one considers that municipalities are meant to be the first port of call and the most direct link to the public, it is concerning when complaints are lodged against municipalities. An example is presented through a complainant who wished to access certain information from a municipality. After approaching the courts for relief, the municipality agreed to provide the requested information. Notwithstanding such undertaking, the information was not provided and the municipality instead advised the complainant that a further PAIA request had to be lodged. Although the complainant subsequently withdrew his PAIA related complaint, the matter is indicative of not only the poor levels of compliance with PAIA at the municipal level, but also the complete disregard for the right of access to information, even in the face of court action.

As previously reported, there are instances where members of the public feel that they are left with no option but to make use of PAIA, even when other means are available to them to

access records. This includes inmates requesting their own trial records from the DOJCS and copies of their dockets from the South African Police Services (SAPS) using PAIA. A new trend which appears to be developing in some provinces is the use of PAIA by parties to proceedings before the Commission for Conciliation, Mediation and Arbitration (CCMA) for records relating to their own hearings. Engaging with complainants on these requests appears to indicate that there is lack of understanding on the part of requesters as well as information holders of other existing procedures available to them.

PAIA places no obligation on an institution to create records that do not exist. However, when Section 23 of PAIA (public bodies) or Section 55 (private bodies) is invoked as the basis for the refusal of a request, PAIA requires that a detailed exposition is provided in affidavit form setting out a full account of all steps taken to either locate the record or to determine whether the record exists. Complaints dealt with by the SAHRC indicate that this is not being done.

PAIA requests which relate to essential records such as wills, identity documents, medical and employment records, exam scripts and academic results from the Departments of Basic Education and Higher Education confirms the important role that PAIA plays in the daily lives of the public. These requests also reflect the urgent need for implementers to duly apply the provisions of PAIA beyond a simple tick box system, and to instead always bear in mind the potential impact of their decisions on the lives and wellbeing of individuals.

Many complaints received by the Commission relate to lack of response from public bodies within the timeframes prescribed by PAIA and deemed refusals where requesters receive no response at all. Reasons for this may include lack of effective systems to receive and track the progress of PAIA requests, attitudes of indifference and / or lack of understanding of PAIA. The latter becomes particularly evident when officials are not able to identify who the DIO within their organisation is or what the role of such a person is insofar as PAIA is concerned.

## 5.2. Complaints relating to the private sector

The SAHRC also receives a large number of complaints against the private sector (albeit a consistently lower number of complaints than those lodged against public bodies). As with requests lodged with public bodies, common challenges experienced when requesting records from private bodies relate to deemed refusals and the failure of information holders to adhere to time frames prescribed in PAIA.

A large number of complaints against the private sector relate to mining companies (and government departments responsible for mining related activities). They range from records relating to tenders and procurement processes, alleged irregularities and requests for environmental records. Issues raised in these complaints were echoed during the seminar hosted by the SAHRC on transparency in the mining sector and indicate systemic issues that must be addressed.

The challenges experienced with regards to private bodies and PAIA are particularly evident in a matter currently being handled by the SAHRC. Since receipt of the complaint, the SAHRC has been faced with numerous challenges in attempting to resolve the matter, including the entity's continued failure to properly apply the provisions of PAIA (notwithstanding guidance from the SAHRC). Certain actions of the private body point to the low priority sometimes assigned to compliance with PAIA even in large well-resourced corporations. This complaint also demonstrates a gap in PAIA which leaves requesters without the right of internal appeal insofar as PAIA requests lodged with private bodies are concerned. As such, the complainant is now required to approach the courts for relief, which she is unable to do due to lack of funds. Recognising the difficulty that this poses for requesters, especially indigent individuals, the SAHRC has previously made a recommendation to the Minister of Justice and Correctional Services that PAIA be reviewed to allow for internal appeals in respect of private bodies.

### 5.3. General enquiries

The PAIA Unit regularly receives enquiries from members of the public and officials from public and private bodies on the interpretation and application of PAIA. Enquiries range from general compliance issues, how to fulfil PAIA obligations and how to apply and interpret PAIA in specific requests for information. Trends that are noted through enquiries guide the SAHRC in its own work, whether through incorporation of common areas of misinterpretation in its training workshops or as the basis for recommendations for the reform of PAIA.

The SAHRC most regularly receives enquiries from public bodies regarding their compliance obligations in terms Sections 14, 15 and 32 of PAIA. This includes general guidance on the compilation and content of the relevant notices and manuals. Received manuals and reports are reviewed and where necessary, further advice is provided on proposed amendments.

The majority of enquiries received from private bodies relate to compliance with Section 51 of PAIA. The number of enquiries in this regard has significantly increased in light of the impending deadline for the submission of Section 51 manuals in terms of the latest regulations to PAIA.



# 6. THE MONITORING MANDATE



## 6. The Monitoring mandate

### 6.1. The SAHRC's obligation in terms of Section 83(3)(a) - Recommendations submitted to the Department of Justice and Correctional Services

Section 83(3)(a) of PAIA specifically mandates the SAHRC to make recommendations for the development, improvement, modernisation, reform or amendment of PAIA or other legislation or common law having a bearing on access to information held by public and private bodies. Recommendations made by the SAHRC serve not only to strengthen PAIA, but also supports the broader constitutional objective of promoting the right of access to information.

One of the aims of the SAHRC regarding access to information has been to interrogate ways that PAIA can be made more user-friendly for individuals and communities. Therefore, the SAHRC has over the years identified problematic and/or confusing provisions of PAIA, developed suggestions for their amendment and reform and addressed these to the DOJCS for further consideration. The opportunity to engage directly with the DOJCS to advocate for specific legislative reform on PAIA is central to ensuring that the right of access to information is working towards its constitutional promise.

In the latest recommendations report submitted to the Minister of Justice and Correctional Service at the end of March 2015, the SAHRC requested a written report containing comprehensive responses to the various recommendations made by the SAHRC in the previous three financial years as well as the new recommendations submitted for the current financial year (2014/2015). These recommendations appear below:





No	Issue	Recommendation	Year of recommendation
<b>RECOMMENDATIONS RELATING TO PROVISIONS OF PAIA</b>			
1	<p><b>Section 90(2): Offences</b></p> <p>Failure to comply with Section 14 of PAIA is an offence in terms of Section 90(2). However, no similar provision exists in terms of compliance with Section 32 of PAIA.</p> <p>Compliance with both Section 14 and 32 is mandatory and the failure of Information Officers to fulfil their obligations in terms of these provisions should be penalised to ensure compliance.</p>	<p>The Commission recommended that Section 90 of PAIA be amended to include the following wording:</p> <p><i>“An information officer of a public body who has willfully and fully or in a grossly negligent manner, failed to comply with the provisions of Section 32, commits an offence, and is liable on conviction to a fine not exceeding R5000, or imprisonment of a period not less than 2 years”</i></p> <p>To support this proposed amendment, the Commission also recommended that a clear directive be issued regarding the process to be followed by the Commission regarding the penalty provision.</p> <p>In addition, the Commission recommended that public bodies be held accountable for compliance with PAIA during their annual accounting to Parliament.</p>	2011/2012
2	<p><b>Section 51: Manual (Publication and Availability of Certain Records)</b></p> <p>PAIA places an obligation on private bodies to compile information manuals.</p> <p>In this regard, the Minister of Justice and Constitutional Development (now Department of Justice and Correctional Services) passed an exemption allowing for the submission date of the information manuals to be extended to the end of December 2015.</p> <p>This provision places an excessive burden on small businesses as well as on the Commission, which is mandated to receive the Section 51 manuals from private bodies.</p>	<p>Due to the onerous nature of complying with Section 51, the Commission recommended that the Department of Justice and Correctional Services reconsider the provision, and in particular, the extensive practical implications of having to comply with Section 51 of PAIA.</p> <p>The Commission also recommended that the exemption be further extended until such time as the matter had been properly deliberated and decided upon.</p> <p>Current exemption in respect of submission of Section 51 manuals expires in December 2015.</p>	2011/2012
3	<p><b>Section 46: Mandatory Disclosure in Public Interest</b></p> <p>The wording of Section 46 of PAIA places an undue burden of proof on a requester who requires access to records in the public interest.</p>	<p>The Commission recommended that the use of the word “and” between subsections (a) and (b) of Section 46 of PAIA be replaced with the word “or” to lessen the burden on requesters who wish to rely on the provision.</p> <p>It is envisaged that the proposed amendment will increase the circumstances under which the public interest justification may be raised.</p>	
4	<p><b>Section 15: Voluntary Disclosure and Automatic Availability of Certain Records</b></p> <p>PAIA places an obligation on public bodies to compile a list of automatically available records and to submit such lists to the Department of Justice and Correctional Services.</p>	<p>In 2011, the Commission requested the Department of Justice and Correctional Services to provide it with a composite list of all public bodies which have complied with Section 15 of PAIA for its own records and monitoring purposes.</p>	

