

The Promotion of Access to Information Act Annual Report

South African Human Rights Commission



2012 – 2013

Transforming society. Securing rights. Restoring dignity.

PREFACE

Section 83 and 84 of the Promotion of Access to Information Act (PAIA) requires the South African Human Rights Commission (SAHRC) to submit an annual report to the National Assembly. This Report makes recommendations for the development and reform of the PAIA and other selected pieces of legislation or common law having a bearing on access to information held by public and private bodies, respectively. The recommendations of this Report also extend to the development and reform of practices and procedures in terms of which public and private bodies make information electronically available to the public.

In addition, the Annual Report is to provide to the National Assembly, in relation to each public body, the particulars of the total number of requests for access received in the period under review; the number of requests for access granted in full; the number of requests for access granted in terms of section 46; the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partly; the number of cases in which the periods stipulated in section 25(l) were extended in terms of section 26 (1); the 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; the 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; the 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; the 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); the 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 such other matters as may be prescribed.

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FOREWORD

Information is power. Yet many people who are poor are denied access to information that they need to enjoy the rights enshrined in South Africa's Bill of Rights. The power of millions of people, whose experience is characterised by poverty and inequality, to access information and make informed choices on the basis of this information, is thus effectively undermined.

The 2012-2013 Annual Report on the Promotion of Access to Information Act (PAIA) by the South African Human Rights Commission (Commission) analyses the responses of Government Departments to information requests from the public. The Report reveals that over 90% of municipalities remain non-compliant. Such non-compliance is linked to the conditions in which millions of poor people live and die. The preamble to South Africa's Constitution 'recognise(s) the injustices of our past'. The Constitution aims to *'heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which Government is based on the will of the people and every citizen is equally protected by law; improve the quality of life of all citizens and free the potential of each person'*. As one of 8 founding governments of the Open Government Partnership, the South African Government has committed to transparent, effective and accountable government.

Section 32 of the Constitution asserts that 'everyone has the right of access to any information held by the state and any information held by another person that is required for the exercise or protection of any rights'. PAIA aimed to give effect to this right in relation to both public and private bodies. PAIA also outlines the extensive mandate to the Commission to advance the right to information.

Government officials who attended the Commission's 2012 hearings on the right to water and sanitation heard poor communities share the frustration of numerous attempts to get information. Community participants spoke of the lack of government and business accountability for inefficiency, political patronage and corruption linked to budgets and contracts. The lack of information on how, when and who will address basic service failures, fuels the frustration behind 'service delivery protests'. This is a dire indictment, not just of the least resourced sphere, but of Government as a whole.

The Commission followed its hearings with strategic training in all 9 provinces, to empower poor communities to use PAIA to secure government feedback. In addition, it conducted specialized training for communities in Soweto. The Commission continued training of public and private sector compliance officers to improve levels of voluntary disclosure and responsiveness to public requests for information. In this regard, the Commission conducted 22 training sessions with public and private bodies, as well as Provincial and National Information Officer's Forums.

The Commission leveraged limited capacity and resources to reach poor communities by initiating PAIA Law Clinics with the University of Witwatersrand. In the clinics, law students join the Commission in recording complaints. The Commission aims to establish similar partnerships in each province. These partnerships will also enable PAIA litigation, with a special focus on strategic cases.

This Report includes the Commission's Annual Audit of several National Government Departments. In its Golden Key Awards Research, the Commission made a strategic shift to monitoring substantive compliance. Follow-up research found that national departments that were non-compliant included departments critical to service delivery, such as Human Settlements, Public Works, Water Affairs, Home Affairs as well as Women, Children and People with Disabilities. On Parliament's recommendation, the Commission also conducted records management research that assessed all 43 National Departments.

This Report exposes the challenge of securing both formal and substantive PAIA compliance from every department and sphere of Government. This year the Commission proposed that Government's Management Performance Assessment Tool (MPAT) be used to assess all public bodies and achieve 100% substantive compliance. Through engagement with the Department of Performance Monitoring and Evaluation (DPME), the Commission secured a commitment that MPAT will incorporate the PAIA assessment standard developed by the Commission. This must compel a shift to more open and responsive government.

During the period of this Report, there have been legislative changes, which have far-reaching consequences for the right to information. After the Protection of State Information Bill (POSIB) was passed by Parliament, the Commission sent a letter to the President, on the basis of expert legal opinion from Counsel on the Constitutionality of POSIB. The Commission requested the President to refer the Bill to the Constitutional Court. While the President recently referred POSIB back to Parliament, many issues raised in the Commission's expert opinion remain relevant.

Wiki-Leaks and the revelations of Edward Snowden exposed widespread state surveillance of individuals by the United States of America and other governments. In this context South Africa's Protection of Personal Information (POPI) Bill has the potential to enhance the information environment without unduly restricting the constitutional right to information. POPI establishes an Information Regulator, with powers to enforce PAIA. It will be necessary to address the long established institutional culture of secrecy so protection of personal information does not result in bureaucrats denying access to information. At the Commission's first Business Transparency Conference in June, the issue of protection of personal data by private companies was addressed by several experts in the field, including Deputy Minister of Justice and Constitutional Affairs, John Jeffries. This Conference laid a strong precedent for the Commission's 2013-2014 focus on business accountability for human rights.

On the basis of the Commission's experience of PAIA's strengths and weaknesses, it developed substantive recommendations (detailed in this report) to improve the existing law. The Commission also contributed to the African Commission on Human and People's Rights new Model Law on Access to Information, which aims at strengthening the freedom of information environment and public participation regionally.

The Parliamentary Committee tasked with the review of Chapter 9 and Associated Institutions proposed a dedicated Information Commissioner with commensurate expertise to fulfill the extensive PAIA mandate. At present the PAIA mandate is one of many strategic leadership responsibilities located

within the portfolio of the Commission's Deputy Chairperson, which includes acting as Chair (during a period in which the Commission Chair has external country responsibilities as Chair of the ICC and NANHRI); Basic Services; Health; CEDAW and the Commission's Western Cape office. Fortunately, the Commission has a small, dedicated and talented team in its PAIA Unit, led by Fola Adeleke.

On behalf of the South African Human Rights Commission I am honoured to table the Commission's 2012-2013 PAIA Annual Report to Parliament.

Pregs Govender

Deputy Chairperson

South African Human Rights Commission

List of Acronyms

CC	Coordinating Committee
CEO	Chief executive officer
COGTA	Cooperative Governance and Traditional Affairs
DIO	Deputy Information Officer
DOJCD	Department of Justice and Constitutional Development
DPSA	Department of Public Service and Administration
DPME	Department of Performance Monitoring and Evaluation
EC	Eastern Cape
FS	Free State
GKA	Golden key awards
GP	Gauteng Province
Hon	Honorable
IO	Information officer
IT	Information Technology
IPID	Independent Police Investigation Directorate
KZN	Kwa Zulu Natal
LP	Limpopo
MEC	Member, Executive Council
MP	Mpumalanga
NIOF	National information officers' forum
NGO	Non Governmental Organization
NC	Northern Cape
NW	North West
ODAC	Open Democracy Advice Centre
PALAMA	Public Administration, Leadership and Management Academy
PAIA	Promotion of Access to Information Act 2 of 2000
SAHA	South African History Archives
SAHRC	South African Human Rights Commission
SARS	South African Revenue Service
SAPS	South African Police Service

1. Introduction

The South African Human Rights Commission (SAHRC), as the custodian of the Promotion of Access to Information Act (PAIA), implements a number of functions in fulfillment of its statutory mandate. The mandate of the SAHRC is fulfilled through its PAIA Unit. In the financial year 2012/13, the budget allocation to the unit was R759, 000 which was used to execute the promotion, protection and the monitoring of compliance mandates.

In terms of the promotion mandate, the key activities of the SAHRC included the training of public officials, training of various communities across the country, the coordination of a National Information Officers Forum (NIOF), as well as the establishment of a Provincial Information Officers Forum (PIOF) in Mpumalanga. A new project was introduced called PAIA Law Clinics.

The monitoring mandate of the SAHRC is achieved through the conduct of compliance audits, research as well as the collation and analysis of reports submitted by various public institutions.

In terms of the protection mandate, the SAHRC assisted several requesters of information in exercising their right of access to information through mediation and conciliation on behalf of aggrieved requesters of information in instances where requests for information were denied or deemed refusals due to non-response by public bodies, analysis of the section 32 reports received from government departments on how they handled information requests in a financial year as well as conducting research that informs our recommendations for the reform of PAIA and other relevant laws.

2. The Promotion Mandate

Since the passage of the PAIA in 2000, the SAHRC has mainly focused on training public service officials to drive internal compliance. A strategic shift however took place in the 2012/13 financial year with greater emphasis being placed on the exercise of the right of access to information by the public. The emphasis placed on promoting the public exercise of the right of access to information was in recognition of the need for the public to hold government to account in the delivery of various social services. Government should be understood as a custodian of information on behalf of the public and the legislative presumption in terms of the PAIA is in favour of the disclosure of information to the public, hence, the need to train the public to exercise the constitutional right of access to information.

2.1. Training

In terms of the 2012/13 financial year, the SAHRC continued to offer training to various institutions. A total of 22 training sessions were held which included training for public and private sector compliance officers, specialized community training for communities in Soweto, as well as 9 specialized trainings in each of the 9 communities where the SAHRC's water and sanitation hearings were held in the 9 provinces. The PAIA was used as a way of providing feedback to the communities from government to assist the communities to access water and sanitation. The strategic training and awareness sessions held with the various communities in the provinces ensured that the PAIA training sessions were not

conducted merely to tick the box of compliance with our annual performance plans but also to integrate the sessions with the broader objectives of the SAHRC to assist the public to realize other socio-economic rights.

As part of our efforts to improve training, the SAHRC also embarked on a project to produce a video documentary to be translated into all 11 official languages that documents usage of the PAIA by two communities in realizing other tangible socio-economic rights. We believe that once this documentary project is finalised, it will be a powerful resource for training purposes to highlight the importance of the right of access to information as a key to unlock service delivery from government and how this right can be a powerful tool in the hands of the public.

2.2 PAIA Law Clinics

Recognizing that training may not adequately assist poor South Africans to realize their rights, the SAHRC commenced a new project called PAIA Law Clinics in association with the Law Clinic of the University of Witwatersrand. Every fortnight, 14 final year law students join the PAIA Unit staff of the SAHRC in raising human rights awareness and recording complaints from community members. In instances where the PAIA can be applied, information requests are completed on behalf of these community members to seek access to the information they need. This new project has led to an increase in the way the PAIA is being used to seek the enforcement of other tangible human rights for the public. The objectives of the PAIA Law Clinics are:

- a) To expand university education about the PAIA and, in particular, to develop the interest of law students in actively and creatively using PAIA in their future careers;
- b) To promote the PAIA litigation, with a special focus on strategic cases;
- c) To leverage university resources, including by encouraging the academia in undertaking research and writing, and developing their practical familiarity with the PAIA issues specifically on access to information issues broadly so that they can contribute knowledgeably to public debate;
- d) To enlist students to help monitor how the PAIA is actually being used, so that the results can be used to improve the law's performance;
- e) To enlist students in helping to familiarize communities with the possibilities for using the PAIA and related laws, and to obtain information that may be substantively useful for them in meeting their service delivery needs;
- f) To help communities obtain information that they need in order to protect or promote important rights.

