

PART II

3 GUIDE OF SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The South African Human Rights Commission has at the date of printing hereof not yet compiled the guide contemplated in Section 10 of the Act. The guide will contain such information as may reasonably be required by a person who wishes to exercise any right contemplated in the Act. Any enquiries regarding this guide should be directed to:

The South African HUMAN RIGHTS COMMISSION,

at PAIA Unit (THE RESEARCH AND DOCUMENTATION DEPARTMENT),

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PART III

3.1 RECORDS OF THE PRIVATE BODY

This clause serves as a reference to the records that the Private Body holds in order to facilitate a request in terms of the Act.

The information is classified and grouped according to records relating to the following subjects and categories:

It is recorded that the accessibility of the documents listed herein below, may be subject to the grounds of refusal set out hereinafter or as provided for in the Act.

The head of the private body may, in addition and on a voluntary basis, also publish notices in terms of Section 52(2) of the Act regarding categories of records, which are available without a person having to request access in terms of the Act.

3.2 PRIVATE BODY DOCUMENTS AND RECORDS

3.2.1 INCORPORATION DOCUMENTS AND RECORDS

3.2.1.1 Company secretarial documents

3.2.1.2 Constitution of the business

3.2.1.3 Memorandum and Articles of Association

- 3.2.1.4 Shareholders Agreement
- 3.2.1.5 Records of Board of Directors meetings
- 3.2.1.6 Records of Shareholders meetings

**Please note – the above records may be available at auditor’s /
book-keeper’s / accountant’s office**

3.2.2 FINANCIAL DOCUMENTS AND RECORDS

- 3.2.2.1 Regional Services Council records
- 3.2.2.2 VAT records
- 3.2.2.3 Tax records
- 3.2.2.4 PAYE records
- 3.2.2.5 UIF records
- 3.2.2.6 Stock records
- 3.2.2.7 Asset inventory
- 3.2.2.8 Invoices
- 3.2.2.9 Monthly Statements
- 3.2.2.10 Credit notes
- 3.2.2.11 Savings Account records and statements
- 3.2.2.12 Cheque Account records and statements
- 3.2.2.13 Cash records
- 3.2.2.14 Financial reports
- 3.2.2.15 General financial documentation and other accounting records

3.2.3 OPERATIONAL DOCUMENTS AND RECORDS

- 3.2.3.1 Supply Agreements
- 3.2.3.2 Exchange Control Regulation records
- 3.2.3.3 Internal telephone directory
- 3.2.3.4 Legal and insurance records and correspondence
- 3.2.3.5 Proof of delivery forms
- 3.2.3.6 Goods received vouchers
- 3.2.3.7 Records regarding written product and service specifications
- 3.2.3.8 Permits, licences, consents, approvals, authorisations, applications and registrations
- 3.2.3.9 Product / Service manuals
- 3.2.3.10 Customer database
- 3.2.3.11 Correspondence with customers
- 3.2.3.12 Customer account records
- 3.2.3.13 Sales records
- 3.2.3.14 Production records
- 3.2.3.15 Records with regards to scheduling and supply of goods
- 3.2.3.16 Costing/quoting records

These records include, but are not limited to records which pertain to the Private Body's own affairs.

3.2.4 HUMAN RESOURCES DOCUMENTS AND RECORDS

Personal records provided by employees and other records including but not limited to:

- 3.2.4.1 Employment contracts / Letter of Appointment
- 3.2.4.2 Salary advice slips / Remuneration records including records relating to increases
- 3.2.4.3 Curriculum Vitae

- 3.2.4.4 Leave records
- 3.2.4.5 Disciplinary codes, procedures and records
- 3.2.4.6 Performance management records
- 3.2.4.7 Records of Management meetings
- 3.2.4.8 Medical history records
- 3.2.4.9 Long service award records
- 3.2.4.10 Training records
- 3.2.4.11 Employment Equity Plan
- 3.2.4.12 Workplace Skills Plan
- 3.2.4.13 SETA records
- 3.2.4.14 Attendance register
- 3.2.4.15 Bargaining Council records
- 3.2.4.16 Provident Fund records
- 3.2.4.17 Pension Fund records
- 3.2.4.18 Unemployment Insurance records
- 3.2.4.19 Medical aid records
- 3.2.4.20 Records relating to deductions, statutory or otherwise

“Employees” refers to any person who works for, or provides services to or on behalf of the Private Body, and receives or is entitled to receive remuneration and any other person who assists in carrying out or conducting the business of the Private Body. This includes, without limitation, directors, permanent and limited duration employees as well as contract and/or seasonal workers.