<p>5</p>	<p><b>Section 91(A)(2): Designation and Training of Presiding Officers</b></p> <p>In 2009, the Rules Board passed rules of procedure allowing for PAIA matters to be heard before Magistrates Courts, thus enabling a larger section of the population to access the courts in respect of PAIA related matters.</p> <p>PAIA places an obligation on the Director General of the Department of Justice and Correctional Services and the Chief Justice to provide training to Magistrates. In terms of Section 91(A)(2) of PAIA, only a Magistrate who has been trained on PAIA may adjudicate such matters.</p> <p>Since the passing of the rules, the Commission has not yet received confirmation of whether any Magistrates have received the required training and / or the details thereof.</p>	<p>The Commission recommended that a judicial colloquium be held to discuss the training of Magistrates in respect of the adjudication of PAIA matters.</p> <p>The Commission also requested the Director General of the Department of Justice and Correctional Services to provide it with a list of all Magistrates who have received PAIA training</p>	<p>2011/2012 2013/2014</p>
<p>6</p>	<p><b>Section 25: Decision on request and notice thereof</b></p> <p><b>And</b></p> <p><b>Section 26: Extension of period to deal with request</b></p> <p>PAIA provides timeframes that should be adhered to when processing requests for information. However, it has become apparent that public bodies consistently fail to adhere to these prescribed time periods.</p> <p>The Commission has also noted that in some instances, public bodies misuse certain provisions of PAIA to derogate from the stipulated time frames. For example, Section 22 of PAIA provides as follows:</p> <p><i>'The information officer of a public body to whom a request for access is made must by notice require the requester, other than a personal requester, to pay the prescribed fee...'</i></p> <p>Often times, Deputy Information Officers only inform requesters upon the expiration of the 30 (thirty) day period that their requests have not been processed because required payments have not been made. This results in requesters having to wait for longer periods of time to access information.</p>	<p>The Commission recommended that PAIA be amended to clearly reflect that the 30 (thirty) day time period cannot be deviated from in any circumstances (save where the procedure for extension has been followed in terms of Section 26 of PAIA).</p> <p>In addition, it was recommended that shorter time periods be introduced where access to information is vital to safeguarding the liberty of people.</p>	<p>2013/2014</p>

7	<p><b>Section 74: Internal Appeals</b></p> <p>The right of internal appeal under Section 74 only applies to decisions made by public bodies as defined under part (a) of the 'public body' definition in Section 1 of PAIA. This process does not include refusals made by public bodies as defined under part (b) of Section 1 or to refusals made by private bodies. In the latter two instances, requesters are left with no alternative other than to approach the courts for further relief.</p> <p>The limitation created in Section 74 has created space for certain public bodies (and private bodies) to disregard requests for information as they are aware that a requester cannot appeal a decision through internal processes and must therefore approach the courts for relief.</p>	<p>The Commission recommended that Section 74 of PAIA be amended to extend the right of internal appeal to refusals for access to information made by public bodies, as defined under part (b), as well as private bodies.</p> <p>Such amendment will ensure that all requesters are provided with an equal opportunity for securing relief beyond initial refusal, irrespective of who they have lodged a request for information with.</p>	2013/2014
8	<p><b>Section 78: Applications to Courts</b></p> <p>During 2009, the Constitutional Court ruled in <u><b>Brummer v Minister of Social Development and Others (CCT 25/09) 2009 ZACC 21;2009(6)SA 323</b></u> that Section 78 of PAIA must be amended to reflect that a requester has 180 (one hundred and eighty) days to approach the courts for relief in respect of PAIA matters.</p>	<p>The Commission recommended that the wording of Section 78 be amended as per the directive from the Constitutional Court</p>	2013/2014
9	<p><b>Section 32: Reports to Human Rights Commission</b></p> <p>Section 32 states that public bodies must submit reports to the Commission on an annual basis setting out statistical data relating to the requests for information received and processed.</p> <p>The following shortcomings with Section 32 limit the potential value that could be derived from the Section 32 reports:</p> <ul style="list-style-type: none"> <li>- PAIA does not fix a date for the final submission of Section 32 reports to the Commission. As a result, local government departments tend to submit their reports before the close of their financial year in June each year, while other public bodies submit their reports at the end of March each year.</li> <li>- The statistical data that is currently required in terms of Section 32 of PAIA is limited in that public bodies are only required to provide statistical data in their Section 32 reports. The current structure and content of the report does not therefore provide an accurate reflection of how public bodies respond to requests for information.</li> <li>- No provision is made for the disaggregation of data into requests for personal information and other types of requests.</li> </ul> <p>Section 32 does not currently include a requirement for public bodies to report on matters which have been litigated on the basis of a deemed refusal or a refusal on a ground other than an internal appeal decision (nor does it require public bodies to report on the outcome of litigation matters).</p>	<p>For the reasons contained herein, the Commission recommended the following:</p> <ul style="list-style-type: none"> <li>- Regulations should be passed stipulating deadlines for the submission of reports to the Commission in terms of Section 32 of PAIA to ensure accurate and uniform reporting of all public bodies;</li> <li>- That a clear directive<sup>1</sup> be issued calling for public bodies to provide more substantive information in their Section 32 reports in order for the Commission to test the veracity of the content of the reports as well as the types of requests received and processed.</li> <li>- To assist the Commission in testing the veracity of the content of the Section 32 reports, the Commission also recommended that Section 32(d) be amended to include a requirement that public bodies indicate the specific grounds relied upon when refusing a request for information.</li> <li>- In further support of substantive content being included in Section 32 reports, the Commission recommended that the reports make reference to the public body's compliance with the proactive disclosure provisions set out in Section 15 of PAIA.</li> </ul> <p>The Commission recommended that Section 32 should be amended to include reporting on matters which have been litigated on the basis of a deemed refusal or based on one of the refusal grounds set out in PAIA, as well as the outcome of such litigation.</p>	2011/2012 20 2013/2014

10	<p><b>Section 19: Duty to assist requesters</b></p> <p>In terms of Section 19(2) of PAIA, an Information Officer:</p> <p><i>"may not refuse [emphases added] the request because of [non-compliance with Section 18(1)] unless the Information Officer has –</i></p> <ul style="list-style-type: none"> <li>(a) notified that requester of an intention to refuse the request and stated in the notice – <ul style="list-style-type: none"> <li>i. the reasons for the contemplated refusal; and</li> <li>ii. that the Information Officer or another official identified by the Information Officer would assist that requester in order to make the request in a form that would remove the grounds for refusal;</li> </ul> </li> <li>(b) given the requester a reasonable opportunity to see such assistance..."</li> </ul> <p>Also, whereas section 19 of PAIA places an obligation on Information Officers of public bodies to assist requesters when requesting information, the same obligation is not imposed on private bodies.</p>	<p>The Commission previously recommended that the wording of Section 19(2) be amended by substituting the phrase '<b>may not refuse</b>' with '<b>must not refuse</b>' to ensure that Information Officers (and Deputy Information Officers) fulfil their duty to assist requesters.</p> <p>This would ensure that an obligation is placed on Information Officers (and Deputy Information Officers) to not decline and / or ignore requests for information based purely on procedural grounds.</p> <p>The Commission also recommended that Section 53 be amended so as to place a similar obligation on private bodies (thereby aligning Section 53 with Sections 18 and 19 of PAIA).</p>	2012/2013 2013/2014
11	<p><b>Section 22: Fees</b></p> <p>Section 22 and Section 54 of PAIA provides for the payment of request fees and access fees for requests made to public bodies and private bodies, respectively.</p> <p>These fee requirements apply except in the following instances:</p> <ul style="list-style-type: none"> <li>- Where a requester requests access to his/her personal information from a public or private body; or</li> <li>- Where a requester earns less than R14,712 per annum if single, or less than R27,192 per annum if married or in a life partnership.<sup>2</sup></li> </ul> <p>There is a concern that the imposition of fees places an undue burden on certain members of the public wishing to access information. On this basis, it is envisaged that exemption from fees (or a suitable revision of the prescribed fees) would assist in increasing transparency, accountability and public participation.</p>	<p>The Commission recommended that the legislation be amended to reflect that the Section 14 and Section 51 manuals of public and private bodies respectively must include the prescribed schedule of fees, as provided for in Government Gazette No. 7094.</p> <p>By attaching the schedule of fees, requesters will be fully informed of the fees that can be requested from them and the criteria for exemption from the payment of fees.</p> <p>(This additional information is permissible in terms of Sections 14(i) and 51(f) of PAIA, respectively).</p> <p>The Commission recommended that the Department of Justice and Correctional Services reconsider the imposition of fees on requesters. In the event that the fee requirement is retained, it has been recommended that they be revised to better reflect the increased cost of living.</p>	2011/ 2012 2013/2014