During the implementation of the PAIA law clinics which the SAHRC hopes to establish in a university in each province, the Commission intends to:

- a) Build partnerships with institutions of higher education in order to establish accredited PAIA clinics in those institutions;
- b) Build capacity of selected institutions of higher learning with a view to generate requests for information that may lead to litigation;

- c) Facilitate the interaction between the legal academics, students and selected community-based organizations (CBOs) and communities;
- d) Advise lecturers, students and CBOs on issues of access to information, open democracy and good governance for better service delivery.

2.3 Information Officers' Forum

The SAHRC hosted the Annual National Information Officers' Forum (NIOF) on 28th September 2012 and the Provincial Information Officers' Forum (PIOF) for this financial year in Mpumalanga on March 27th 2013. Both fora dealt with the theme: *"Access to information and the realization of socio economic rights"*. With notable speakers such as the Deputy Auditor General at the NIOF and the MEC for Finance at the PIOF, there was a successful engagement between the Commission and DIOs in attendance. This dialogue contributed to shaping the understanding of the relevance of PAIA in achieving broader human rights objectives and fostering transparency in government.

The NIOF, established in 2003 was conceptualized by the SAHRC, the Department of Justice, the Open Democracy Advice Centre (ODAC) and other civil society organizations. The rationale for the NIOF was to provide resource support to government officials who now had additional responsibilities in terms of implementing the PAIA. Through the NIOF, the SAHRC aims to:

- Provide a platform for sharing information, issues and challenges relating to the PAIA;
- Celebrate the 'Right to Know' day and raise awareness;
- Influence and encourage access to information practitioners to embrace the culture of openness and accountability;
- Link the right to access information to the realization of socio economic rights and service delivery;
- Provide capacity building tools;
- Keep stakeholders abreast with local, regional and international developments on access to information;
- Increase compliance with and implementation of the PAIA;
- Create networking opportunities;
- Obtain practical insight on challenges faced by various stakeholders; and
- Reward best practices by access to information practitioners.

The 2012 NIOF marked the 10th anniversary of the National Information Officers Forum. The theme of the NIOF was informed by the SAHRC's focus on transforming society through securing all human rights for everyone and the restoration of human dignity of all regardless of social status. This focus we believe can be realized through the usage of the right to information as an enabling right, facilitating the realization and attainment of other rights.



Guests at the NIOF

The Deputy Chairperson of the SAHRC, Pregs Govender, speaking against the backdrop of service delivery protests, the gross violation of human rights in the Marikana saga and the failure of government to deliver services to the public, emphasized the need to protect and enforce the right to information, and the significant role DIOs play in enforcing the right.

Commissioner Govender emphasized the need to ensure that compliance with the PAIA by public institutions is not only technical but substantive. Referring to the interrelationship between government and business where government concludes various contractual agreements with the private sector to deliver social services, Commissioner Govender emphasized the need for transparency to cut across all sectors of society. Following the outline on the realization of access to socio-economic rights, Commissioner Govender went on to discuss the role and powers of the SAHRC in combating non-compliance with legislation, and the violation of human rights. She recounted previous actions of the SAHRC in investigating the Western Cape and Free State toilet complaints. Commissioner Govender reported that the investigations were conducted with the intention of protecting the rights of affected communities. She stated that the SAHRC did not give preference to political parties and acted without fear, favour or prejudice.

Commissioner Govender further noted that the duty to be transparent and deliver services to communities was not solely dependent on government but it rested on the private sector as well. She cited the Limpopo Report of the SAHRC issued in 2008¹ which dealt with an investigation on the impact of mining companies on surrounding communities. The findings of the Report demonstrated that the actions of the private sector often have an adverse impact on the lives of members of the communities. In particular, the Report concluded that very little or no consultation with the various communities before projects were embarked on.

¹ Mining Related Observations and Recommendations: Anglo Platinum, Affected Communities and other stakeholders in and around the PPL Limpopo Mines

Building on this finding, Commissioner Govender highlighted the importance of the private sector respecting human rights and complying with PAIA and other human rights obligations. Commissioner Govender called on DIOs to be agents of change in their institutions. She urged DIOs to facilitate the implementation of PAIA, entrench a culture of openness and accountability and to demonstrate the importance of access to information in service delivery. This she said could be achieved by ensuring substantive compliance and development of policies that recognize the importance of human rights and the promotion of social justice.



The Deputy Chairperson, Pregs Govender, delivering her address

Mr. Makwetu, the Deputy Auditor General delivered the keynote address. His address was based on the recent findings of the annual audit of public bodies undertaken by the office of the Auditor General. Mr. Makwetu supported the view that the failure of government to deliver basic services is a human rights violation and a lack of respect for human dignity.

Referring to the outcomes of the audits that were conducted by the Auditor General, Mr. Makwetu stated that financial mismanagement was particularly dominant at the local government level and canvassed for the usage of the PAIA in promoting transparency. Mr. Makwetu expressed dismay at the 'face value' compliance with laws by public institutions and drawing on the objectives of PAIA, Mr. Makwetu said transparency played 4 key roles in government which include accountability, a mechanism to uproot corruption and mismanagement of funds, build public confidence and the creation of an environment for informed participation of citizens.



Mr. Makwetu, Deputy Auditor General of South Africa delivering his address

2.4 The Provincial Information Officers' Forum (PIOF)

The SAHRC decided to launch a Provincial Information Officers' Forum in Mpumalanga for the 2012/13 financial year based on the compliance monitoring done by the PAIA unit of the SAHRC over the last three years where the Mpumalanga Province has had very low levels of compliance with the PAIA. In 2010 and 2011, no provincial department or municipality submitted a section 32 report within the required timeframe. In 2012, only 2 provincial departments complied within the required timeframes. The issue of addressing both formal compliance and increasing levels of awareness within public institutions within the province therefore needed to be addressed.

Since the launch of the PIOFs in 2010, the general theme has centered on access to information as a tool to enhance service delivery and transparency. This theme was adopted with the intention of demonstrating the importance of access to information in the relationship between government and the public. It is also aimed at making officials aware that the right to information cannot be separated from efficient service delivery.



Delegates at the Mpumalanga PIOF

The SAHRC invited a number of experts and various stakeholders on the PAIA to share good practices on issues around good records management practices taking place in Limpopo, usage of IT to effectively respond to the PAIA requests by ESKOM, as well as the benefits of establishing a committee to drive compliance with the PAIA by the provincial government departments in the KZN provincial government.

During an open discussion at the establishment of the forum, various challenges were raised relating to the PAIA that are specific to Mpumalanga which the Commission plans to address in the current financial year. These include:

- Internal communication challenges within the administration (lack of or poor coordination relating to legislative compliance e.g. submission of the PAIA section 32 reports);
- Training of DIOs;
- Lack of awareness (little knowledge on usage of the PAIA by the public in the province);
- Lack of executive buy-in by senior management on the PAIA implementation;
- Lack of reflection of the PAIA targets in key performance areas in job descriptions of relevant officials responsible for the PAIA implementation;
- Lack of proper designation of relevant officials to be DIOs in the respective departments and parastatals;
- Lack of substantive and holistic compliance with the PAIA;
- Lack of central coordination in the province to harmonize compliance for the provincial government as a whole;
- Lack of compliance with statutory obligations of the PAIA ;

3. The Monitoring Mandate

The monitoring mandate of the SAHRC largely involves conducting research and audits to track substantive compliance with the PAIA by public institutions that will facilitate the disclosure of information to the public. Public institutions are generally mostly only interested in meeting the minimum standard of compliance with the PAIA such as the appointment of a DIO and the compilation of a section 32 report as well as a section 14 manual. Other relevant implementation objectives relating

to voluntary and proactive disclosure of information, such as records management, budget allocation and internal awareness measures have not been incorporated as reflected in the various findings below.

3.1. Audit Findings

Below is a detailed review of the information received from the public institutions that the Commission audited in the 2012/13 financial year. These are Department of Basic Education, Department of Human Settlements, Legal Aid South Africa, Gauteng Department of Education, Gauteng Department of Agriculture, Office of the Premier Limpopo, Office of the Premier Mpumalanga and Office of the Premier, North West. The audited institutions were selected on the basis of different sets of criteria which included: complaints lodged by members of the public against some of the institutions, the high volume of requests that some of the institutions receive, and the role of the offices of the Premiers in driving the PAIA compliance in the provinces.

Section 17 of the PAIA places an obligation on public bodies to appoint DIOs to assist in the implementation of the PAIA. The core duties of a DIO are to ensure that the department complies with all compliance requirements, to respond to requests and to ensure that information is easily made available. In the 2012 /2013 period, responses to the SAHRC's audit questionnaires showed that while DIOs had been appointed in writing as prescribed in the PAIA², knowledge of who the DIO is by staff members of a public body, particularly, the frontline personnel is not known. As a result, members of the public are not directed to the relevant official responsible for handling information requests. Knowledge and understanding of the PAIA within public bodies is therefore at the core of proper and efficient implementation of the PAIA.

When considering the presence of DIOs and their duties in public bodies, there is an expectation that DIOs will conduct internal training on the PAIA for other personnel on the role they can play in assisting requesters. As a result, all DIOs are expected to receive training on the PAIA upon appointment. The SAHRC conducts training on a request basis from any public or private body that requires the PAIA. While the DIOs in the audited institutions indicated that they had received training, a point of concern however is the lack of indication of regular and continuous refresher training. A very small percentage of institutions demonstrated continued training on the PAIA. Information provided in the questionnaires submitted showed that DIOs only had once off training and no further training had been done by the DIO. Given the numerous developments on access to information in the last financial year including the impending passage of the Protection of Personal Information Bill and the Protection of State Information Bill, this is a cause for concern. These legislative developments have a direct bearing on access to information and will affect the work of DIOs. The need to keep abreast of developments is of critical importance to ensure that DIOs are able to implement the PAIA with ease and are able to incorporate duties that will arise as a result of other legislation without compromising their outputs on the PAIA.

Internal training efforts and the development of internal training material has also been minimal. The failure of public bodies to train personnel other than the DIOs within the institutions has resulted in the lack of continuity within public institutions. Past engagements with public institutions have consistently

² Section 17(6)(a)

revealed inconsistency in compliance. In one institution that was audited in 2009, the SAHRC found that the DIO was fully aware of the duties and responsibilities, the institution was fully compliant with PAIA and awarded for best practice at the Golden Key Awards ceremony. The SAHRC at a later stage engaged with the institution and found that requests for information were not being responded to; compliance reports were not submitted or submitted late. The SAHRC investigated the matter and discovered that the DIO who was in place at the time of the audit was no longer with the public institution. This highlights the failure to provide internal training for other officials in order to create sustainable and continuous compliance. This tendency is not new in the public sector and is one of the major causes of non compliance.