3.2.5 SAFETY RECORDS

- 3.2.5.1 Safety Manual
- 3.2.5.2 Occupational Health & Safety Act records
- 3.2.5.3 Council for Occupational Injuries and Diseases records
- 3.2.5.4 Quality control test results and records

3.2.6 INFORMATION TECHNOLOGY RECORDS

3.2.6.1 Web site development, support and maintenance agreements

3.2.6.2 Computer software support and maintenance agreements

3.2.7 RECORDS REQUIRED IN TERMS OF LEGISLATION

3.2.7.1 A list of certain legislation setting out a description of the records of the Private Body which are available in accordance with such legislation, is as follows:-

3.2.7.1.1 Basic Conditions of Employment Act 75 of 1997

3.2.7.1.2 Companies Act 61 of 1973

3.2.7.1.3 Compensation for Occupational Injuries and Diseases Act 130 of 1993

3.2.7.1.4 Competition Act No 89 of 1998

3.2.7.1.5 Constitution of SA Act 108 of 1996

3.2.7.1.6 Customs and Excise Act 91 of 1964

3.2.7.1.7 Currency and Exchanges Act 9 of 1933

3.2.7.1.8 Employment Equity Act 55 of 1998

3.2.7.1.9 Income Tax Act 58 of 1962

3.2.7.1.10 Labour Relations Act 66 of 1995

3.2.7.1.11 Pension Funds Act 24 of 1956

3.2.7.1.12 Regional Services Council Act 108 of 1985

3.2.7.1.13 Skills Development Act 9 of 1999

3.2.7.1.14 Skills Development Levies Act 9 of 1999

3.2.7.1.15 Unemployment Insurance Act 63 of 2001

3.2.7.1.16 Unemployment Insurance Contribution Act 4 of 2002

3.2.7.1.17 Value Added Tax Act 89 of 1991

Reference to the above-mentioned legislation shall include subsequent amendments to such legislation and all relevant sections within such legislation in terms of which the private body holds records.

3.2.8 OTHER PARTY RECORDS

3.2.8.1 Employee, customer or Private Body records which are held by another party (e.g. accountant or independent contractor), as opposed to the records held by the Private Body itself;

3.2.8.2 Records held by the Private Body pertaining to other parties, including without limitation, financial records, correspondence, contractual and transactional records, records provided by the other party, and records third parties have provided.

PART IV

4 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

The main grounds for the Private Body to refuse a request for information relates to the -

4.1 mandatory protection of the privacy of a third party who is a natural person, which would involve the unreasonable disclosure of personal information of that natural person;

4.2 mandatory protection of the commercial information of a third party, if the record contains –

4.2.1 trade secrets of that third party;

4.2.2 financial, commercial, scientific or technical information which disclosure could likely cause harm to the financial or commercial interests of that third party;

4.2.3 information disclosed in confidence by a third party to the Private Body, if the disclosure could put that third party at a disadvantage in negotiations or commercial competition;

4.3 mandatory protection of confidential information of third parties if it is protected in terms of any agreement;

4.4 mandatory protection of the safety of individuals and the protection of property;

4.5 mandatory protection of records which would be regarded as privileged in legal proceedings;

4.6 the commercial activities of the Private Body, which may include –

4.6.1 trade secrets of the Private Body;

4.6.2 financial, commercial, scientific or technical information which disclosure of could likely cause harm to the financial or commercial interests of the Private Body;

4.6.3 information which, if disclosed could put the Private Body at a disadvantage in negotiations or commercial competition;

4.6.4 a computer program which is owned by the Private Body, and which is protected by copyright.

- 4.7 the research information of the Private Body or a third party, if its disclosure would disclose the identity of the Private Body, the researcher or the subject matter of the research and would place the research at a serious disadvantage;
- 4.8 Requests for information that are clearly frivolous or vexatious, or which involve an unreasonable diversion of resources shall be refused.

5 REMEDIES AVAILABLE WHEN A PRIVATE BODY REFUSES A REQUEST FOR INFORMATION

5.1 INTERNAL REMEDIES

The Private Body does not have an internal appeal procedure. As such, the decision made by the information officer is final, and requesters will have to exercise such external remedies at their disposal if the request for information is refused, and the requester is not satisfied with the answer supplied by the information officer.

5.2 EXTERNAL REMEDIES

A requester that is dissatisfied with an information officer's refusal to disclose information, may within 30 days of notification of the decision, apply to a relevant Court for relief.