12	<p><b>Section 23: Records that cannot be found or do not exist</b></p> <p>Section 23 imposes an obligation on public bodies to demonstrate that all reasonable steps have been taken to locate a requested record and that there are reasonable grounds to believe that the record is either (1) in the public body's possession but cannot be found; or (2) does not exist.<sup>3</sup></p> <p>The Commission has received a number of complaints against public bodies that have declined access to records on the ground that the requested records do not exist. In most instances, it is alleged that public bodies fail to provide the required affidavits / affirmations, alternatively, fail to provide any / sufficient information regarding the steps taken to locate the requested record or the reasons why the record does not exist.</p>	<p>The current wording of the provision provides little guidance as to whether the action taken by public bodies is / should be deemed reasonable.</p> <p>The Commission therefore recommended that Section 23(1) be amended to define the following:</p> <ul style="list-style-type: none"> <li>- What constitutes 'reasonable steps' in respect of locating a record; and</li> </ul> <p>What constitutes 'reasonable grounds' for believing the record does not exist</p>	2011/2012
<b>CLARITY OF VAGUE PHRASES / PROVISIONS</b>			
13	<p><b>Section 1: Definition of 'commercial information'</b></p> <p>The meaning of 'commercial information' is vague.</p> <p>Many private companies refuse requests for access to information on the basis that the requested information is commercial information and therefore constitutes a ground of refusal. However, no further explanatory notes are provided which would enable a requester to determine whether the ground is being justifiably raised.</p>	<p>The definition section must provide a clearer definition of 'commercial information' so as to promote transparency within the private sector.</p>	2011/2012
<b>GENERAL</b>			
14	<p><b>Section 21 of the Companies Act:</b></p> <p>Clarity is required regarding so-called section 21 companies (not for profit) (and trade unions) and the obligations of these entities in terms of PAIA.</p>	<p>A strict interpretation appears to indicate that Section 21 companies fall under the definition of companies in terms of the Companies Act and that those provisions relating to private bodies will therefore apply.</p> <p>However, in order to ensure common understanding regarding the application of PAIA, the Commission recommended that the Department of Justice and Correctional Services provide a clear directive.</p>	2011/2012 2012/2013
15	<p><b>General development of the law</b></p> <p>There has been significant legislative development in the field of access to information geared towards ensuring easier and less formalistic and stringent processes to access information.</p> <p>In particular, the African Union Model Law on Access to Information provides guidelines on methods for making information easily available and reducing the burden on requesters.</p> <p>Noting that the PAIA framework has numerous shortfalls, aligning PAIA to the African Union Model Law on Access to Information will greatly advance the right to access information in South Africa.</p>	<p>The Commission recommended that PAIA be reviewed and that certain amendments be effected to the legislation with a view to harmonising the domestic legal framework with the provisions of the African Union Model Law on Access to Information.</p>	2013/2014

**NEW RECOMMENDATIONS (2014/2015)**

<p>16</p>	<p><b>Section 83(a)(ii): Electronic Proactive Disclosure of Information</b></p> <p>In terms of Section 83(a)(ii) of PAIA, the Commission may make recommendations to the Department of Justice and Correctional Services on the electronic disclosure of information by public and private bodies.</p> <p>In this regard, the Commission is concerned about the low level of compliance with both sections 15 and 52 of PAIA relating to the voluntary disclosure of information of public and private bodies, respectively.</p>	<p>The Commission recommends that as a long term project, a governmental open data portal be established to host voluntarily disclosed information in terms of section 15 of PAIA.</p> <p>In respect of private bodies, the Commission recommends that, with the support of government, private bodies are encouraged to establish private sector open data portals, where possible, to promote compliance with section 52 of PAIA and enhance transparency in the business sector.</p>	<p>2014/2015</p>
<p>17</p>	<p><b>Section 52(1): Voluntary disclosure and automatic availability of certain records</b></p> <p>Section 52(1) of PAIA states that:</p> <p><i>“ the head of a private body <u>may</u>, on a voluntary basis and periodic basis submit to the Minister a description of –</i></p> <p><i>The categories of records of the private body that are automatically without a person having to request access in terms of the Act (PAIA)....”</i></p> <p>This section mirrors section 15 of PAIA which makes provision for the disclosure of automatically available records of public bodies.</p> <p>Whereas the requirement for the disclosure of automatically available information in section 15(1) places a mandatory requirement on Information Officers of public bodies to disclose automatically available records, the use of the word <b>‘may’</b> in section 52(1) implies that a private body has discretion whether or not to do so.</p> <p>Requesters are currently required to demonstrate that information requested from a private body is required for the exercise or protection of a right. Therefore, in the absence of a list outlining records that are automatically available, requesters are faced with the arduous task of meeting the high threshold set out in PAIA in order to access records that should be automatically available. In addition, requesters are also required to pay request and access fees associated with normal PAIA requests.</p> <p>As it stands, section 52(1) does not fully comply with the objectives of PAIA, including <i>“to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible..”</i></p>	<p>It is recommended that the wording of section 52 be amended by replacing the word <b>‘may’</b> with the word <b>‘must’</b>.</p>	<p>2014/2015</p>

## 6.2. Case law

As part of the SAHRC's monitoring mandate under PAIA, the PAIA Unit scrutinises relevant court cases relating to PAIA and access to information.<sup>4</sup> Since the enactment of the access to information legislation, there has been vigorous movement by civil society and other interest groups to advance this fundamental right and litigation based on PAIA has notably increased over the years. Such cases serve as a means of not only advancing the right of access to information, but also assists in clarifying how PAIA must be interpreted and applied, resulting in important judicial precedent. As previously reported, one of the most significant cases relating to PAIA to date is the Brummer<sup>5</sup> matter where section 78 of PAIA was found to be unconstitutional on the basis that it only provided requesters with 30 (thirty) days to lodge an application to court if dissatisfied with the outcome of a PAIA request. The judgement resulted in the amendment of section 78 to allow requesters 180 (one hundred and eighty) days to lodge an application to court in terms of PAIA.<sup>6</sup> Although Brummer was heard in 2009, PAIA has not yet been amended to reflect the outcome of the judgment. The case was therefore once again mentioned by the SAHRC in its latest recommendations report to the Minister of Justice and Correctional Services.

Other noteworthy judgements recently handed down relating to the right of access to information and PAIA include the following:

### 6.2.1. Right2Know Campaign and Another v the Minister of Police and Another (2013/32512)2014 ZAGP JHC

The Right2Know Campaign and South African History Archive (SAHA) (applicants) used PAIA to request information on places declared as "National Key Points" under Sections 2 and 2A of the National Key Points Act (NKPA).<sup>7</sup> The applicants further requested bank statements of the Special Account for the Safeguarding of National Key Points for the period 2010 to 2012, as provided for in Section 38 of the NKPA. The respondent in the case refused to provide access to the records, using the exclusions cited in Sections 38 and 46 of PAIA.

The court found that the respondent had failed to properly apply the grounds of refusal. In particular, the court made reference to the test set out by Ngcobo CJ in the matter between the President of the Republic of South Africa v M&G Media Ltd.<sup>8</sup> The test required public bodies to demonstrate that the requested record falls within the exemption/s relied on. It further requires that public bodies provide sufficient evidence for the court to conclude that the information being withheld falls squarely within the exemptions.

The respondent in this matter failed to demonstrate the proper application of Sections 38, 41 and 46 of PAIA and instead, only cited the relevant provisions of PAIA verbatim. The court ruled in favour of the applicant and held that the respondent's decision to refuse access to

<sup>4</sup> J Klaaren 'PAIA through the Courts: Case Law and Important Development in PAIA Litigation' (2010) available at: <http://wiredspace.wits.ac.za/handle/10539/9207?show=full> (Accessed: 23 June 2015)

<sup>5</sup> Brummer v Minister of Social Development and Others 2009(6) SA 323(CC) - The applicant, made a request to the Department of Social Development for access to certain information. When his request was refused and an internal appeal was unsuccessful, Mr Brummer approached the Cape High Court for relief. As his application to court was made well after the 30 (thirty) day limit, he applied for condonation. When the court refused his condonation, he challenged the constitutionality of the 30 (thirty) day limit on the basis that it violated his rights of access to court as well as access to information guaranteed by the Constitution.

<sup>6</sup> Ngcobo J found that before a litigant can launch an application to court, the litigant must go through certain steps, which includes a consideration of the reasons for the refusal of access to information and seeking legal advice on whether an application to court will be successful. Raising funds for litigation may also contribute to the delay in launching an application to court. He therefore held that the 30 (thirty) day period limits the right of access to court as well as the right of access to information. He held that this limitation was not reasonable and justifiable and accordingly concluded that the 30 (thirty) day limit prescribed by Section 78(2) was unconstitutional.

<sup>7</sup> 102 of 1980

<sup>8</sup> President, RSA v M & G Media Ltd 2012 (2) SA 50 (CC) at [23] - [25]

the record was unconstitutional and unjustifiable<sup>9</sup>.

This decision is of significant importance in furthering transparency and respect for the right of access to information. It also shows that courts will issue judgments that recognise that public bodies must fully discharge their duties when responding to requests for information. On the other hand, the case also reveals that public bodies sometimes have little regard for the right of access to information, evidenced by the failure to properly apply and interpret PAIA.

### 6.2.2. NUMSA v City Power Johannesburg


In April 2015, the High Court in Johannesburg heard a matter relating to a refused request for access to records relating to a tender awarded by City Power Johannesburg (CPJ). The court listed ten reasons why it was unimpressed with the actions of CPJ with regards to the handling of the PAIA request, including the following:

- The IO's failure to respond to the initial request;
- CPJ's failure to comply with the PAIA procedure published on its own website;
- CPJ's delay in making a decision on the request;
- Failure to notify parties of their right to appeal the decision when it was made; and
- Taking steps that are not permitted by PAIA in soliciting further responses.

The application was postponed to allow for the proper application of PAIA. Interestingly, insofar as the issue of wasted costs was concerned, Judge Kathy Satchwell was reluctant to simply order that the wasted costs be paid by CPJ as this would effectively mean that the costs would be recovered from the taxpayers - "This teaches no one anything about responsibility or compliance with statutory duties<sup>10</sup>." Accordingly, the question of costs was postponed for both parties to file affidavits and present argument as to whether the relevant officials of CPJ should bear personal financial responsibility for the wasted costs.<sup>11</sup> The issue of costs clearly demonstrates the displeasure with which the judiciary is willing to view non-compliance with PAIA.

### 6.2.3. Litigation at the Magistrates Court level

Access to information has been described as an elitist right for the educated and wealthy, mainly due to the fact that prior to the amendment of the Magistrates Court rules in 2009, PAIA litigation was limited to individuals and organisations that had the financial muscle to litigate before the High Court. The amended rules, which allow for the litigation of PAIA matters before Magistrates Courts (see Magistrates Court Rule 55), were aimed at ensuring access to justice for a wider sector of the population in instances where they were dissatisfied with the outcomes of PAIA procedures.

