

# The South African Human Rights Commission

*The Promotion of Access to Information Act  
Annual Report  
2013 – 2014*

TRANSFORMING SOCIETY • SECURING RIGHTS • RESTORING DIGNITY



# LIST OF ACRONYMS

CC	Coordinating Committee
DIO	Deputy Information Officer
DG	Director General
DDG	Deputy Director General
GKA	Golden Key Awards
IO	Information Officer
NIOF	National Information Officers Forum
PAIA	Promotion of Access to Information Act, 2 of 2000
PPI	Protection of Personal Information Act, 4 of 2013
PIOF	Provincial Information Officers Forum-
PCC	Provincial Coordinating Committee
SALGA	South African Local Government Authority
SAHRC	South African Human Rights Commission

**The South African  
Human Rights Commission**  
*PAIA Annual Report 2014*

# PREFACE

Section 83 and 84 of the Promotion of Access to Information Act, 2 of 2000 (PAIA) provides that the South African Human Rights Commission (SAHRC) must submit an annual report to the National Assembly making recommendations for the development, improvement, reform, modernisation and amendment of PAIA, other legislation or common law having a bearing on access to information held by public and private bodies as well as procedures in terms of which public and private bodies make information electronically available. The SAHRC is further required to furnish the National Assembly with a report on compliance by public bodies with section 32 of PAIA.

Section 32 reports reflect statistical data on requests for access received by public bodies and how the requests were responded to. Further, the report provides information on the following statistics:

- » number of requests for access granted in full;
- » number of requests for access granted in terms of section 46;
- » number of requests for access refused in full and partially and the number of times

each provision of PAIA was relied on to refuse access in full or partly;

- » number of cases in which the periods stipulated in section 25(l) were extended in terms of section 26 (1);
- » 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 part thereof;
- » number of internal appeals which were lodged on the ground that a request for access was deemed to have been refused in terms of section 27;
- » number of applications lodged in every court and the outcome thereof;
- » the number of court decisions which were appealed and the outcome thereof;
- » number of applications to every court which were lodged on the ground that an internal appeal was deemed to have 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
- » any other matters as may be prescribed.

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# FOREWORD

The right of access to information forms an important part of the realization and protection of human rights. It is a political instrument that makes room for active engagement between the state and members of the public. PAIA has been in place for over a decade and gives effect to the right to access information. The objectives of PAIA are consonant with the constitutional principles of establishing a democratic state based on transparency and accountability. The achievement of a fully-fledged democracy based on transparency is reliant on the state to implement laws such as PAIA.

Although PAIA has been in place for over a decade, implementation and levels of compliance by public bodies does not reflect a strong commitment to PAIA.

The SAHRC is mandated in terms of PAIA to advance the right to access information and to monitor the compliance with PAIA and the implementation thereof. The SAHRC has invested resources to ensure that the right to access to information is advanced and in doing so, the SAHRC has noted that there is very little commitment to PAIA.

In this report, the SAHRC will provide a detailed account of its work in the 2013/2014 period. The report will provide information on promotional interventions of the SAHRC aimed at raising awareness of PAIA as well as levels of compliance by public bodies.

From the report and statistics drawn by the SAHRC, it is clear that public bodies are not prioritising PAIA within their operations. Compliance statistics reveal the continuous non-compliance in local government. National and provincial government do not fare well either. The status of the implementation of PAIA by public bodies is cause for concern as it demonstrates a disregard for the right to access information.

The SAHRC hereby tables its annual Report on PAIA for 2013/2014.



**Kayum Ahmed**

Chief Executive Officer

South African Human Rights Commission

# INTRODUCTION

# 1

**T**he SAHRC is an institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (Constitution) and is governed by the South African Human Rights Act 40 of 2013. The SAHRC is the custodian of all rights in the Bill of Rights. As such, the SAHRC has a constitutional mandate to promote, protect and monitor the observance of human rights. In executing its mandates, the SAHRC strives to be the focal point for human rights realisation.

Section 32 of the Constitution guarantees the right to access information held by the state and private bodies. PAIA was enacted to give effect to the right to access information and creates a statutory mandate on the SAHRC to advance the right and to monitor its implementation.