Increasingly, as demonstrated in the 2012/13 audits, public institutions are beginning to incorporate the PAIA into their strategic and operational plans. This is a noteworthy development given the common trend in the public sector to maliciously comply with the PAIA. Malicious compliance in this context refers to instances where public institutions state that systems to implement the PAIA are in place and cite that a DIO has been appointed to respond to requests for information; however, such statutory compliance has not translated into the promotion of the objectives of the PAIA within the public bodies. The rationale for recommending the introduction of the PAIA into the strategic and operational plans is to establish the political will to implement the PAIA, assess whether the executive management of institutions is cognizant of the duty to implement the PAIA and deliver on the right to access information as well as test the internal readiness of public institutions to implement the PAIA by putting systems in place to ensure that institutions comply with the PAIA, handle requests for information accordingly, and are developing or modifying policies to ensure that access to information or the principles of the PAIA are central to policies that govern the institutions.

The results of sampled institutions are but a minor indication of the state of implementation and must not be seen as a complete illustration of the status of the PAIA implementation in the public sector as a whole. The introduction of systems and processes is generally limited to the generation of a specific PAIA email and a manual register for tracking requests for information.

Of critical importance is the realization by public bodies that efficient systems can be developed using the little resources available. Public institutions have often used the lack of financial resources as a major factor that hindered implementation of the PAIA. While resource constraints do influence implementation, it does not justify public bodies having no regard for the PAIA. Good practice institutions like the Office of the Premier, Limpopo and the Limpopo Department of Health and Social Development have developed effective PAIA implementation mechanisms with very minimal costs and have ensured that the department processes requests effectively. These institutions have also been identified by other public institutions consulted for peer review.

Since the launch of the audit process, the SAHRC has identified trends across the public sector that negatively affects compliance with the PAIA and its implementation. Trends identified include the lack of awareness on the PAIA and lack of commitment from political and executive leaders in government. Lack of awareness hampers compliance by public bodies; it also hinders continuity where compliance and implementation have been initiated.

The Limpopo Provincial Government through the office the Premier has maintained 100 percent compliance for more than 3 consecutive years, the National Department of Justice and Constitutional Development has also demonstrated consistent compliance. The Gauteng Provincial Departments of Education as well as the Department of Agriculture and Rural Development have further demonstrated continuous compliance.

While developments in compliance are notable, the absence of policies pertinent to the implementation of the PAIA in public bodies must be noted with concern. One of the institutions audited stated that no records management policies were in place and a records manager has not been appointed.

Executive commitment and political will to implement the PAIA must be secured to ensure that state institutions are equipped and ready to deliver on the right to access information. The SAHRC is of the view that strict corrective measures be put in place to penalize non compliance by public bodies. The SAHRC has in terms of section 84 of the PAIA consistently submitted reports to Parliament on the state of compliance. The reports have outlined the lack of compliance by public bodies and have provided detailed information and solutions on the need to comply with the PAIA to ensure that the public sector is accountable and operates transparently.

Having submitted these reports, the SAHRC hopes that Parliament will take steps to ensure that the status of implementation changes and that the constitutional principles of an open democracy are upheld. This expectation has not been met, and until such time that corrective measures are put in place; compliance with the PAIA and its implementation will continue to dwindle.

Aside from the audits conducted in the 2012/13 financial year, the SAHRC also embarked on various research exercises to monitor implementation of the PAIA in public institutions. The Annual Golden Key Awards research (GKA) was conducted for 23 institutions across the 3 levels of government, a follow-up research exercise was conducted for institutions that had previously been assessed on the GKA model and a ghost request exercise was conducted for a select number of institutions for information that was expected to be automatically available. The results of these research exercises raised several causes for concern given the high percentage of mute responses to the requests.

3.2 Golden Key Awards Research

The GKA is hosted annually on the International Right to Know Day to acknowledge best practices by public institutions which promote openness, responsiveness and information sharing in the country through the implementation of the PAIA. The awards are also aimed at recognizing outstanding achievements of DIOs at public institutions in implementing the PAIA, civil society engagement with the PAIA, promotion of knowledge of the PAIA as well as the most prominent/frequent user of the PAIA from the general public. For the 2012/13 financial year, the awards were divided into five categories, namely;

- Best DIO
- Best User of the PAIA (Organization/Individual)
- Best Promoter of the PAIA (Organization/Individual)
- Best Performing National Department in the PAIA

- Best Performing Provincial Department in the PAIA
- Best Performing Municipality in the PAIA

While awards are given to the best performers, the research process assists the SAHRC in identifying institutions that have not done well in implementing the PAIA as well as DIOs who need capacity building and support in carrying out their functions. The outcome of the process is to target these under-performers by offering them training and institutional support on the PAIA. In order to adequately cover the pool of samples of government institutions in the country, the SAHRC generally varies the institutions that are sampled on a yearly basis. Institutions sampled in the previous year are only sampled in the subsequent year if they performed poorly or did not respond to the information requests.

A total number of 24 institutions were sampled in 2012/13. The samples comprised of 10 national departments and 14 provincial departments. Requests were submitted to the selected institutions with only 4 responses received within the 30 day time frame that the PAIA provides. The responses were from the Department of Higher Education, Department of Women and Children, the Western Cape Department of Human Settlement, and Limpopo Department of Agriculture. 2 institutions out of 10 responded in the national department category, and only 2 institutions out of 14 responded at the provincial level. To put it differently, the research only recorded a 16 percent response result. This was cause for concern as this response was significantly lower than the 2011. In 2010, research results recorded a response of 50 percent and 26 percent respectively from the sampled institutions.

Local governments were not sampled in 2012 because of a decision to review our research methodology with respect to local government assessment. We however received nominations for Theewaterskloof Municipality and Mogale City Municipality for their compliance efforts on the PAIA.

It is disappointing to note that national departments that are well equipped in terms of resources to implement the PAIA are still failing to do so 12 years after the enactment of the PAIA. Given the fact that majority of our requests were met with mute refusals, the SAHRC undertook to evaluate the institutions that responded to our GKA research in previous years to assess whether any developments had taken place to fill in the gaps identified after their assessment of their respective internal processes.

It was against the backdrop that the SAHRC sent out follow up review questions of the 2011 Golden Key Awards research to 14 public bodies (National, Provincial and Local government). What follows is a closer look at their responses and the assessment of the follow up review.

3.2.1 Follow up Review

The SAHRC sent out follow-up questions to 14 public bodies from the three tiers of government. From the national government the SAHRC assessed six departments, namely, Cooperative Governance, Communications, Basic Education, Labour, National Treasury and Public Enterprises. From the Provincial

level, ³ departments, Office of the Premier Gauteng, Department of Roads and Transport from Gauteng, Western Cape Treasury and Mpumalanga Office of the Premier were assessed. From the Local Government, we also had 4 municipalities which are Theewaterskloof Municipality and West Coast District Municipality in the Western Cape, Ehlanzeni District Municipality from Mpumalanga and lastly Gamagara Local Municipality in the Northern Cape.

The follow up questions comprised of 2 main categories. Under the peer review and best practice category, the SAHRC wanted to know whether the department/municipality consulted with other public bodies on improving its implementation strategies among others; and further, how the peer review assisted them in crafting their own implementation strategies. Secondly, the SAHRC also requested respondent departments and municipalities to describe challenges that have been experienced in implementing the PAIA, the systems that they have in place that are working well as well, as areas where they require the SAHRC's support on the PAIA.

Only 5 of the 14 public bodies responded within the requested time. These are the National Department of Cooperative Governance, the Department of Communications, the Office of the Premier Gauteng, the Western Cape Provincial Treasury and Theewaterskloof Municipality. All the departments except Theewaterskloof municipality⁴ and Provincial Treasury of the Western Cape⁵ indicated that they consulted with other bodies in order to improve their implementation strategies. The departments indicated that they still have challenges and concerns⁶ in implementing the PAIA. Some few challenges raised were with regard to the compilation of section 14 manuals and the training of their DIOs and their general staff.

3.2.1 Assessing substantive compliance

Aside from the follow up review that was done in terms of questions directly sent to the institutions already assessed last year, the SAHRC also embarked on an exercise by submitting requests for information through our interns to the institutions that had complied with PAIA implementation to assess whether in practice, the institutions that submitted various policies and implementation plans on the PAIA are indeed responsive to requests from the public. The requests made were for automatically available information and the results of this exercise are also dismal. A total of 17 departments were assessed and only 6 responses were received for access to automatically available information. The national departments that did not respond are the Department of Communications, Labour, National Treasury, Basic Education and Cooperative Governance. Below is a closer look of the golden key research results.

³ The actual number was eight- including four departments from Limpopo Provincial Government. A decision was taken to exclude the four because of their consistent compliance and good practice. The four departments were; Limpopo Treasury, Office of the Premier, Local Government and Human Settlements and Agriculture.

⁴ Their failure to consult with other bodies was due to the fact that their DIO was busy attending to MFMA regulation training and is still in progress.

⁵ They mentioned that it is their intention to engage with other bodies to identify best practice.

⁶ Theewaterskloof Municipality raised a communication concern- e.g. After submitting their Section 32 reports and Section 14 manual, no response was received from the SAHRC as to whether it was received or not.