The amendment of the rules bears mentioning at this juncture  since the passing of the

<sup>9</sup> Justice Roland Sutherland delivered the opinion of the High Court. Justice Sutherland first determined that there was nothing in the NKPA suggesting that the national key points list should be kept secret. The Court found that the cited section of the NKPA deals only with the confidentiality of the security measures and not with the secrecy of the status of the place as a key point.

The Court also found that the respondents were unable to produce evidence that could justify the grounds of refusal to disclose the list. Justice Sutherland reiterated that, in PAIA cases, the party that holds the information and wants to keep it secret carries the burden of proof. That party must provide sufficient evidence to justify the non-disclosure of information.

Finally, Justice Sutherland added that, under PAIA, the public had a right to know the key points and that non-disclosure was incompatible with the Constitutional values of the country.

<sup>10</sup> <http://www.moonstone.co.za/do-not-underestimate-paia/>

<sup>11</sup> <http://www.moonstone.co.za/do-not-underestimate-paia/>



rules in 2009, there has been little litigation at the Magistrates Court level. In addition, the capacity of magistrates to adjudicate PAIA related matters remains unclear. In this regard, Section 91A of PAIA makes provision for the training of presiding officers and places an obligation on the DOJCS and the Office of the Chief Justice to facilitate such training. Although decentralised courses on PAIA appear to have been included in the 2015/2016 schedule of the Office of the Chief Justice, it is unclear how many magistrates have received the training since the coming of the legislative amendment.<sup>12</sup> It is of concern that to date, there has been no clear indication of whether the training has taken place and if so, which magistrates have benefited from such training and which courts they preside over. The primary concern in this regard relates to the potential for the rights of litigants to be adversely impacted, especially those who are indigent and cannot afford legal representation. The SAHRC is therefore cognisant of the need to engage with the DOJCS and other stakeholders regarding the training of presiding officers. Furthermore, there is a need to develop ways of ensuring that members of the public are aware of the court processes available to them and are confident enough to utilise them.

## 6.3. Legislative developments

### 6.3.1. The Protection of Personal Information Act

POPI aims to balance the right of a person to protect personal information against the rights of society to be internationally competitive in the information age. POPI was enacted in 2013 and although the commencement date has not yet been set, some provisions of the legislation have come into operation. The most notable advancement brought about in terms of POPI is the introduction of the yet to be established Information Regulator. Functions of the Information Regulator will include monitoring and enforcement of compliance with PAIA and POPI, consulting with interested parties, handling complaints and facilitating cross-border cooperation.

Once the commencement date has been set, POPI will introduce various developments insofar as personal information such as the following:

1. Companies must ensure the integrity and safekeeping of personal information in their possession or under their control<sup>13</sup> and must take steps to prevent the information being lost, damaged, or unlawfully accessed.
2. The purpose of the information gathering and processing must be defined;
3. The processing must be lawful and personal information may only be processed if it is adequate, relevant and not excessive considering the purpose for which it is processed;
4. Steps must be taken to keep the 'data subject' informed; and
5. Information must be kept complete, accurate, up to date and must not be misleading.<sup>14</sup>

Both private and public bodies must be cognisant of the obligations which POPI creates and the practical implications of complying with those obligations.

<sup>12</sup> <http://www.judiciary.org.za/dcm-training-objectives.html>

<sup>13</sup> P Stein "Information Law and Data Protection". Webber Wentzel Attorneys. 14 April 2014. <http://www.webberwentzel.com/wwb/content/en/ww/information-law> (Accessed: 25 June 2015)

<sup>14</sup> P Stein (See note 31 above)

### 6.3.2. The Protection of State Information Bill

The Protection of State Information Bill (POSIB) (formerly named the Protection of Information Bill and commonly referred to as the Secrecy Bill) is still seen as a highly controversial piece of proposed legislation which aims to regulate the classification, protection and dissemination of state information. POSIB weighs up state interests against the principles of transparency and freedom of expression. It will replace the Protection of State Information Act, 1982, which currently regulates these issues.

The SAHRC has previously called for the amendment of POSIB with a view to ensuring that it does not fall foul of constitutional standards and that it is in harmony with PAIA. Whilst the SAHRC is aware of the need to protect certain information, the SAHRC strongly believes that protecting information should not infringe on the right to access information, or any other related rights. Passing of legislation such as POSIB has the potential of further decreasing what are already concerning levels of non-compliance with PAIA.

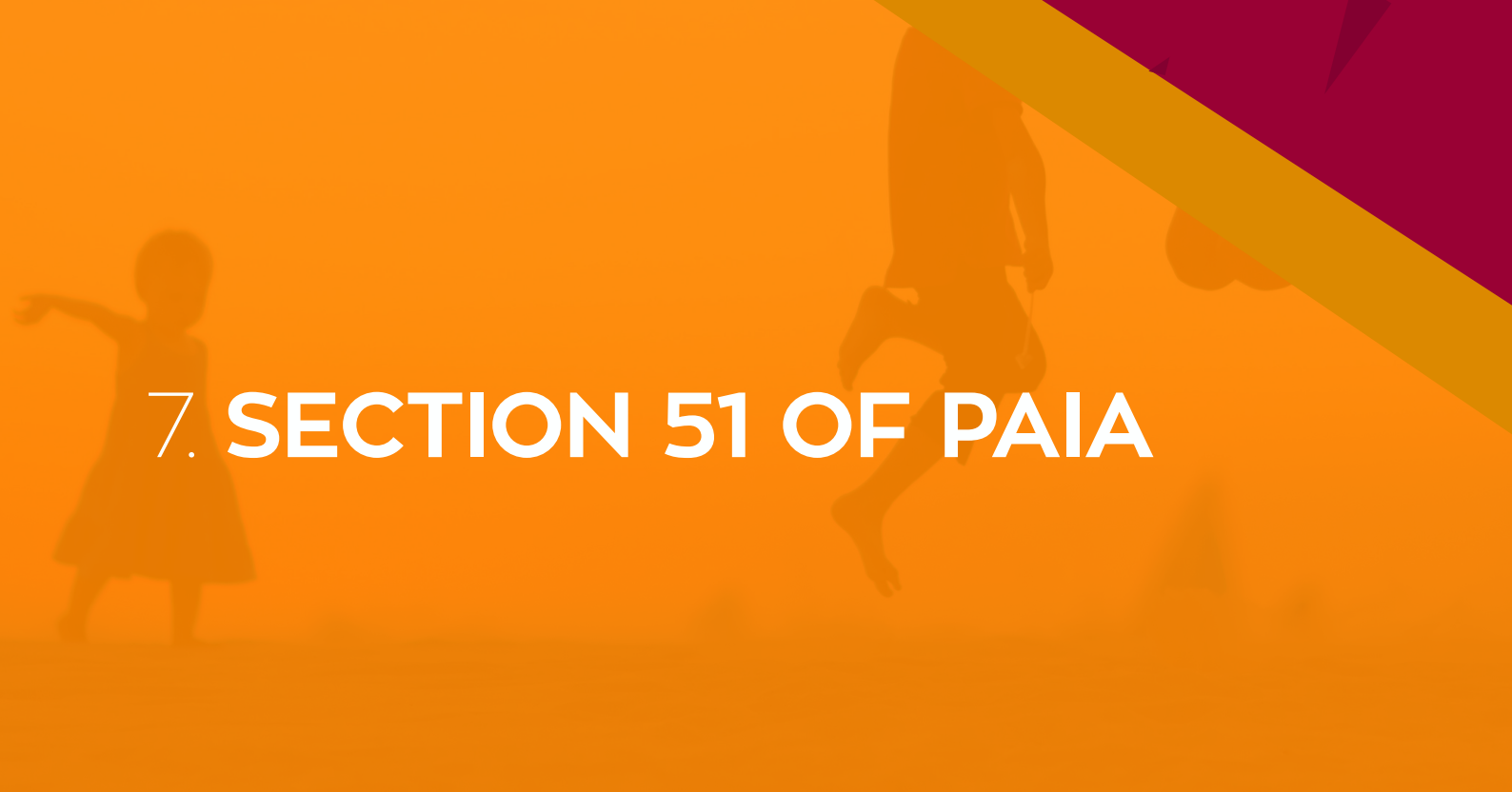
According to the Parliamentary Monitoring Group's (PMG) online tracking system, POSIB has been approved by Parliament and is waiting to be signed into law.<sup>15</sup>

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15 <https://pmg.org.za/bill/278/>



# 7. SECTION 51 OF PAIA



## 7. Section 51 of PAIA

In terms of Section 51 of PAIA, the head of a private body must compile a Section 51 manual which sets out applicable procedures for accessing the various records held by a company. The company must submit the manual to the SAHRC at its head office and must make the manual available as prescribed by PAIA at the company offices and on their website. Penalties are in place for certain instances of non-compliance (Section 90 of PAIA).

An exemption for submission of the required manuals was extended by the DOJCS from 31 December 2011 to 31 December 2015, providing private companies within certain sectors a limited reprieve for submission of their manuals. However, in terms of Government Notice no. 34914, certain private bodies were still required to submit their Section 51 manuals to the SAHRC in terms of PAIA. This includes private bodies which operate in specific sectors, with 50 (fifty) or more employees or which operate in specific sectors and have an annual turnover equal to or exceeding prescribed amounts.