Likewise, a third party dissatisfied with an information officer's decision to grant a request for information, may within 30 days of notification of the decision, apply to a Court for relief. For purposes of the Act, the Courts that have jurisdiction over these applications are the Constitutional Court, the High Court or another court of similar status.

6 REQUEST PROCEDURE

- 6.1 The requester must comply with all the procedural requirements contained in the Act relating to the request for access to a record.
- 6.2 The requester must complete the prescribed form enclosed herewith in **Appendix 1**, and submit same as well as payment of a request fee and a deposit, if applicable to the Information Officer at the postal or physical address, fax number or electronic mail address as stated in 2.1 or 2.2 above.
- 6.3 The prescribed form must be filled in with enough particularity to at least enable the Information Officer to identify –
- 6.3.1 The record or records requested;
 - 6.3.2 The identity of the requester,
 - 6.3.3 Which form of access is required, if the request is granted;
 - 6.3.4 The postal address or fax number of the requester.
- 6.4 The requester must state that he/she requires the information in order to exercise or protect a right, and clearly state what the nature of the right is so to be exercised or protected. In addition, the requester must clearly specify why the record is necessary to exercise or protect such a right.

- 6.5 The Private Body will process the request within 30 days, unless the requester has stated special reasons which would satisfy the Information officer that circumstances dictate that the above time periods not be complied with.
- 6.6 The requester shall be informed whether access granted or denied. If, in addition, the requester requires the reasons for the decision in any other manner, he/she must state the manner and the particulars so required.
- 6.7 If a request is made on behalf of another person, then the requester must submit proof of the capacity in which the requester is making the request to the reasonable satisfaction of the information officer.
- 6.8 If an individual is unable to complete the prescribed form because of illiteracy or disability, such a person may make the request orally.
- 6.9 The requester must pay the prescribed fee, before any further processing can take place.

7 ACCESS TO RECORDS HELD BY THE PRIVATE BODY

- 7.1 Records held by the Private Body may be accessed by requests only once the prerequisite requirements for access have been met.
- 7.2 A requester is any person making a request for access to a record of the Private Body. There are two types of requesters:

7.2.1 PERSONAL REQUESTER

- 7.2.1.1 A personal requester is a requester who is seeking access to a record containing personal information about the requester.
- 7.2.1.2 The Private Body will voluntarily provide the requested information, or give access to any record with regard to the requester's personal information. The prescribed fee for reproduction of the information requested will be charged.

7.2.2 OTHER REQUESTER

- 7.2.2.1 This requester (other than a personal requester) is entitled to request access to information on third parties. However, the Private Body is not obliged to voluntarily grant access. The requester must fulfil the prerequisite requirements for access in terms of the Act, including the payment of a request and access fee.

8 FEES

- 8.1 The Act provides for two types of fees, namely:
- 8.1.1 A request fee, which will be a standard fee; and
- 8.1.2 An access fee, which must be calculated by taking into account reproduction costs, search and preparation time and cost, as well as postal costs.
- 8.2 When the request is received by the Information Officer, such officer shall by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before any further processing of the request.

- 8.3 If the search for the record has been made and the preparation of the record for disclosure, including arrangement to make it available in the requested form, requires more than the hours prescribed in the regulations for this purpose, the information officer shall notify the requester to pay as a deposit the prescribed portion of the Access fee which would be payable if the request is granted.
- 8.4 The information officer shall withhold a record until the requester has paid the fees as indicated in **Appendix 2**.
- 8.5 A requester whose request for access to a record has been granted, must pay an access fee for reproduction and for search and preparation, and for any time reasonably required in excess of the prescribed hours to search for and prepare the record for disclosure including making arrangements to make it available in the request form.
- 8.6 If a deposit has been paid in respect of a request for access, which is refused, then the information officer concerned must repay the deposit to the requester.

9 DECISION

- 9.1 The Private Body will, within 30 days of receipt of the request, decide whether to grant or decline the request and give notice with reasons (if required) to that effect.
- 9.2 The 30 day period with which the Private Body has to decide whether to grant or refuse the request, may be extended for a further period of not more than thirty days if the request is for a large amount of information, or the request requires a search for information held at another office of the Private Body and the information cannot reasonably be obtained within the original 30 day period. The Private Body will notify the requester in writing should an extension be sought.

10 AVAILABILITY OF THE MANUAL

- 10.1 This manual is made available in terms of Regulation Number R. 187 of 15 February 2002.