3.3 The Golden Key Research Results

The following public bodies were sampled:

Table 1: National Government Departments

<u>NATIONAL</u>
1. Higher Education and Training
2. Public Enterprises
3. Arts and Culture
4. Public Works
5. Home Affairs
6. Human Settlements
7. Transport
8. Economic Development
9. Water Affairs
10. Women, Children and People with Disabilities

Table 2: Provincial Government Departments

<u>PROVINCIAL</u>
1. LP: Agriculture
2. WC: Human Settlements
3. NW: Office of the Premier
4. MP: Health
5. KZN: Office of the Premier
6. KZN: Human Settlements
7. WC: Roads and Public Transport
8. GP: Human Settlements
9. FS: Health
10. FS: Local government and Human Settlements
11. NC: Office of the Premier
12. NC: Human Settlements
13. EC: Human Settlements
14. EC: Treasury

Department	Response within 30 days	Road map	Records management	Internal mechanisms	Resources	Total	Percentage
Point tally:	3	6	6	24	11	50	100%
<u>NATIONAL</u>							
1. Higher Education and	3	5	5	20	2	35	70%

Training							
2. Public Enterprises	3	3	0	10	0	16	32%
3. Arts and Culture	0	0	0	0	0	0	0%
4. Public Works	0	0	0	0	0	0	0%
5. Home Affairs	0	0	0	0	0	0	0%
6. Human Settlements	0	0	0	0	0	0	0%
7. Transport	0	0	0	0	0	0	0%
8. Economic Development	0	0	0	0	0	0	0%
9. Water Affairs	0	0	0	0	0	0	0%
10. Women, Children and People with Disabilities	0	0	0	0	0	0	0%
PROVINCIAL							
1. LP: Agriculture	3	6	5	22	8	44	88%
2. WC: Human Settlement	3	6	6	24	5	44	88%
3. MP: Health	0	0	0	0	0	0	0%
4. KZN: Office of the Premier	0	0	0	0	0	0	0%
5. KZN: Human Settlements	0	0	0	0	0	0	0%
6. EC: Human Settlements	0	0	0	0	0	0	0%
7. EC: Treasury	0	0	0	0	0	0	0%
8. FS: Health	0	0	0	0	0	0	0%
9. FS: Local government and Human Settlements	0	0	0	0	0	0	0%
10. WC: Transport and Public Works	0	0	0	0	0	0	0%
11. NC: Human Settlements	0	0	0	0	0	0	0%
12. NW: Office of the Premier	0	0	0	0	0	0	0%
13. NC: Office of the Premier	0	0	0	0	0	0	0%
14. GP: Human	0	0	0	0	0	0	0%

Settlements							
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Considering the strong connection between service delivery and access to information, it is even more disturbing to note within the national departments category, departments such as Home Affairs, Public Works and Human Settlements all registered deemed refusals. This association between social delivery and access to information also highlights the need to encourage access to information compliance at provincial level. The 2012 research showed a decline in compliance at the provincial level. Although there was a generally poor response from the provincial level, the provincial department of Human Settlements Western Cape and department of Agriculture Limpopo demonstrated best practice implementation through specific indicators i.e. Western Cape Human Settlement produced a section 14 Braille manual and requests system for blind requesters whereas Limpopo Agriculture provided ample financial resources for the implementation of PAIA, particularly within records management and also showed a significant political will which is proving significant in their drive for continued high levels of implementation.

CATEGORY	RECIPIENT
Best National Institution	Department of Higher Education
Best Provincial Department	Department of Human Settlement Western Cape Department of Agriculture Limpopo
Best Municipality	Mogale City Municipality
Best DIO	Stiaan Moolman, Department of Human Settlement Western Cape
Best Promoter	South African History Archives
Best User of PAIA	Centre for Environmental Rights

The departments that received these awards on the provincial and local government level must be commended for their outstanding work in putting the necessary mechanisms in place to promote openness and responsiveness within their establishments. They are recognized for their sterling work in going beyond their statutory obligations in implementing the PAIA but also putting other mechanisms in place that not only influence the implementation of the PAIA but also influence the responsiveness and openness of the institutions as well.

The SAHRC also recognizes and acknowledges the best user of the PAIA. In 2012/13, the award went to the Centre for Environmental Rights for their work in using PAIA to address public interest issues relating to the environmental sector, their assessment and monitoring of 17 public and 35 private bodies with over 100 PAIA requests submitted as well as their litigation efforts arising from the information requests.

Lastly, on the best promoter with the PAIA, the award went to the South African History Archives for their continued training with communities on the PAIA which includes how the PAIA works in practice and can be used by the public to access information from government, the procedures that are to be

followed as well as suggestions on the type of records the public should request from their local government. Their publications for community training have no doubt contributed to creating more public awareness on issues of accountability, transparency and openness in general and the PAIA in particular. Their development of a guide on the PAIA for paralegals as well as the online portal for tracking requests for information by civil society has also contributed immensely to the access to information community of practice.



Members of the CC, the Deputy Chairperson of the SAHRC, the SAHRC head of the PAIA Unit with winners of the golden key award.

The results of the Golden Key Research indicate that there is still a lot of work still needs to go into substantive compliance with the PAIA by public departments. The fact that that follow-up reviews by the SAHRC show that most of the recommendations from the SAHRC to assessed departments were not implemented is a cause for concern. Also, it is disturbing to note that from our ghosts requests exercise, a number of institutions that are compliant with the PAIA in terms of statutory obligations, could not grant access to records that are listed as automatically available. These results reinforces the point that has been consistently emphasized by the SAHRC that public institutions need the buy-in of the senior executive management and political leadership to allocate adequate financial and human resources for the substantive implementation of the PAIA in the respective public institutions.

Lastly, on recommendation from Parliament, the SAHRC also conducted a records management research that assessed all 43 national government departments on the state of records management in the respective departments particularly with regard to how classified information is handled by the departments and what governs the disclosure of classified information. The Departments of Defence, Military Veterans, Home Affairs, International Relations & Cooperation and the Department of Transport did not respond to the request throughout the six month period that we followed up with them. Below is a review of the questions and responses provided by the national departments.

3.4 Records Management Research Results

- Is there an efficient system for the storage and organization of records?

Most institutions have one but not centralized in all cases and a manual filing system is still prevalent.

- What system is used to organize records?

Most institutions have a file plan and in some instances, there are electronic filing systems but there are exceptional cases like the Department of Public Works' file plan that was last updated in 1983.

- What system is used to archive information?

A number of institutions comply with the National Archives Act while several have their own systems in place and in the case of PALAMA, they do not have an archiving system.

- Has a Records Manager been appointed?

Most institutions, with the exception of SARS, Departments of Communications, PALAMA, Arts and Culture as well as Department of Women, Children and People with Disabilities, have a records manager.

- Does the Records Manager above have any responsibilities in terms of PAIA implementation?

Departments such as Public Enterprises, Human Settlements, STATS SA, Communications, Agriculture, National Treasury and Economic Development have not aligned the PAIA functions with the records management unit.

- Are there rules governing the generation of a record?

Aside from the Department of Labour as well as Arts and Culture, all other national departments have a records management policy in place.

- Is there a list of categories of records held which cannot be disclosed?

A high number of public institutions are not complying with section 14 of the PAIA that requires a category of records which cannot be disclosed to be published. These include the departments of Communications, Agriculture, Forestry & Fisheries, Correctional Services, Economic Development, Sport and Recreation, Government Communications, Health, Science and Technology, State Security, Public Works, Human Settlements, Higher Education, PALAMA, Arts and Culture, IPID, Trade and Industry.

- Is the list disaggregated to show categories of records held which are available on request?

Again, given the inability of most institutions to comply with the PAIA section 14 manual, Departments of Communications, Agriculture, Forestry & Fisheries, National Treasury, Correctional Services, Economic Development, Health, Science and Technology, Tourism, Public Works, Higher Education, Public Service Administration, Stats SA, Trade and Industry do not have this list in accordance with the PAIA.

- Is the list disaggregated to show categories of records held which are routinely available?

Though the objective of the PAIA is to promote proactive disclosure of information, the departments of Communications, Agriculture, Forestry & Fisheries, Correctional Services, Sport and Recreation, Health,

Public Works, Higher Education, Public Service Administration, Public Enterprises, Water Affairs, IPID do not have this category of information.

- Is there a list of all categories of records held?

The failure of departments to have a list of all categories of records held is an indication of the failure of the departments to comply with section 14 of the PAIA, a statutory obligation on all public institutions. These departments are Correctional Services, Economic Development, Health, Public Works, Higher Education, Public Service Administration, PALAMA, Water Affairs, STATS SA and IPID.

- To what extent is the Protection of Information Act of 84 of 1982 used in refusing disclosure of information by your department and how does it feature in your implementation of PAIA?

Most departments responded that they do not apply the Protection of Information Act, except for the Department of National Treasury and COGTA.

- How does your department implement the Minimum Information Security Standards (MISS) policy?

With regard to the application of MISS, a number of public departments implement MISS. These are the Department of Communications, Agriculture, Forestry & Fisheries, National Treasury, Correctional Services, Economic Development, Sport and Recreation, GCIS, Health, Science and Technology, Tourism, State Security, SARS, Public Works, Social Development, DPSA, Public Enterprises, Arts and Culture, Environmental Affairs, Energy, Water Affairs, SAPS, IPID, Trade and Industry as well as department of Women, Children and People with Disabilities.

- Does your Department implement MISS in the classification, disclosure and refusal to disclose information to members of the public?

All national government departments except for the Department of Rural Development responded in the affirmative to this question.

The SAHRC's choice to randomly select institutions whose compliance with the PAIA would be monitored on an annual basis is based on the lack of financial resources that will enable the Commission to monitor compliance with the over 300 public departments that currently exist in South Africa. The SAHRC recognizes that public departments prioritize the reports they comply with from various institutions. As a result, the Commission has taken the innovative step to use the management performance assessment tool (MPAT) developed by the DPME to monitor compliance with the PAIA as well. We believe that by incorporating the PAIA into MPAT, we will be able to assess all public bodies on all levels of government as well as ensure 100% compliance with the assessment. A copy of the PAIA assessment standard can be found below:

2.10 Performance Area: Access to information	
2.10.1 Standard name: Promotion of Access to Information	
<p>Standard definition: The department follows the prescribed procedures of PAIA when granting requests for information.</p> <p>Importance of the standard: To encourage openness and to establish voluntary and mandatory mechanisms or procedures which give effect to the right of access to information in a speedy, inexpensive and effortless manner as reasonably possible, striving towards transparency, accountability and effective governance in the public sector.</p>	
<p>Relevant Legislation: The Promotion of Access to Information Act 2, 2000, Government Notice: No. R. 1244, Government Notice: No. R. 990, Government Notice: No. R. 187, Government Notice: No. R. 223</p>	
Standards	Evidence
<ul style="list-style-type: none"> • Department has not appointed a deputy information officer • Department does not have a manual on functions and index of records held by public body (PAIA section 14) • Department does not automatically issue and disclose records/notices (section 15) without a person having to request access at least once a year • Department fails to submit accurate report/s to the Human Rights Commission on how it handles information requests as required in section 32 of PAIA 	
<ul style="list-style-type: none"> • Department has appointed a deputy information officer(s). • Department has a section 14 manual but does not comply with all requirements of this section. • Department issued a section 15 notice but does not voluntarily disclose information and automatically make records available. • Department submits a Section 32 report to the Human Rights Commission annually but it is not fully compliant to the requirements of Section 32 	<ul style="list-style-type: none"> • Designation letter as deputy information officer(s) • Performance Agreement of the deputy information officer(s) • Roadmap documents for implementation of PAIA (Sections 14 Manual, Latest annual Section 32 Report, Section 15 Notice)

<ul style="list-style-type: none"> • Department has appointed a deputy information officer(s). • Department has a section 14 manual, updated annually which complies with all the requirements of this section. • Department issued a section 15 notice, voluntarily disclose information and automatically make records available. • Department submit a Section 32 report to the Human Rights Commission annually that is fully compliant to the requirements 	<ul style="list-style-type: none"> • Designation letter as deputy information officer(s) • Performance Agreement of the deputy information officer(s) • Manual in terms of section 14 • Section 15 Notice as gazetted by DOJCD (secondary data) • records management policy (enabling proper implementation of PAIA) • Section 32 report as submitted to SAHRC
<p>Level 3 plus:</p> <ul style="list-style-type: none"> • Management discussions informs compliance to the PAIA and the periodic review of the implementation plan 	<p>Level 3 plus:</p> <ul style="list-style-type: none"> • Report on PAIA compliance in annual report to Parliament • Minutes of management meeting where PAIA discussion took place and actions emanating from discussions • Process document on the review of the implementation plan (includes training of deputy information officers on PAIA)

Moderation Criteria
<ul style="list-style-type: none"> • Moderators to check whether evidence documents are valid for level 2 • Moderators to check whether the section 14 manual by the department is according to the requirements stipulated in PAIA Section • Moderators to check whether section 15 notice was submitted to the DOJCD • Section 32 reports was submitted to the SAHRC
<ul style="list-style-type: none"> • Moderators to check whether evidence documents fully meet the statutory requirements to enable implementation.
<p>Level 3 plus:</p> <ul style="list-style-type: none"> • Check whether resolutions taken in the management meetings are captured in the reviewed implementation plan

4. The Protection Mandate

All the findings of the compliance monitoring models adopted above has led to the generation of a list of substantive recommendations for the improvement of the PAIA in line with the protection mandate of the SAHRC. The SAHRC made recommendations to the Department of Justice on various provisions in PAIA that are in need of reform dealing with issues that had been previously brought to the attention of the department. Feedback from the department was still pending at the time of writing this report.