Over the years, the SAHRC has regularly received Section 51 manuals from private companies. In light of the upcoming deadline for submission by all private bodies of their Section 51 manual i.e. 31 December 2015, the SAHRC has been receiving a massive influx of new manuals, general enquiries and requests for written confirmation of previously submitted manuals in terms of Section 51 of PAIA. To date, the SAHRC has received tens of thousands of Section 51 manuals.

Considering the practical difficulties associated with preparing a manual in terms of Section 51 of PAIA, especially for small businesses, as well as the SAHRC's own capacity constraints as the institution legislatively required to receive Section 51 manuals from private bodies, a recommendation relating to an extension of the deadline has been included in the latest report submitted to the Minister in terms of Section 83 of PAIA.



# 8. REPORTING IN TERMS OF SECTION 84




## 8. Reporting in terms of Section 84

Section 84 of PAIA obliges the SAHRC to submit to the National Assembly an annual report setting out certain particulars. The data is in line with the information submitted by public bodies to the SAHRC on an annual basis in terms of Section 32(a) to (h) of PAIA:

- i. Number of requests for access received;
- ii. Number of requests for access granted in full;
- iii. Number of requests for access granted in terms of Section 46;
- iv. Number of requests for access refused in full and refused partially and the number of times each provision of PAIA was relied on to refuse access in full or partially;
- v. Number of cases in which the periods stipulated in Section 25(20) of PAIA were extended in terms of Section 26(1);
- vi. Number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record or a part thereof;
- vii. Number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of Section 27;
- viii. Number of applications made to every court and the outcome thereof and the number of decisions of every court appealed against and the outcome thereof;
- ix. Number of applications to every court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of Section 77(7);
- x. Number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by PAIA and the nature and outcome thereof; and
- xi. Such other matters as may be prescribed.

### 8.1. Analysis of Section 32 reports submitted<sup>16</sup>

Since the enactment of PAIA, compliance by public bodies has been less than ideal. Although there have been improvements in compliance in the current reporting period across all spheres of government, levels remain unsatisfactory more than a decade after enactment of the legislation 

<sup>16</sup> Total figures include those reports which were submitted beyond the deadline date, highlighted in blue

### 8.1.1. National Departments<sup>17</sup>

<b>NATIONAL DEPARTMENTS</b>	
<b>YEAR</b>	<b>NUMBER OF COMPLIANT DEPARTMENTS</b>
2002/2003	13
2003/2004	15
2004/2005	13
2005/2006	13
2006/2007	18
2007/2008	22
2008/2009	22
2009/2010	18
2010/2011	18
2011/2012	30
2012/2013	28
2013/2014	26
2014/2015	30

The level of compliance at national level is the highest it has been since enactment of PAIA, with the national sphere of government only reaching the same number in one other reporting period in 2011/2012. The SAPS reported receiving in excess of 20 000 requests. The ability to report on this volume of requests in a timely manner points to an effective tracking system and may serve as an example of processes that can be replicated in other departments.

### 8.1.2. Provincial departments

<b>PROVINCIAL DEPARTMENTS</b>	
<b>YEAR</b>	<b>NUMBER OF COMPLIANT DEPARTMENTS</b>
2002/2003	26
2003/2004	8
2004/2005	4
2005/2006	11
2006/2007	14
2007/2008	13
2008/2009	33
2009/2010	22
2010/2011	56
2011/2012	63
2012/2013	69
2013/2014	56
2014/2015	90

Compliance at provincial level is the highest it has been since monitoring of PAIA began in

<sup>17</sup>

Newly established departments are not reflected in the comparative table

2002/2003. Certain provinces remain consistently above par in terms of the number of provincial departments within their borders which comply with Section 32 of PAIA. The Western Cape, Limpopo, Northern Cape and KwaZulu Natal provinces have all achieved 100%, while the Free State has achieved 91%. Eastern Cape has also fared well achieving 85% compliance. Unfortunately, the North West province remains the least compliant of all provincial governments with only two departments within the province submitting a Section 32 report in the current cycle.

### 8.1.3. Municipalities

<b>LOCAL GOVERNMENT</b>	
<b>YEAR</b>	<b>NUMBER OF COMPLIANT MUNICIPALITIES</b>
2002/2003	3
2003/2004	4
2004/2005	6
2005/2006	8
2006/2007	11
2007/2008	48
2008/2009	33
2009/2010	25
2010/2011	20
2011/2012	69
2012/2013	37
2013/2014	25
2014/2015	52

Although the number of compliant municipalities has doubled, it has still not matched the highest level reached in 2011/2012. Overall, the level compliance at local government has consistently remained the lowest amongst all spheres of government with only 18% of municipalities complying with Section 32 of PAIA in the current reporting period. The SAHRC made attempts to increase compliance at local government level by engaging with SALGA. Following that engagement, SALGA distributed a circular to all municipalities requesting compliance with Section 32 and emphasising the mandatory nature of the provision. It is hoped that compliance levels within the local sphere of government will continue improving with SALGA's continued assistance with disseminating appropriate messaging.



#### 8.1.4. Chapter 9 and 10 Institutions

CHAPTER 9 & 10 INSTITUTIONS	
YEAR	NUMBER OF COMPLIANT CHAPTER 9 & 10 INSTITUTIONS
2002/2003	5
2003/2004	3
2004/2005	2
2005/2006	5
2006/2007	4
2007/2008	3
2009/2010	4
2010/2011	1
2011/2012	3
2012/2013	4
2013/2014	4
2014/2015	3

As previously reported by the SAHRC, compliance with Section 32 of PAIA by Chapter 9 and 10 Institutions is unacceptably low. The impact of this is further pronounced considering the specific dynamics within which these institutions operate, being institutions constitutionally mandated to support democracy. The SAHRC calls upon the Office on Institutions Supporting Democracy to take steps to engage with these institutions regarding the dismal compliance levels. In the same way that Chapter 9 and 10 institutions are mandated to hold others to account for breaching various constitutional principles and rights, they should also be expected to do the same.

## 8.2. Trends Analysis

### 8.2.1. Compliance with Section 32

Section 32 reports serve a critical function in the assessment of the usage of PAIA and the manner in which public bodies respond to PAIA requests. Categories included in the Section 32 reports include the number of requests received, how the requests have been responded to and whether litigation had been instituted in terms of PAIA.

The Section 32 report also provides an indication of whether public bodies have systems in place to properly receive and record requests and to track the progress of those requests as they are being dealt with in terms of PAIA. In some instances, public bodies produce inaccurate reports, pointing to the possible absence of adequate systems. A lack of understanding of PAIA often leads to misinterpretation of the provisions of PAIA when dealing with requests, which may also result in inaccurate reporting.

PAIA allows for public bodies to make comments regarding the implementation of PAIA. These submissions provide the SAHRC with an opportunity to undertake a more substantive analysis than would otherwise be possible considering that the information required in Section 32 reports are for the most part statistical in nature. Some noteworthy trends gleaned from the Section 32 reports received from public bodies and these submissions are briefly dealt with below.

Various national departments have raised concerns about the inadequacy of the 30 (thirty) day period for response as required in terms of PAIA. This is especially so in instances where records have to be properly identified, sourced from a registry / archives and where third party notification processes are required. Similarly, concerns were raised about the 30 (thirty) day period for dealing with internal appeals. The period was deemed insufficient particularly in those instances where investigations and research is required to formulate recommendations to the relevant authority to enable him or her to make informed decisions. This was also found to be the case where PAIA requests warrant consultations amongst divisions within a public body or amongst other public bodies. Considering such processes, as well as the inclusion of public holidays and weekends in the calculation of the time period, it has been suggested that PAIA be amended to include the possibility of an extension of the time to deal with an internal appeal (similar to Section 26 of PAIA which allows for an extension of the period to deal with a request in the first instance).

Some national departments referred to outstanding requests which could not be finalised due to the non-payment of prescribed request and access fees. Beyond payment of the prescribed fees, challenges were identified with the schedule of fees which does not cover all possible types of reproduction costs.

The need for training on PAIA has been identified by certain departments across all spheres. The SAHRC is particularly heartened by submission of Nquthu Municipality situated in KwaZulu Natal that it conducted 19 awareness raising campaigns for the public on access to information in 2014. The PAIA Unit of the SAHRC will engage with the DIO of this municipality to establish whether members of staff tasked with receiving and attending to PAIA requests are adequately capacitated and if need be, necessary support will be provided. Setsoto Local Municipality situated in the Free State noted that members of the public do not clearly understand what PAIA is about and / or how to utilise the legislation. It was furthermore noted that many of staff members do not understand PAIA. The SAHRC will engage with these public bodies to ascertain training needs and where possible, to provide assistance.

Reports confirm that some departments have established dedicated PAIA units / offices to deal with PAIA requests as was done by the Western Cape Provincial Department of Community Safety. The same department also conducts PAIA training workshops for employees from all salary levels. The approach adopted by this department is commendable and presents a best practice example of practical measures that can be implemented to increase levels of compliance.

A concern that has previously been reported on by the SAHRC and has again been noted in submissions received by in the current reporting cycle is that the financial year end of local government is on 30 June whereas the financial year end of national and provincial department is 31 March each year. Due to the absence of a legislatively prescribed deadline for submission of Section 32 reports to the SAHRC, the SAHRC has traditionally called for submission during the first quarter of its own financial year (between April and June). This may well be a contributing factor in respect of the low compliance rates amongst municipalities. The SAHRC has raised this concern in the recommendations previously submitted to the Minister of Justice.

It is unfortunate to see that since the previous reporting cycle, there has been more than a 50% decrease in submission of Section 32 reports by bodies classified as "other public bodies". Perhaps most disconcerting is that amongst these are very large, well-resourced organisations and institutions that play a critical role in the country, including Telkom SA Ltd, the Special Investigating Unit, universities from across the country, the Magistrates Commission, the Development Bank of South Africa and the South African Reserve Bank.

Submissions made by public bodies in relation to the interpretation and application of certain provisions of PAIA are a promising sign that implementers are engaging with the legislation in a more substantive manner. Submissions regarding possible areas for reform of PAIA will be further considered by the SAHRC. If deemed appropriate, suitable recommendations will be developed for submission to the Minister of Justice in terms of Section 83(3)(a) in the 2015/2016 financial year.

### 8.2.2. Compliance with Section 14

Section 14 of PAIA places a mandatory requirement on all public bodies to compile information manuals. The main objective of Section 14 is to ensure that information about public bodies is made available to citizens. The following information must be contained in the Section 14 PAIA manual prepared by a public body:

- The name and contact details of the IO and DIO;
- A description of the work of the public body and the services rendered by the public body;
- Records and information held by the public body;
- A list of categories of records that are automatically available;
- A description of how members of the public can participate in the policy development of the public body;
- A description of the request procedure to be followed when requesting information in terms of PAIA;
- A description of remedies available to members of the public whose requests for information have been declined;

The Section 14 manual is an important tool that creates an information sharing platform between the public body and the public at large. Section 14 manuals should therefore be as user friendly as possible and easily accessible. The manuals must be translated into at least

three languages, and must be made available on websites of the institutions and at the various offices.

The SAHRC has noted that compliance with Section 14 of PAIA is low. In instances where government departments have submitted their manuals, the quality of the content quality is not always satisfactory. An example is where public bodies quote sections of PAIA verbatim but do not explain how those provisions should be interpreted. Public bodies also fail to regularly update their manuals as required in terms of PAIA. This is of particular concern when one considers the various changes which usually occur within the leadership of government departments. Noting that the head of the institution is the IO, it is critical that such information is regularly updated to ensure accuracy.

Some public bodies have raised concerns about their resource constraints and the financial implications of complying with Section 14 of PAIA, specifically with regards to translating the manual and publishing it in the government gazette. Subsequent to the SAHRC making recommendations in this regard, the requirement for public bodies to publish manuals in the government gazette was removed. However, challenges still remain with the costs associated with translating the manual into at least three official languages.

Compliance with Section 14 across the three tiers of government is also inconsistent. For the period under review, provincial departments have been the most compliant while levels of compliance within local government remains the lowest.

### 8.3. Challenges

Certain challenges have been identified with regards to the reporting in terms of Section 32 of PAIA:

- a) A limitation of the legislation itself is the lack of enforcement powers afforded to the SAHRC in terms of PAIA. This negatively impacts on the SAHRC's ability to address non-compliance. As stated elsewhere, it is hoped that the powers conferred on the Information Regulator will address this deficiency;
- b) A further legislative deficiency is the absence of a sanction for failure to comply with Section 32 (unlike failure to comply with Section 14 of PAIA). This has also formed the basis of a recommendation to the Minister of Justice and Constitutional Development as this has the potential of exacerbating non-compliance with the reporting provision in PAIA;
- c) The limited nature of the information required from public bodies in terms of Section 32 of PAIA prevents a substantive analysis of the levels of compliance with the legislation. The statistical data also prevents a clear identification of challenges experienced by implementers of PAIA, thereby hindering the development of suitable programmes and interventions to adequately address those challenges;
- d) The SAHRC's limited resources does not allow for the verification of the contents of each Section 32 report received, or the implementation of a follow up system where non-compliant departments can be engaged on an individual basis.



# 9. SECTION 32 STATISTICS



## 9. Section 32 statistics

### COLOUR KEY

	HAS COMPLIED WITH SECTION 33
	HAS NOT COMPLIED WITH SECTION 32
	HAS COMPLIED WITH SECTION 32 BUT SUBMITTED LATE

### 9.1. National departments

NATIONAL DEPARTMENTS	Number of requests received	Number of requests granted in full	Number of requests granted in the public interest (Section 46)	Number of requests refused in full	Number of requests refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in Section 25(1) were extended in terms of Section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged on account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (Section 77(3))	Other information relating to implementation
The Presidency	14	4	0	4	3	7	4	1	1	1	0	
Department of Planning Monitoring and Evaluation	2	1	0	1	0	1	1	0	0	0	0	Yes
Parliament	5	5	0	0	0	0	3	0	0	0	0	
Department of International Relations and Cooperation	7	1	0	4	2	6	2	0	0	0	0	
Department of Communications												
Department of Trade and Industry	52	10	2	12	25	37	5	7	4	0	0	
Department of Justice & Constitutional Development	243	130	0	18	1	19	33	3	2	0	0	
Department of Economic Development												
Department of Science and Technology	0	0	0	0	0	0	0	0	0	0	0	
Department of Defence												

Department of Energy	52	24	0	15	10	23	20	7	5	2	0	Yes
Department of Mineral Resources	488	418	0	28	42	70	0	17	0	16	0	
Department of Cooperative Governance												
Department of Correctional Services	185	147	1	9	6	9	78	0	0	0	0	
Department of Environmental Affairs	36	15	1	6	10	16	12	6	0	0	0	
Department of Agriculture, Forestry and Fisheries	77	41	0	12	2	14	10	2	1	0	0	Yes
Department of Basic Education	13	8	0	5	0	0	4	0	0	0	0	Yes
Department of Social Development												
National Treasury	21	3	0	17	0	17	2	2	0	1	0	
South African Police Services	21 580	19 218	1173	126	59	185	43	13	0	1	0	Yes
Department of Rural Development and Land Reform	12	8	0	2	0	2	6	0	0	0	0	
Department of Public Service and Administration	2	0	0	1	1	1	0	1	0	0	0	
Department of Labour	13	9	0	2	2	4	3	7	7	0	0	
Department of Health	25	9	0	0	0	0	0	0	0	0	0	Yes
Department of Human Settlements	11	3	0	0	0	0	1	0	0	0	0	
Department of Government Communications and Information Systems	5	1	0	2	0	2	0	0	0	0	0	
Department of Tourism	1	0	0	1	0	0	0	0	0	0	0	Yes

Department of Roads and Transport	40	22	0	0	11	11	13	0	0	0	0	Yes
Department of Arts and Culture												
Department of Military Veterans	1	0	0	1	0	0	0	0	0	0	0	
Civilian Secretariat of Police												
Department of Public Works												
Department of State Security												
Department of Traditional Affairs	1	1	0	0	0	0	1	0	0	0	0	
Department Sports and Recreation South Africa	11	0	0	0	0	0	1	1	1	1	0	
Department of Women	0	0	0	0	0	0	0	0	0	0	0	
Department of Home Affairs	477	283	0	6	4	0	0	78	0	78	0	
Department of Public Enterprises												
Department of Water and Sanitation												
Department of Higher Education and Training	3	3	0	0	0	0	1	1	1	0	0	
Department of Telecommunications and Postal Services	11	2	0	0	1	0	8	1	0	0	0	
<b>TOTALS</b>	<b>23 388</b>	<b>20 366</b>	<b>1 177</b>	<b>272</b>	<b>179</b>	<b>424</b>	<b>251</b>	<b>147</b>	<b>22</b>	<b>100</b>	<b>0</b>	



## 9.2. Provincial Departments

### 9.2.1. Eastern Cape

PROVINCIAL DEPARTMENTS	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>EASTERN CAPE</b>												
Office of the Premier	6	2	0	0	1	1	1	0	0	0	0	
Provincial Treasury	1	0	0	1	0	0	0	0	0	0	0	
Department of Safety and Liaison	1	0	0	0	0	0	0	0	0	0	0	
Department of Health	6 207	3 947	3 947	369	369	369	14	1148	1148	369	345	
Department of Cooperative Governance and Traditional Affairs												
Department of Transport	6	0	0	0	0	0	3	0	0	3	3	
Department of Roads and Public Works	0	0	0	0	0	0	0	0	0	0	0	
Department of Human Settlements	10	7	1	0	0	0	0	0	0	0	0	
Department of Social Development												
Department of Sport, Recreation, Arts and Culture	3	0	0	0	0	0	0	2	0	2	0	
Department of Finance Economic Development, Environmental Affairs and Tourism	0	0	0	0	0	0	0	0	0	0	0	
Department of Rural Development and Agrarian Reform	1	1	0	0	0	0	0	0	0	0	0	
Department of Education	98	3	0	0	0	0	8	0	0	37	28	
<b>TOTALS</b>	<b>6 333</b>	<b>3 960</b>	<b>3 948</b>	<b>370</b>	<b>370</b>	<b>370</b>	<b>26</b>	<b>1 150</b>	<b>1 148</b>	<b>411</b>	<b>376</b>	