In the light of the passage of a model law on Access to Information in Africa by the African Commission on Human and People's Rights under the leadership of the Special Rapporteur on Freedom of Expression, Pansy Tlakula, the SAHRC recommends the amendment of PAIA taking into account this model law that has been endorsed by the African Union (AU). Below are the specific recommendations for the amendment of the PAIA when compared with the AU model law on freedom of information.

4.1 PAIA Amendments and the AU Model law on Access to Information in Africa

The model law on Access to Information for Africa is a detailed set of provisions which is non-binding but is used as a tool to guide law makers in developing national laws that give effect to the promotion of information disclosure in public and private institutions that exercise public functions. South Africa already has the PAIA which prescribes the manner and circumstances in which information is to be accessed but the objective here is to study the model law and use this to improve the provisions of PAIA to promote the objectives of ensuring that citizens can exercise their rights of access to information more efficiently and effectively. The suggested amendments are:

4.1.1 Duty to Create Records

Part 2, Section 6 of the AU model law imposes on organizations, a *“duty to create, keep, organize and maintain information.”*

This section explains clearly what is expected of each body with regards to records keeping. Firstly, it imposes an obligation for records to be created. This currently does not exist in the PAIA and as a result, hinders the transparency objectives of the PAIA. Public bodies recognize they are not obliged to create records, hence, they do not commit decisions into documenting making all the time and hinders monitoring and evaluation that is crucial to effective management. Since there is no such provision in the PAIA which dictates what is expected of organizations in this respect, the aforesaid provision should be incorporated into the PAIA.

Although Section 21 of the PAIA addresses the preservation of records of public bodies, it only applies to when a request is received and suggests that the preservation of the record(s) in question apply only to the particular record requested at that time and for a certain time period only.

Furthermore, this provision does not apply to information that is sought from private bodies. It is important to place an obligation on organizations to keep and record information because only through an effective records management system and policy in place can the right of access to information be realized.

4.1.2 Reduction of the timeframes to disclose information

The PAIA currently provides for information to be disclosed within 30 days and in exceptional cases, for an extension to be granted to a maximum of 30 days. While public institutions currently do not comply with this 30 day requirement, we nevertheless submit that the 30 day period is prolonged. The AU model law recommends in Section 15 that information must be disclosed within 21 days and further in section 15 (2) that where a request relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the information officer must within 48 hours after the request is submitted make a decision.

The PAIA does not make provision for information required to safeguard the life or liberty of persons. Since the right to life and the right to freedom and security are reflected in Section 11 and Section 12(1) respectively of the Constitution, then the provisions of the model law should be equally reflected in the PAIA particularly when information is sought to uphold and protect these rights.

4.1.3 Fees

In Section 22 (1) and Section 54 (1) of the PAIA, requesters earning above a specific threshold are required to pay fees when requesting information. Exercising the right of access to information is sometimes described as a luxury right given the many social service delivery problems that South Africa faces. However, the right of access to information is an important right that unlocks the demand for the realization of other tangible socio-economic rights. Access to information is not a luxury right and forms an important component of the protection of other constitutional human rights. Where fees are imposed to access information from government which is essentially a custodian of information that belongs to the people, the objectives of the PAIA is being compromised. The AU model law recognizes this important fact and places no obligation on people seeking information to pay fees. Some institutions have used the method of paying the prescribed fees or charging exorbitant fees that are not in accordance with the PAIA regulations to prevent the disclosure of records to requesters of information.

4.1.4 Notification to third parties

In the PAIA, no provision is made for when third parties cannot be located in obtaining an opinion to grant a request for information. The PAIA discusses “*notice to third parties*” in Section 47 and Section 71 respectively, however, places no legal obligation on private and public bodies to make sworn affidavits stating the process that they have followed and steps they have taken to locate the relevant third party. This shows a weakness in the PAIA because if third parties have not had the opportunity to represent themselves and their personal information is given out without their consent, this could be seen as a violation of their constitutional right to privacy.

The AU recommends in section 39(6) of the model Law that ‘where a third party cannot be located, an information officer must prepare and sign an affidavit stating all steps taken to locate the third party, and retain such affidavit.’

4.1.5 Oversight Mechanisms

Part 5 of the AU model law addresses what is referred to as an ‘oversight mechanism’ as well as how it must be applied. Here, the appointment, appointment criteria, as well as the powers and duties of

Information Officers and Deputy Information Officers are prescribed. Although the PAIA addresses the designation and delegation of Information Officers and Deputy Information Officers of public bodies in Section 17, it makes no reference as to how DIOs will be appointed and what their specific duties are.

There is also no provision highlighting this for private bodies and this is a very important aspect which should be addressed accordingly.

4.1.6 Sanctions

As per Section 70 (1) and Section 70 (2) of the AU model law, fines should be imposed on organizations who do not comply with making access to information possible and this provision should be set out in the PAIA. One of the biggest challenges of the PAIA is the inability of the SAHRC, the custodian of the law, to enforce some of the obligations of the PAIA that government departments are required to comply with. Thankfully, this is being remedied with the introduction of the Information Regulator in terms of the Protection of Personal Information Bill. There should be strict rules with regard to penalizing non compliance with provisions of the PAIA as introduced in the AU model law which also defines offences and implications should parties be guilty of the offences.

4.1.7 Request Forms

The PAIA requires information requests to be submitted through the submission of a detailed PAIA form by requesters. It also makes provision for information officers to assist requesters to complete forms in cases where they are unable to complete the forms themselves. In practice however, the completion of forms to access information constitutes a bureaucratic resistance to the objections of the PAIA. The AU model law only requires that information requests should be committed to writing in any form and where oral requests are made, for the information officers to record such requests in writing. This simplifies the process of accessing information and we believe that there would be a greater usage of the PAIA if the process of accessing information is less onerous. The SAHRC's experience in conducting community training on the PAIA indicates that people are reluctant to use the PAIA when they realize the cumbersome nature of accessing information in terms of the PAIA. NGOs and media entities have also laid similar complaints and we recommend to Parliament the removal of usage of forms to access records.

4.1.8 Submission of Implementation Plans and Annual Reports

In line with the AU Model Law, we recommend that public bodies should be mandated to annually submit their implementation plan on the PAIA to the Information Regulator and to deal with the PAIA compliance in their annual reports. This is consistent with the new PAIA MPAT standard which requires annual reporting to Parliament on the PAIA to attain the highest level of compliance with the PAIA implementation.

By incorporating these suggested amendments into the PAIA, we believe that the realization of the objectives of the PAIA will be greatly enhanced. Other recommendations for the improvement of the PAIA include PAIA section 32 Reporting.

4.1.9 Section 32 Reporting

The PAIA requires public departments to submit a section 32 report to the SAHRC which in turn must be collated by the SAHRC into an annual report that must be submitted to Parliament stating the number of

requests for information received by public institutions and how they were dealt with. The statistical data presently required in terms of section 32 is limiting in the sense that public bodies are required to generate generic data in their reports. No provisions are made for the disaggregation of data into requests for personal information and other types of requests. In this sense, the immense value which could be provided by the reports for analytical purposes is limited. An amendment for the expansion of section 32 reports should therefore be considered.

Section 32 also requires information which provides data for limited monitoring and insight into the practice and responsiveness of public bodies to requests. In order to facilitate a more substantive and informed monitoring, the SAHRC proposes an expansion to the subsections in section 32 to include reporting on matters which have been litigated on the basis of a refusal of access on grounds set out in the PAIA and the outcome of such litigation. The latter will provide a necessary and useful snapshot of the frequency of litigation, key issues prompting refusals and the degree to which requesters are approaching the courts for redress.

The SAHRC has also previously raised concerns about the absence of any clear directives within the legislation to enable it to test the veracity of the content of a section 32 report. It has come to the attention of the Commission that a number of public bodies are not tracking and reporting on requests submitted to them. Engagements with civil society organizations in the course of the SAHRC's compliance audits on a selected number of public institutions have produced evidence of requests submitted but which are not reflected in section 32 reports of the public body in question. This matter is exacerbated by the limited resources allocated to the SAHRC to execute its mandate in this regard, particularly, since it cannot conduct *in situ* checks on public bodies and their PAIA records.

The SAHRC also recommends that regulations stipulating deadlines for date of submission of section 32 reports to the SAHRC be passed. For purposes of expediency, the SAHRC has notified public bodies to submit their reports at the close of their financial year. This practice is supported by the need to have annual PAIA statistics which are concurrent with the financial year of most public bodies. The legislation, however, does not fix a date for final submission and the result has been that local government submits reports before the close of their financial year in June of each year while other public bodies submit at the end of March. This inconsistency has led to a distortion of statistics and reporting and has had a further impact on the SAHRC's ability to report on compliance with section 32 to Parliament. It is also recommended that amendments be effected to section 32 to include provisions which will require reporting on proactive disclosure such as frequency of proactive disclosure, means through which proactive disclosure is guaranteed in terms of accessibility and accuracy, and provision of any information of any internal action taken against deputy information officers for non performance of the PAIA obligations.

4.1.10 Section 46 Amendment

A key recommendation is that the requirements in section 46 be amended to be less stringent to allow more room for information to be disclosed in the public interest. The unduly restrictive nature of the override should be contextualized in the framework of the PAIA with consideration to its objectives and

to the practical operation of its provisions. Reliance on the override clauses mean that information which has a time-based premium is often of no consequence to requesters who may satisfy each of the two stringent tests in the provision. The SAHRC therefore recommends that the use of the word 'and' between subsections (a) and (b) should be amended to the word 'or', thereby lessening the burden on requesters who wish to rely on the provision and increase the right of access in a wider range of public interest matters.