## 9.2.2. Free State

PROVINCIAL DEPARTMENTS	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>FREE STATE</b>												
Office of the Premier	68	68	0	0	0	0	0	0	0	0	0	
Department of Sports, Arts and Culture and Recreation												
Department of Cooperative Governance, Traditional Affairs and Human Settlements	2	2	0	0	0	0	0	0	0	0	0	
Department of Education	0	0	0	0	0	0	0	0	0	0	0	
Department of Police, Roads and Transport	0	0	0	0	0	0	0	0	0	0	0	
Department of Social Development	0	0	0	0	0	0	0	0	0	0	0	
Department of Agriculture and Rural Development	1	1	0	0	0	0	0	0	0	0	0	
Department of Small Business Development, Tourism and Environmental Affairs	0	0	0	0	0	0	0	0	0	0	0	
Department of Public Works	0	0	0	0	0	0	0	0	0	0	0	
Department of Health	38	35	1	3	0	3	0	0	0	2	0	
Provincial Treasury	2	2	0	0	0	0	0	0	0	0	0	
<b>TOTALS</b>	<b>111</b>	<b>108</b>	<b>2</b>	<b>6</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	

### 9.2.3. Gauteng

PROVINCIAL DEPARTMENTS	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>GAUTENG</b>												
Office of the Premier	7	4	1	0	1	1	2	0	0	0	0	
Department of Agriculture and Rural Development	53	32	1	13	7	3	3	2	1	2	0	
Department of Economic Development	2	1	0	1	0	1	1	0	0	0	0	
Department of Social Development	3	3	0	0	0	0	0	0	0	0	0	
Department of Health												
Department of Finance	3	0	0	2	0	3	1	1	0	0	0	
Department of Community Safety												
Provincial Treasury	0	0	0	0	0	0	0	0	0	0	0	
Department of Education	18	16	0	1	0	1	1	1	0	0	0	
Department of Roads and Transport	7	7	0	0	0	0	0	0	0	0	0	
Department of Sports, Culture and Recreation												
Department of Human Settlements, Co-operative Governance and Traditional Affairs												
Department of Infrastructure Development	0	0	0	0	0	0	0	0	0	0	0	
<b>TOTALS</b>	<b>93</b>	<b>63</b>	<b>2</b>	<b>17</b>	<b>8</b>	<b>9</b>	<b>8</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>0</b>	

## 9.2.4. KwaZulu Natal

PROVINCIAL DEPARTMENTS	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>KWAZULU NATAL</b>												
Office of the Premier	3	3	0	0	0	0	1	0	0	0	0	
Provincial Treasury	1	0	0	0	0	0	0	0	0	0	0	Yes
Department of Agriculture and Rural Development	5	3	0	0	0	2	0	0	0	0	0	
Department of Transport	1 227	1 224	-	0	1	-	1	0	0	1	0	
Department of Social Development	18	15	0	3	0	3	5	0	0	0	0	
Department of Health	11188	10126	703	74	58	3	673	4	3	5	3	Yes
Department of Community Safety and Liaison	0	0	0	0	0	0	0	0	0	0	0	
Department of Sports and Recreation	0	0	0	0	0	0	0	0	0	0	0	
Department of Human Settlements	3	3	0	0	0	0	0	0	0	0	0	
Department of Public Works	7	0	6	0	6	6	6	0	0	0	0	Yes
Department of Economic Development, Tourism and Environmental Affairs	3	2	0	1	0	1	0	0	0	0	0	
Department of Arts and Culture	05	01	0	02	01	02	01	0	0	0	0	
Department of Co-operative Governance and Traditional Affairs	3	2	0	0	0	0	1	0	0	0	0	Yes
Department of Education	5	0	0	0	0	0	1	0	0	0	2	
<b>TOTALS</b>	<b>12 468</b>	<b>11 379</b>	<b>709</b>	<b>80</b>	<b>66</b>	<b>17</b>	<b>689</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>5</b>	

## 9.2.5. Limpopo

PROVINCIAL DEPARTMENTS	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>LIMPOPO</b>												
Office of the Premier	10	8	0	2	0	2	1	0	0	0	0	
Department of Cooperative Governance, Human Settlement and Traditional Affairs	16	10	0	0	0	0	2	1	0	0	0	
Department of Agriculture	3	1	0	2	0	3	0	0	0	0	0	Yes
Department of Social Development	5	4	0	0	0	0	3	1	0	0	0	
Department of Health	471	469	0	1	1	0	0	1	0	0	0	
Department of Economic Development, Environment and Tourism	25	21	0	2	1	0	12	0	0	0	0	
Department of Public works, Roads and Infrastructure	7	3	0	0	4	4	0	0	0	0	0	
Department of Safety Security and Liaison	0	0	0	0	0	0	0	0	0	0	0	
Department of Sports, Arts and Culture	0	0	0	0	0	0	0	0	0	0	0	
Department of Education	7	6	0	1	0	0	0	0	0	0	0	
Provincial Treasury	12	12	0	0	0	0	1	0	0	0	0	
Department of Transport	40	22	0	0	11	11	13	0	0	0	0	Yes
<b>TOTALS</b>	<b>596</b>	<b>556</b>	<b>0</b>	<b>8</b>	<b>17</b>	<b>20</b>	<b>32</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	

## 9.2.6. Mpumalanga

PROVINCIAL GOVERNMENT	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>MPUMALANGA</b>												
Office of the Premier	1	1	0	0	0	0	0	0	0	0	0	
Department of Cooperative Governance and Traditional Affairs	10	4	0	0	0	0	0	0	0	0	0	Yes
Department of Finance	2	2	0	0	0	0	0	0	0	0	0	
Department of Culture, Sport and Recreation	0	0	0	0	0	0	0	0	0	0	0	
Department of Social Development	0	0	0	0	0	0	0	0	0	0	0	Yes
Department of Education	4	2	0	1	0	1	0	0	0	0	0	
Department of Health												
Department of Human Settlements												
Department of Agriculture, Rural Development and Land Administration												
Department of Community Safety, Security and Liaison												
Department of Economic Development and Tourism.												
Department of Public Works, Roads and Transport												
<b>TOTALS</b>	<b>17</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

## 9.2.7. Northern Cape

PROVINCIAL GOVERNMENT	Number of request received	Number of requests granted in full	Number of requests granted in the public interest  (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>NORTHERN CAPE</b>												
Office of the Premier	4	1	0	0	0	0	2	0	0	0	0	Yes
Department of Co-operative Governance, Human Settlements and Traditional Affairs	2	2	2	0	0	0	1	0	0	0	0	Yes
Department of Agriculture, Land Reform and Rural Development	1	0	0	1	0	1	0	0	0	0	0	Yes
Department of Education	0	0	0	0	0	0	0	0	0	0	0	
Department of Environment and Nature Conservation	0	0	0	0	0	0	0	0	0	0	0	
Department of Social Development	0	0	0	0	0	0	0	0	0	0	0	
Provincial Treasury	0	0	0	0	0	0	0	0	0	0	0	
Department of Sports, Arts and Culture	0	0	0	0	0	0	0	0	0	0	0	
Department of Roads and Public Works	6	0	0	0	0	0	1	0	0	0	0	
Department of Economic Development and Tourism.	0	0	0	0	0	0	0	0	0	0	0	
Department of Health	18	5	0	1	0	1	5	3	3	0	0	Yes
Department of Transport, Safety and Liaison	222	222	0	0	0	0	0	1	0	0	1	
<b>TOTALS</b>	<b>253</b>	<b>230</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>9</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>1</b>	

## 9.2.8. North West

PROVINCIAL GOVERNMENT	Number of request received	Number of requests granted in full	Number of requests granted in the public interest  (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>NORTH WEST</b>												
Office of the Premier												
Department of Public Works, Roads and Transport.												
Department of Finance												
Department of Sports, Arts and Culture												
Department of Human Settlements, Public Safety and Liaison												
Department of Women, Children and People with Disabilities.												
Department of Rural Environment and Agricultural Development	6	3	0	1	2	3	2	0	0	1	0	
Department of Education												
Department of Local Government and Traditional Affairs												
Department of Health												
Department of Social Development	0	0	0	0	0	0	0	0	0	0	0	
<b>TOTALS</b>	<b>6</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	



## 9.2.9. Western Cape

POVINCIAL GOVERNMENT	Number of requests received	Number of requests granted in full	Number of requests granted in the public interest  (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>WESTERN CAPE</b>												
Office of the Premier	114	114	0	0	0	0	0	0	0	0	0	
Provincial Parliament	0	0	0	0	0	0	0	0	0	0	0	
Department of Economic Development and Tourism	0	0	0	0	0	0	0	0	0	0	0	
Department of Environmental Affairs and Planning	82	73	0	4	0	1	31	0	0	0	0	
Department of Health	111	108	0	1	2	3	3	6	6	6	0	
Department of Human Settlements	17	13	0	4	0	0	0	0	1	0	0	
Department of Local government	3	2	0	1	0	1	0	1	0	0	0	Yes
Provincial Treasury	1	1	0	0	0	0	0	0	0	0	0	
Department of Agriculture	4	3	0	0	0	0	0	0	0	0	0	Yes
Department of Transport and Public Works	6	4	0	0	0	0	0	0	0	0	0	
Department of Education	1	1	0	0	0	0	0	0	0	0	0	
Department of Cultural Affairs and Sport	3	3	0	0	0	0	0	0	0	0	0	
Department of Community Safety	1	1	0	0	0	0	0	0	0	0	0	
Department of Social Development	3	1	0	2	0	2	0	1	0	0	0	
<b>TOTALS</b>	<b>346</b>	<b>324</b>	<b>0</b>	<b>12</b>	<b>2</b>	<b>7</b>	<b>34</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>0</b>	

## 9.3. Municipalities

LOCAL GOVERNMENT	Number of request received	Number of requests granted in full	Number of requests granted in the public interest  (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision +(section 77(3))	Other information relating to implementation
<b>EASTERN CAPE</b>												
King Sabata Dalindyebo Municipality	0	0	0	0	0	0	0	0	0	0	0	
uMzimkhulu Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
<b>GAUTENG</b>												
Mogale City	14	10	0	1	2	1	0	0	0	0	0	
City of Johannesburg	89	65	0	2	0	2	6	0	0	0	0	Yes.
City of Tshwane	20	13	13	2	1	2	3	0	1	2	0	
Ekurhuleni	42	22	0	2	6	8	9	0	0	0	0	
Emfuleni Local Municipality	2	2	0	0	0	0	0	0	0	0	0	
Westonaria Local Municipality	2	2	0	0	0	0	0	0	0	0	0	Yes
Midvaal Local Municipality	16	15	0	1	0	1	0	0	0	0	0	
<b>FREE STATE</b>												
Setso Local Municipality	2	1	0	0	0	0	0	0	0	0	0	Yes
Tswelopele Municipality	0	0	0	0	0	0	0	0	0	0	0	
Mafube Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
Fezile Dabi District Municipality	4	3	0	0	0	0	0	0	0	0	0	
Tokologo Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
Xhariep District Municipality	0	0	0	0	0	0	0	0	0	0	0	

Mangaung Metropolitan Municipality	6	6	0	0	0	0	0	0	0	0	0	
<b>KWAZULU- NATAL</b>												
Nquthu Municipality	1	1	0	0	0	0	0	0	0	0	0	Yes
Umsinga Municipality	1	0	0	0	0	0	1	0	0	1	1	
Big 5 False Bay Municipality	0	0	0	0	0	0	0	0	0	0	0	
Kwa Sani Municipality	0	0	0	0	0	0	0	0	0	0	0	
Sibonelo Goodenough Bhengu	0	0	0	0	0	0	0	0	0	0	0	
Hibiscus Coast Municipality	8	8	1	0	0	0	1	0	0	0	0	
uMhlathuze Municipality	32	25	0	1	1	1	0	0	0	0	0	
Mandeni Municipality	0	0	0	0	0	0	0	0	0	0	0	
Okhahlamba Municipality	0	0	0	0	0	0	0	0	0	0	0	
Emnambithi /LadySmith Municipality	6	4	0	0	1	1	0	0	0	0	0	
Ugu District Municipality	9	8	0	1	0	1	0	0	0	0	0	
Endumeni Local Municipality	1	1	0	0	0	0	0	0	0	1	0	
Msunduzi Local Municipality	3	2 One re-quest was cancelled by the applicant	0	0	0	0	0	0	0	0	0	
<b>Northern Cape</b>												
Frances Baard District Municipality	0	0	0	0	0	0	0	0	0	0	0	
<b>NORTH WEST</b>												
City of Matlosana	4	4	0	0	1	0	0	0	1	0	0	
Tlokwe City Council	2	2	0	0	0	0	0	0	0	0	0	
<b>MPUMALANGA</b>												

Umjindi Municipality	0	0	0	0	0	0	0	0	0	0	0	
Thembisile Hani Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
Chief Albert Luthuli Municipality	0	0	0	0	0	0	0	0	0	0	0	
Makhado Local Municipality	0	0	0	0	0	0	0	0	0	0	0	Yes
Govan Mbeki Municipality	0	0	0	0	0	0	0	0	0	0	0	
Gertruida District Municipality	2	0	0	0	2	2	0	2	2	0	0	
<b>LIMPOPO</b>												
Capricorn District Municipality	4	3	0	0	0	0	0	1	0	0	0	
<b>WESTERN CAPE</b>												
Theewaterskloof Local Municipality	8	8	0	0	0	0	0	0	0	0	0	
Cape Winelands Municipality	0	0	0	0	0	0	0	0	0	0	0	
City of Cape Town	2316	299	0	1945	32	46	14	6	0	0	0	Yes
Drakenstein Municipality	9	9	0	0	0	0	1	0	0	0	0	
Laingsburg Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
Overberg District Municipality	0	0	0	0	0	0	0	0	0	0	0	
George Municipality	30	15	0	2	0	1	0	0	0	0	0	
Swellendam Municipality	1	0	0	0	1	0	0	0	0	0	0	Yes
West Coast District Municipality	10	10	0	0	0	0	0	0	0	0	0	
Central Karoo District Municipality	0	0	0	0	0	0	0	0	0	0	0	
Stellenbosch Municipality	26	18	0	5	3	0	0	1	0	1	0	Yes
Swartland Municipality	5	5	0	0	0	0	0	0	0	0	0	
Mossel Bay Municipality	14	6	0	5	1	6	0	2	1	0	0	
<b>TOTALS</b>	<b>2 638</b>	<b>545</b>	<b>14</b>	<b>1 965</b>	<b>44</b>	<b>64</b>	<b>26</b>	<b>12</b>	<b>5</b>	<b>5</b>	<b>1</b>	

## 9.4. Other Public Bodies

OTHER BODIES	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
Council for Medical Schemes	15	13	0	2	0	2	0	0	0	0	0	
Road Accident Fund	2 561	2 290	0	210	0	38	189	0	0	0	0	
Market Theatre Foundation	0	0	0	0	0	0	0	0	0	0	0	
South African National Biodiversity Institute	0	0	0	0	0	0	0	0	0	0	0	Yes
ESKOM	46	21	11	5	4	6	0	2	0	0	22	Yes
South African Social Security Agency	3228	3163	0	65	0	65	6	3	0	3	1	Yes
Land and Agricultural Development Bank of South Africa	2	0	0	2	0	2	0	0	0	0	0	
Ithala Development Finance Corporation	1	1	0	0	0	0	0	0	0	0	0	
Airports Company South Africa	4	0	0	4			0	0	0	0	0	
Legal Aid South Africa	10	3	0	4	1	1	5	0	0	0	1	Yes
National Nuclear Regulator	3	0	0	1	1	0	0	0	0	0	0	Yes
KZN Growth Fund Trust	0	0	0	0	0	0	0	0	0	0	0	
Windybrow Theatre	0	0	0	0	0	0	0	0	0	0	0	
Legal Services Department	11	0	0	0	0	0	0	0	0	0	0	Yes


North West University	182	159	159	17	0	0	3	0	0	0	0	
University of the Witwatersrand	2	2	0	0	0	1	0	0	0	0	0	
Nkoka Training cc	0	0	0	0	0	0	0	0	0	0	0	
Council of Scientific and Industrial Research	2	1	0	1	0	1	0	0	0	0	0	Yes
Mining Qualifications Authority	0	0	0	0	0	0	0	0	0	0	0	
South African Qualifications Authority	0	0	0	0	0	0	0	0	0	0	0	
National Energy Regulator	43	43	0	0	0	0	0	0	0	0	0	
South African Revenue Services	36	7	0	15	2	17	7	6	2	0	0	
Dube TradePort Corporation (DTC)	1	0	0	1	0	0	0	0	0	0	0	
Free State Development Corporation	0	0	0	0	0	0	0	0	0	0	0	
East London Industrial Development Zone SOC Ltd	1	1	0	0	0	0	1	0	0	0	0	
National Urban Reconstruction and Housing Agency	0	0	0	0	0	0	0	0	0	0	0	
Development Bank of Southern Africa	0	0	0	0	0	0	0	0	0	0	0	
University of Free State	2	0	0	0	2	2	2	0	0	0	0	
Telkom	24	7	0	0	17	0	17	7	0	0	0	
Transnet	15	7	0	3	3	3	12	0	0	0	1	
National Research Foundation	0	0	0	0	0	0	0	0	0	0	0	Yes
Air Traffic and Navigation Services SOC Ltd	6	1	0	1	4	0	0	0	0	0	0	

## 9.5. Chapter 9 and 10 institutions

Chapter 9 and 10 Institutions	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
The Office of the Public Protector												
The South African Human Rights Commission	3	2	0	0	1	1	0	0	0	0	0	
The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities												
The Auditor General of South Africa												
The Commission for Gender Equality												
The Electoral Commission												
Independent Communications Authority of South Africa												
Public Service Commission	5	1	4	0	0	0	0	0	0	0	0	
Financial and Fiscal Commission	0	0	0	0	0	0	0	0	0	0	0	
<b>TOTALS</b>	<b>8</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

## 10. Conclusion

The SAHRC undertakes a multi-faceted access to information project each financial year with dedicated resources. The approach of the SAHRC in this regard is a testament to its own understanding that beyond a legislative mandate contained in PAIA, its transparency related work also forms part of a broader human rights agenda that involves all other arms of the SAHRC's constitutional mandate and the entire spectrum of human rights.

Increase in compliance levels within all spheres of government is promising. However, the consistently low levels of compliance by local government remain of serious concern, notwithstanding the notable improvement in compliance in the current reporting period. Overall, after a decade since the enactment of PAIA, technical compliance with PAIA should no longer be of concern. Instead, substantive compliance should be on the agenda. The Information Regulator is seen as a promising avenue for increasing what are for the most part, dismal levels of compliance with mandatory legislative obligations. More disappointing however is that enforcement powers and the threat of sanction is what may be required to bring home the message of what access to information and transparency means in a democracy. The leveraging power of the right of access to information in the realisation of all other rights appears to be so clearly misunderstood and misconstrued by so many information holders in both the public and private spheres so many years after access to information was legislated. More must therefore be e.

### (Footnotes)

- 1 Possibly in the form of Regulations
- 2 (Proclamation No. R. 991, 2005) Government Gazette 14 October( Regulation Gazette)
- 3 PAIA, Section 23(1)(b)(i),(ii).







### For more information

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