5. Legislative landscape

Recognizing that there are two important laws that directly affect the right of access to information and the PAIA, the Commission looks forward to the passage of the long overdue Protection of Personal Information Bill and the establishment of the Information Regulator to exercise enforcement powers over the PAIA. Also, in light of the passage of the Protection of State Information Bill, a letter was written to the President highlighting some of our concerns with regard to the constitutionality of the Bill based on the findings of a legal opinion commissioned by the SAHRC from a senior counsel. A response from the Presidency is still pending.

6. Section 84 Reporting

In terms of section 84 of the PAIA, the Commission is obliged to submit a detailed report on how public departments handle information requests in a financial year. Below is the detailed analysis of the reports received from public departments in the 2012/13 financial year.

6.1 Section 32 Compliance Report 2012/13

The PAIA places an obligation on all public bodies to submit annual reports to the Commission on the number of requests received by each public body and how the requests were processed. This requirement is mandatory for all public bodies. The objective of the section 32 report is to establish the usage of the PAIA by the public and to test the readiness of public bodies to respond to requests for information. This is determined by the number of requests for information granted by the public body and the number of cases that go on appeal to the relevant authorities and the number of court applications that arise from requests for information that were refused.

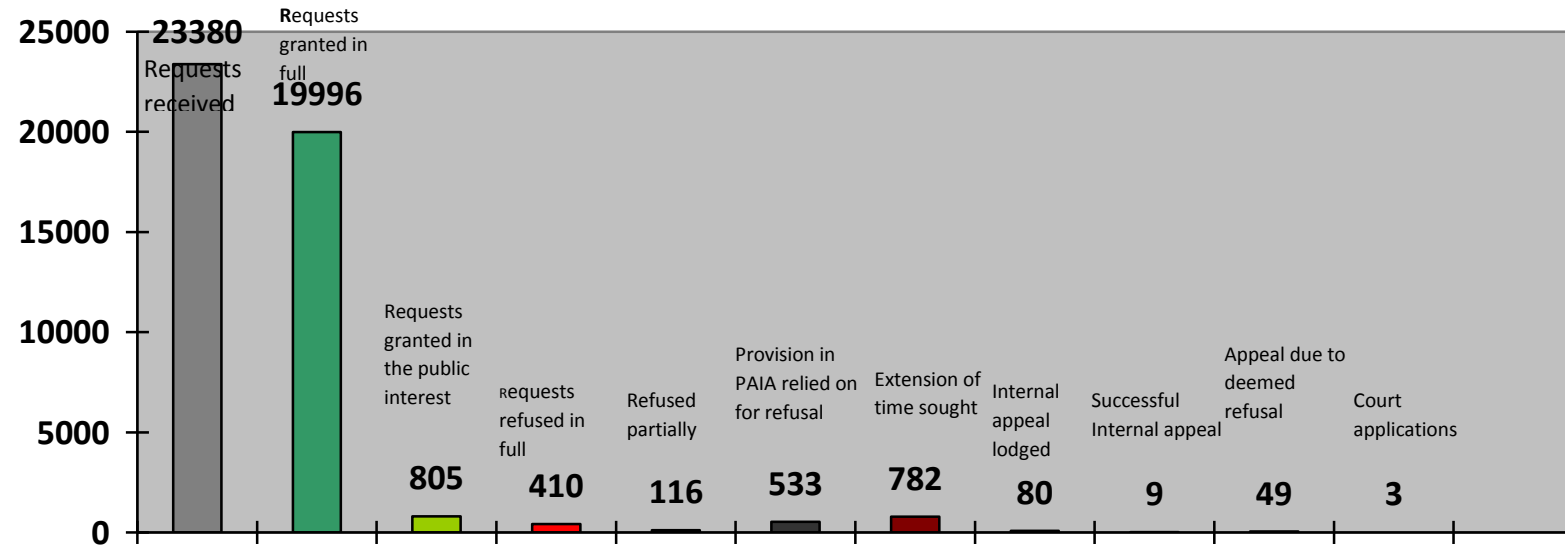
Since the passage of the PAIA, compliance by public bodies with regard to the submission of section 32 reports has been low. In cases where the reports are submitted, many of the reports received do not accurately capture the requirements of section 32. In the reports however received, there is an increasing trend by public bodies not to comply with the provisions of the PAIA in dealing with information requests. Some reports submitted show that a certain number of requests received were refused, however, the report will also show that in refusing those requests, no provisions of the PAIA were applied to refuse the request. The PAIA clearly stipulates that in instances where a public body refuses to grant access, such refusal must be based on the provisions of the PAIA that permit a public body to restrict access to a record. The status quo demonstrates that public bodies are not relying on

the grounds of refusal stipulated in the PAIA to refuse requests for information. This is an indication that the right to information is infringed unjustifiably and that requests for information are not dealt with accordingly.

Inaccurate reporting demonstrates that institutions do not have mechanisms in place that enable the institution to track and monitor requests received, the officials dealing with requests have not been trained on the PAIA thus interpreting and applying the PAIA incorrectly.

6.2. National Departments

Only 28 of the 43 national departments submitted section 32 reports. A noticeable concern for this reporting period is that a number of departments that had submitted reports in the 2011/2012 cycle did not submit in the 2012/13 financial year.



The statistics reflected are based on the section 32 reports received from government departments as at 31st July 2013. The high volume of requests received is due to the high figures submitted by the South African Police Services (SAPS) and the Department of Justice. On closer examination of the reports received, only the SAPS granted requests in the public interest and several public departments including the Presidency, Home Affairs and Environmental Affairs in more than half of the requests received, sought an extension of time beyond the 30 day initial period that PAIA provides to deal with requests. The 30 day requirement is already unduly long to deal with requests without any exception for expediting the processing of requests for information where a delayed response may adversely affect the requester. Seeking an extension of the time period raises concerns about the effectiveness of the internal processes of national departments to handle requests for information. Only 3 court applications were reported to have been only instituted in terms of requests that were denied. This reflects the challenges with seeking legal recourse where requesters feel their right of access to information has been infringed. The urgent establishment of the Information Regulator in terms of the Protection of Personal Information Bill as recently passed by Parliament is therefore required to provide alternative, affordable legal recourse for requesters of information.

6.3. Provincial Departments

Limpopo and Western Cape Provincial Departments achieved 100% compliance in terms of submitting the section 32 reports for 2012/13. There is a continued lack of compliance in the Eastern Cape, North West and Northern Cape Provinces with a handful of departments submitting reports in the provinces. The Free State, Mpumalanga, Gauteng and Kwa Zulu Natal Provinces improved slightly.

At the provincial level, a total of 1305 requests were submitted in terms of reports received from provincial departments as at 31st July 2013. A total of 1096 requests were granted in full which reflects a better responsiveness at the provincial level if compared with the national level. This figure is positive mostly because there was an alarming non-compliance with the submission of section 32 reports in most of the provinces.



Eastern Cape	46	34	0	3	1	3	2	6	1	1	5	
Free State	145	118	3	3	3	4	2	1	0	0	0	
Gauteng	144	77	20	28	3	5	13	13	3	6	4	
KwaZulu-Natal	455	436	1	10	2	8	20	1	0	1	1	
Limpopo	227	172	6	7	9	13	10	5	1	1	0	
Mpumalanga	8	3	0	3	0	2	0	0	0	0	0	
Northern Cape	8	4	0	1	0	0	1	1	1	1	0	
North West	3	0	0	2	0	2	0	0	0	0	1	
Western Cape	270	252	72	5	8	1	29	3	1	0	0	

6.4. Municipalities

Compliance at local government has seen no improvement. Since the PAIA was passed, over 90% of municipalities fail to comply with the PAIA and in 2012/13, the dismal record remains consistent. Given the importance of the right of access to information in the exercise of other constitutional rights, emphasis needs to be placed on addressing the compliance of municipalities on how they handle information requests and in turn improve service delivery.

At the local government level, a total of 656 requests were received based on reports received from local governments as at 31st July 2013. A total of 441 requests were granted in full with 4 requests being released in the public interest. 66 requests were refused in full and despite this; there was only 1 court application to seek the release of the records that access was denied to. Again, this reflects the weakness in seeking redress for the realization of the right of access to information where the requests were denied unlawfully.

6.5. Chapter Nine institutions

Compliance by the Chapter 9 institutions is also a cause for concern. As institutions established by the Constitution to support democracy, it is worrisome that the institutions are not compliant with requirements of laws that flow directly from a constitutional human right and their responsiveness to members of the public cannot be determined. The Public Protector is required to submit in terms of s 84 (b) (x), the number of PAIA complaints lodged and the nature and outcome of the complaint. This has not been done in recent years.

6.6. Challenges

The SAHRC's lack of enforcement powers in terms of the PAIA has hindered its ability to be able to enforce and demand compliance by public bodies with regard to section 32 reporting. Non compliance with section 32 reporting has not been listed as an offence in the PAIA though compliance with the development of a section 14 manual by public bodies has been listed as an offence. With the SAHRC's powers set to be transferred to the Information Regulator which will be set up under the Protection of Personal Information Bill, we hope that the new body will use its enforcement powers to ensure compliance by public bodies. All the non complying departments at the national, provincial and local departments have since been reported to the DPME to enforce compliance.

6.7. Trends

Reports submitted in this reporting period have demonstrated that public officials are not applying the provisions of the PAIA accordingly. Statistics in the reports are in many instances inaccurate. Another noticeable trend is the increase in appeals based on deemed refusals. Deemed refusals are instances when public bodies fail to respond to a request. This demonstrates a disregard for requests submitted and is problematic for the realization of transparency imperatives that PAIA seeks to promote. The individual institutional report of the public bodies that submitted a section 32 report is recorded below.

The institutions recorded below are those institutions that submitted their section 32 report within the required time frames and the late submissions that were received before printing this report.

6.8. Institutional Compliance Reports

National Government

COMPLIANT NATIONAL DEPARTMENTS
Office of the Presidency
Department of Public Works
Department of Agriculture, Forestry and Fisheries
Department of Defence
Department of Basic Education
Department of Communications
Department of Cooperative Governance
Department of Correctional Services
Department of Environmental Affairs
Department of Health
Department of Human Settlements
Department of Mineral Resources
Department of Justice and Constitutional Development
Department of Labour
Department of Public Service and Administration
Department of Rural Development and Land Reform
Department of Public Enterprises
Department of Science and Technology
Department of Energy
Department of Water Affairs
Department of Higher Education and Training
Department of Home Affairs
Department of Economic Development
Government Communication Systems

Public Administration, Leadership and Management Academy
National Treasury
South African Polices Service
South African Revenue Services

NON-COMPLIANT NATIONAL DEPARTMENTS

Department of Arts and Culture
Department of Trade and Industry
Department of International Relations and Cooperation
Department of Military Veterans
Civilian Secretariat of Police
Department of Social Development
Department of State Security
Department of Traditional Affairs
Department of Transport
Department of Tourism
Independent Police Investigation Directorate
Sport and Recreation South Africa
Statistics South Africa
Department of Women, Children and People with Disabilities
Department of Performance Monitoring and Evaluation

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	17	0	0	2	3	17	9	2	0	1	0	
Department of Communications	7	7	0	0	0	0	1	0	0	0	0	
Department of Justice & Constitutional Development	1131	854	0	4	30	34	210	6	4	1	0	
Public Administration Leadership and Management Academy	0	0	0	0	0	0	0	0	0	0	0	
Department of Economic Development	3	2	0	1	0	1	0	0	0	0	0	
Department of Science and Technology	2	1	0	0	1	1	0	0	0	0	0	
Department of Defence	33	9	0	0	0	0	26	3	1	3	0	1 request was referred to the relevant department
Department of Public	2	2	0	0	0	0	1	1	1	0	0	

Enterprises													
Department of Energy	49	23	0	4	20	24	16	2	0	1	0		
Department of Mineral Resources	510	182	0	325	0	325	0	3	0	0	0	Internal application pending	
Department of Cooperative Governance	2	2	0	0	0	0	0	0	0	0	0		
Department of Correctional Services	70	37	0	1	0	1	33	1	0	0	0		
Department of Environmental Affairs	29	21	0	0	1	1	19	1	0	0	0	-Appeal lodged has not been finalized -Four requests were transferred to other departments -4 affidavits issued to requesters confirming that the department is not in possession of the documents sought by requester -1 request is pending	
Department of Agriculture, Forestry and Fisheries	107	83	0	20	2	17	15	6	2	2	0		
Department of Basic Education	15	10	0	3	0	0	3	1	1	1	0	2 requests were transferred to the relevant department	
Department of	11	7	0	3	0	0	1	1	0	0	0		

Public Works													
National Treasury	9	2	0	3	1	4	0	1	0	0	1		
Department of Water Affairs	14	5	0	2	0	2	4	1	0	0	1		
South African Police Services	20 817	18 522	805	34	48	82	103	7	0	1	0		
Department of Rural Development and Land Reform	14	4	0	2	1	3	8	4	0	2	1		
Department of Public Service Administration	0	0	0	0	0	0	0	0	0	0	0		
Department of Labour	4	2	0	0	2	2	0	1	0	1	0		
Department of Health	45	8	0	2	0	2	0	0	0	0	0		-33 requests transferred to the relevant department -2 requests pending
Department of Human Settlements	5	3	0	1	0	0	1	1	0	0	0		
Department of Higher Education and Training	5	4	0	0	0	0	0	0	0	0	0		-1 request was transferred.
Department of Government Communications and Information Systems	7	3	0	0	2	2	0	0	0	0	0		
South African Revenue Services	22	1	0	9	5	12	1	2	0	0	0		
Department of Home Affairs	450	202	0	3	0	3	331	36	0	36	0		

Provincial Governments

EASTERN CAPE PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier

Department of Rural Development and Agrarian Reform

Department of Education

Department of Safety and Liaison

Department of Local Government and Traditional Affairs

Department of Transport

Department of Human Settlements

EASTERN CAPE PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Provincial Planning and Treasury

Department of Economic Development, Environmental Affairs and Tourism

Department of Health

Department of Roads and Public Works

Department of Social Development

Department of Sports, Recreation, Arts and Culture

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
EASTERN CAPE												
Office of the Premier	7	5	0	2	0	2	1	0	0	0	0	
Department of Safety and Liaison	0	0	0	0	0	0	0	0	0	0	0	
Department of Education	29	24	0	0	0	0	0	5	0	0	5	
Department of Local Government and Traditional Affairs	7	3	0	1	1	1	0	0	0	0	0	
Department of Transport	0	0	0	0	0	0	0	0	0	0	0	
Department of Human Settlements	1	0	0	0	0	0	1	1	1	1	0	
Department of Rural Development and Agrarian Reform	2	2	0	0	0	0	0	0	0	0	0	

FREE STATE PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier

Department of Agriculture and Rural Development

Department of Education

Department of Health

Department of Human Settlements

Department of Public Works

Department of Cooperative Governance and Traditional Affairs

Provincial Treasury

Department of Sports, Arts and Culture

Department of Police, Roads and Transport

FREE STATE PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Social Development

Department of Economic Development, Tourism and Environmental Affairs

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
FREE STATE												
Office of the	84	73	0	0	0	0	1	0	0	0	0	10 requests

Premier													transferred
Department of Public Works	1	0	0	0	0	0	0	0	0	0	0	0	
Treasury	3	3	0	0	1	0	0	0	0	0	0	0	
Department of Agriculture and Rural Development	2	2	0	0	0	0	0	0	0	0	0	0	
Department of Sports, Arts and Culture and Recreation	26	26	0	0	0	0	0	0	0	0	0	0	
Department of Health	23	14	0	3	0	3	0	0	0	0	0	0	
Department of Human Settlements	2	0	0	0	1	1	0	1	0	0	0	0	The department has not accounted for the 1 of the requests received
Department of Education	3	0	0	0	1	0	1	0	0	0	0	0	
Department of Cooperative Governance and Traditional Affairs	0	0	0	0	0	0	0	0	0	0	0	0	
Department of Police, Roads and Transport	1	0	0	0	0	0	0	0	0	0	0	0	

GAUTENG PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier

Department of Agriculture and Rural Development

Department of Economic Development

Department of Finance

Department of Local Government and Housing

Department of Health and Social Development

Department of Sports, Culture and Recreation

Department of Roads and Transport

Department of Community Safety

Provincial Treasury

GAUTENG PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Education

Department of Infrastructure Development

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
GAUTENG												
Office of the Premier	13	1	0	1	1	2	3	4	2	3	0	
Department of Sports, Arts and Culture	37	1	20	13	0	0	1	1	0	0	1	
Department of Agriculture and Rural Development	31	22	0	7	2	1	2	2	0	0	1	
Department of Economic Development	4	1	0	0	0	0	1	2	0	1	0	
Department of Health and Social	0	0	0	0	0	0	0	0	0	0	0	

Development													
Department of Finance	2	0	0	2	0	2	1	2	0	0	0		
Department of Roads and Transport	7	7	0	0	0	0	2	0	0	0	0		
Department of Community Safety	5	2	0	3	0	0	1	1	0	1	1		
Department of Local Government and Housing	45	43	0	2	0	0	2	1	1	1	1		
Gauteng Treasury	0	0	0	0	0	0	0	0	0	0	0		

KWAZULU NATAL PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier

Department of Agriculture and Rural Development

Department of Health

Department of Cooperative Government and Traditional Affairs

Department of Human Settlement

Department of Community Safety

Department of Public Works

Department of Arts and Culture

Department of Social Development

KWAZULU NATAL PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Education

Department of Economic Development, Environment and Tourism

Provincial Treasury

Department of Transport

Department of Sports and Recreation

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
KWAZULU NATAL												
Office of the Premier	4	3	0	1	0	1	0	0	0	0	0	
Department of Agriculture and Environmental Affairs	12	8	0	2	2	2	6	0	0	0	0	
Department of Human Settlements	1	1	1	0	0	0	0	0	0	0	0	
Department of Social Development	5	3	0	2	0	2	1	0	0	0	1	
Department of Cooperative Governance and Traditional Affairs	6	2	0	3	0	3	1	1	0	1	0	
Department of Public Works	6	6	0	0	0	0	0	0	0	0	0	
Department of Health	426	413	0	1	0	0	12	0	0	0	0	
Department of Arts and Culture	1	0	0	1	0	0	0	0	0	0	0	

Department of Community Safety and Liaison	0	0	0	0	0	0	0	0	0	0	0	
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LIMPOPO PROVINCIAL GOVERNMENT: 100% COMPLIANT
Office of the Premier
Department of Agriculture and Rural Development
Department of Education
Department of Economic Development, Environment and Tourism
Department of Social Development
Department of Health
Department of Cooperative Governance, Local Government and Housing
Department of Safety, Security and Liaison
Provincial Treasury
Department of Roads and Transport
Department of Public Works
Department of Sports , Arts and Culture

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
LIMPOPO												
Office of the Premier	7	2	0	0	1	0	0	0	0	0	0	
Department of Cooperative Governance, Human Settlement and Traditional Affairs	12	6	6	0	0	0	0	0	0	0	0	
Department of Agriculture and Rural Development	9	0	0	3	2	3	0	2	0	1	0	
Department of Public Works	6	0	0	3	2	5	4	0	0	0	0	1 of the requests was withdrawn by the requester
Department of Social Development	0	0	0	0	0	0	0	0	0	0	0	
Department of Health	136	136	0	0	0	0	0	0	0	0	0	
Department of Economic Development,	11	4	0	0	0	0	1	0	0	0	0	

Environment and Tourism												
Department of Roads and Transport	26	6	0	1	4	5	5	1	1	0	0	
Department of Safety Security and Liaison	2	2	0	0	0	0	0	0	0	0	0	
Department of Sports, Arts and Culture	1	1	0	0	0	0	0	0	0	0	0	
Department of Education	4	2	0	0	0	0	0	2	0	0	0	
Provincial Treasury	13	13	0	0	0	0	0	0	0	0	0	

MPUMALANGA PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier

Department of Public Works, Roads and Transport

Department of Finance

Department of Co-operative Governance and Traditional Affairs

MPUMALANGA PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Health

Department of Human Settlements

Department of Community Safety, Security and Liaison

Department of Social Development

Department of Culture, Sport and Recreation

Department of Agriculture and Land Administration

Department of Economic Development, Environment and Tourism

Department of Education

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
MPUMALANGA												
Office of the Premier	2	0	0	1	0	1	0	0	0	0	0	1 request was transferred in terms of section 20
Department of Cooperative Governance and Traditional Affairs	2	1	0	1	0	0	0	0	0	0	0	
Department of Finance	2	1	0	1	0	1	0	0	0	0	0	
Department of Public Works, Roads and Transport	2	1	0	0	0	0	0	0	0	0	0	1 request transferred in terms of section 20

NORTHERN CAPE PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier

Department of Roads and Public Works

Department of Cooperative Governance, Human Settlements and Traditional Affairs

NORTHERN CAPE PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Agriculture, Land Reform and Rural Development

Department of Education

Department of Environment and Nature Conservation

Department of Social Development

Provincial Treasury

Department of Sports, Arts and Culture

Department of Economic Development, Environment and Tourism

Department of Health

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
NORTHERN CAPE												
Office of the Premier	3	1	0	0	0	0	0	0	0	0	0	2 requests transferred in terms of section 20
Department of Roads and Public Works	4	3	0	1	0	0	1	1	1	1	0	
Co-operative	1	0	0	0	0	0	0	0	0	0	0	The request was

Governance, Human Settlements and Traditional Affairs												transferred in terms of section 20
Department of Economic Development and Tourism	0	0	0	0	0	0		0	0	0	0	

NORTH WEST PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Department of Social Development, Women, Children and People with Disabilities

NORTH WEST PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Office of the Premier

Department of Agriculture, Land Reform and Rural Development

Department of Education

Department of Local Government and Traditional Affairs

Department of Health

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 Economic Development, Environment and Tourism

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))
NORTH WEST											
Department of Social Development, Women, Children and People with Disabilities	3	0	0	2	0	2	0	0	0	0	1 request transferred in terms of section 20

WESTERN CAPE PROVINCIAL GOVERNMENT: 100% COMPLIANCE

Office of the Premier

Department of Agriculture

Department of Education

Department of Local Government

Department of Health

Department of Human Settlements

Department of Social Development

Department of Community Safety

Department of Economic Development and Tourism

Department of Public Works, Roads and Transport

Department of Environmental Affairs and Planning

Provincial Treasury

Department of Cultural Affairs and Sport

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))
WESTERN CAPE											
Office of the Premier	42	42	0	0	0	0	0	0	0	0	0
Department of	0	0	0	0	0	0	0	0	0	0	0

Agriculture											
Department of Community Safety	0	0	0	0	0	0	0	0	0	0	0
Department of Cultural Affairs and Sport	6	6	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	71	67	71	0	0	0	19	0	0	0	0
Department of Health	120	117	0	2	1	0	0	1	0	0	0
Department of Human Settlements	6	6	0	0	0	0	0	0	0	0	0
Department of local government	0	0	0	0	0	0	0	0	0	0	0
Department of Social Development	3	1	1	1	0	0	0	1	0	0	0
Department of Transport and Public Works	12	4	0	1	7	0	9	0	0	0	0
Department of Education	9	8	0	1	0	1	1	1	1	0	
Provincial Treasury	1	1	0	0	0	0	0	0	0	0	

Local Governments

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
EASTERN CAPE												
Amathole Municipality	2	1	0	0	0	0	0	0	0	0	0	1 request transferred to another municipality
GAUTENG												
Mogale City	15	13	0	2	0	0	0	0	0	0	0	
Sedibeng Municipality	5	4	0	0	0	0	1	0	0	0	0	1 request transferred to a relevant Department
Emfuleni Municipality	7	6	0	0	0	0	1	0	0	0	0	1 request transferred to a relevant Department
Ekurhuleni Municipality	22	14	0	0	2	0	3	0	0	0	0	6 requests under consideration
Lesedi Municipality	2	0	0	0	0	0	2	0	0	0	0	
Madibeng Municipality	8	8	0	0	0	0	0	0	0	0	0	
Westonaria Municipality	1	1	0	0	0	0	0	0	0	0	0	

City of Johannesburg	74	63	0	4	2	0	2	2	2	0	0	
FREE STATE												
Kgatelopele Municipality	1	1	0	0	0	0	0	0	0	0	0	0
Sesotho Municipality	0	0	0	0	0	0	0	0	0	0	0	
KWAZULU- NATAL												
Ulundi Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
City of Umhlathuze Municipality	13	9	0	1	1	1	0	0	0	0	0	1 request is pending 1 request was not granted because the record does not exist
Endumeni Municipality	0	0	0	0	0	0	0	0	0	0	0	
Ethekwini Municipality	90	54	0	2	4	6	31	2	1	1	0	
Amajuba Municipality	0	0	0	0	0	0	0	0	0	0	0	
Mandeni Municipality	0	0	0	0	0	0	0	0	0	0	0	
Ugu Municipality	5	5	0	0	0	0	0	0	0	0	0	
Nquthu Municipality	73	73	0	0	0	0	0	0	0	0	0	
NORTHERN CAPE												
Frances Baard Municipality	0	0	0	0	0	0	0	0	0	0	0	
Siyanda Municipality	0	0	0	0	0	0	0	0	0	0	0	
Umsobomvu Municipality	0	0	0	0	0	0	0	0	0	0	0	
NORTH WEST												

City of Matlosana	5	4	0	1	0	1	0	0	0	0	0	
WESTERN CAPE												
West Coast District Municipality	11	11	0	0	0	0	0	0	0	0	0	
Drakenstein Municipality	10	3	0	0	0	0	0	0	0	0	0	4 requests pending and 3 withdrawn by the requester
Overstrand Municipality	46	26	3	17	2	17	0	0	0	0	0	
Overberg Municipality	1	1	0	0	0	0	0	0	0	0	0	
Matzikama Municipality	1	1	0	0	0	0	0	0	0	0	0	
City of Cape Town	213	115	0	22	13	35	7	2	1	1	0	
Cape Winelands Municipality	0	0	0	0	0	0	0	0	0	0	0	
Saldanha Bay Municipality	13	10	0	0	0	0	21	0	0	0	0	
MPUMALANGA												
Mbombela Municipality	1	0	0	0	0	0	0	0	0	0	0	The municipality has not taken any action on the request received
Umjindi Municipality	0	0	0	0	0	0	0	0	0	0	0	
LIMPOPO												
Capricorn District Municipality	2	0	0	1	0	0	0	0	0	0	0	
Makhado Municipality	5	4	0	0	0	0	0	0	0	0	0	1 request is unaccounted for
Polokwane Municipality	27	14	1	13	0	0	0	0	1	3	1	
Molemole Municipality	3	0	0	3	0	3	0	0	0	0	0	

Chapter Nine Institutions

CHAPTER NINE 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
Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities	0	0	0	0	0	0	0	0	0	0	0	
South African Human Rights Commission	1	0	0	0	1	1	0	0	0	0	0	
Public Service Commission	3	3	0	0	0	0	0	0	0	0	0	
Auditor General South Africa	0	0	0	0	0	0	0	0	0	0	0	

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
AGRISETA	0	0	0	0	0	0	0	0	0	0	0	
Accounting Standards Board	0	0	0	0	0	0	0	0	0	0	0	
FASSET	0	0	0	0	0	0	0	0	0	0	0	
TELKOM SA LTD	5	2	0	2	1	0	0	0	0	0	0	
Special Investigations Unit	1	0	0	1	0	1	0	0	0	0	0	
Council for Medical Schemes	27	23	0	4	0	4	0	0	0	0	0	
Road Accident Fund	4287	4214	0	0	0	0	73	0	0	0	0	73 requests for information have not been accounted for. The report makes reference to 73 requests for extensions but it does not indicate whether the request s were finalized
Market Theatre Foundation	0	0	0	0	0	0	0	0	0	0	0	

South African National Biodiversity Institute	1	1	0	0	0	0	0	0	0	0	0	
Magistrates Commission	3	3	0	0	0	0	0	0	0	0	0	
ESKOM	46	17	0	7	11	0	16	2	1	0	0	4 requests are pending
North West University	27	24	0	3	0	3	0	0	0	0	0	
Water Research Commission	0	0	0	0	0	0	0	0	0	0	0	
University of the Free State	1	0	0	0	0	0	0	0	0	0	0	The request received is pending
National Research Foundation	0	0	0	0	0	0	0	0	0	0	0	
Dube Trade Port Corporation	21	21	0	0	0	0	0	0	0	0	0	
Free State Development Corporation	1	1	0	0	1	2	0	0	0	0	0	Inaccurate report: the institution received one request and has granted the request in full, however the report submitted reflects that one request was refused partially. This contradicts the indication that the request received was granted in full
Transport Education and Training Authority	0	0	0	0	0	0	0	0	0	0	0	
South African Social	716	714	0	2	0	2	1	0	0	0	0	

Security Agency													
WRSETA	0	0	0	0	0	0	0	0	0	0	0	0	
Land and Agricultural Development Bank of South Africa	142	60	0	0	0	0	0	0	0	0	0	0	82 requests have not been accounted for. The institution has only granted 60 requests of the 142 received
Ithala Development Finance Corporation	0	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	0	
Independent Regulatory Board of Auditors	3	0	0	3	0	3	0	0	0	0	0	0	
Development Bank of South Africa	3	3	0	0	0	0	1	0	0	0	0	0	
South African Reserve Bank	4	0	0	3	1	4	0	0	0	0	0	0	
Airports Company South Africa	1	0	0	0	0	0	0	0	0	0	0	0	Institution did not process the request received
Gauteng Gambling Board	0	0	0	0	0	0	0	0	0	0	0	0	
Umgeni Water	3	1	0	0	2	0	0	0	0	0	0	0	
Legal Aid South Africa	3	0	0	0	3	0	2	0	0	0	0	0	

7. Conclusion

Overall, the state of compliance with the PAIA remains dismal in the public sector. A shadow report produced by the PAIA civil society network shows that release of records in the public service is at an all time low of 16 percent and the number of deemed refusals when internal appeals are made is 62 percent for the 2012/13 period. Fifty-Four percent of the requests submitted were deemed refusals.⁷ Insufficient emphasis has been placed by public institutions on implementing transparency practices that will build public trust and confidence in governance. The PAIA gives effect to the right of access to information; this right can be a powerful tool in the realization and protection of other human rights. The PAIA is the foundation for improving transparency and accountability. The NDP also acknowledges that *'the state has been poor at making information available timeously and in a form accessible to all citizens. Government officials are often reluctant to provide information when it is requested. Requests for information are routinely ignored, despite the existence of the Promotion to Access to Information Act. There is endemic lack of compliance. Ineffective implementation of the Promotion of Access to Information Act is due to wilful neglect, lack of appreciation of the importance of the right, an institutional culture of risk aversion and/or secrecy and a lack of training.'*⁸

The South African Government, through the State President, has also acknowledged the importance in this shift in accessing information. The South African government is a founding member of the Open Government Partnership (OGP) and has tabled key commitments on open government before the Partnership, the first set of commitments were tabled at the Heads of State summit that took place on the sidelines of the UN General Assembly on 20 September 2011. It was also at this summit that the heads of state from the 8 OGP countries adopted a Declaration on Open Government. This Declaration included the principle to *"...increase our efforts to systematically collect and publish data on government spending and performance for essential public services and activities. We commit to pro actively provide high value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and in formats that facilitate reuse"*. The second set of commitments was tabled at the OGP Annual summit in London on the 2nd of November 2013 with emphasis placed on access to information for improving accountability in government.

⁷ The statistics were generated from 236 reports submitted to 95 public bodies by 6 civil society organizations.

⁸ National Planning Commission *National Development Plan 2030 – Chapter 14: Fighting Corruption*. 2012

Recognizing the powerful commitment that the State President has committed the South African Government to, it is important that public institutions begin to embrace the principles and objectives of PAIA to disclose records, not only when a request is made, but also through proactive disclosure that will inform greater public participation and active citizenship which the South African constitutional democracy promotes.