Since the inception of PAIA, the SAHRC has actively advocated and raised awareness on the right to access information and PAIA. Through its dedicated PAIA Unit, the SAHRC has crafted programmes to promote the right to access information, monitored compliance with and the implementation of PAIA and has assisted the public to access their rights to information. Recommendations issued by the SAHRC have made significant contribution to law reform and legislative development.

Section 84 of PAIA places an obligation on the SAHRC to report to the National Assembly on PAIA. This report will therefore provide an account of steps taken by the SAHRC in the period 2013/2014 in the execution of its mandate.

## 2

# THE MANDATE OF THE SAHRC IN TERMS OF PAIA

Section 83 of PAIA outlines the Commission's mandate in advancing the right to access information. The mandate as articulated in section 83 can be classified in three broad categories, namely:

- a) Promoting the right to access information and PAIA;
- b) Protecting the right to access information; and
- c) Monitoring the development of the law and the compliance and implementation of PAIA.

The broad categories are multifaceted and numerous programmes are therefore undertaken to ensure that the right to access information is promoted and protected and that implementation of PAIA is monitored. While the categories are separate, it is important to note that activities that fall within each component are interrelated and interdependent.

Further details are provided below.

## 2.1 PROMOTION OF THE RIGHT TO ACCESS INFORMATION

The promotional aspect of the mandate entails developing educational programmes to enhance knowledge on the right to access information and PAIA. Promotion of the right can be achieved in various ways. The advocacy strategy therefore outlines the methods employed in efficiently promoting awareness of the right to access information and PAIA.

Being cognisant of the fact that the exercise of any right will involve at least two or more parties, strategically developed programmes enhance the knowledge of the user of the right as well as the knowledge of the party who is responsible for realising the right.

Having monitored the development of PAIA over the past 13 years, the SAHRC has become aware

of the tension that exists between members of the general public who intend to exercise the right to access information and the holder of the information. In response to this quandary, the SAHRC has developed materials and educational programmes that will enable the public to understand the procedures set out in PAIA and programmes that will assist implementers to understand the interpretation and application of the law, and most importantly, to understand the importance of the right. In doing so, the SAHRC intends to increase the confidence of information holders to efficiently respond to requests for information submitted by members of the public.

### Training programmes for Deputy Information Officers

PAIA places an obligation on public bodies to appoint DIOs who will be responsible for receiving and responding to requests for information, securing compliance of the public body with all PAIA requirements and working closely with the IO to ensure proper and effective implementation of PAIA. Training for DIOs focuses on enhancing the understanding of the right to access information, the application of PAIA and compliance requirements.

Research<sup>1</sup> conducted by the SAHRC and the Open Democracy Advice Centre (ODAC) over the past years indicate a general reluctance on the part of public bodies to release information. Statistical data drawn from compliance reports submitted by public bodies to the SAHRC demonstrate that public bodies are more inclined to refuse requests for information. The high rate of refusal to grant

<sup>1</sup> The Golden Key Awards Report: Research conducted by the Open Democracy Advice Centre and the SAHRC in 2009 shows that 60% of requests submitted to public bodies are declined, in most cases public bodies did not respond to requests at all. The same trend was seen in the 2010-2012 research report.



access to records may be informed by a number of factors. One such factor is the culture of secrecy that was entrenched during the previous regime. In this regard, public officials are more likely to decline a request for information<sup>2</sup> even if the information requested is not of a sensitive nature because refusing access is the safer option. It has also become apparent to the SAHRC that public officials fear that making information available will make their departments vulnerable. The training programmes of the SAHRC are therefore crafted to address concerns of public officials regarding the right to access information and the concept of freedom of information. The primary focus of the training is to illustrate the importance of information in a democratic state established on principles of transparency and accountability. The training also aims to demonstrate that the right to access information is central to achieving social justice. Reference is made to the Batho Pele<sup>3</sup> principles which recognises access to information as a key component to an efficient and people centred government. The training further explains the role of officials in making the right to access information a reality for users of the right by reminding officials that they are custodians of information that belongs to the public.

While this approach has yielded significant pockets of success, resistance has not been completely eliminated. The SAHRC is however

positive that with continuous advocacy, public bodies will fully adopt a culture of information sharing and the number of granted requests will increase.

Training interventions continue to provide the SAHRC with the opportunity to assess the rate of implementation of PAIA in the public sector and the readiness of public bodies to implement PAIA.

For the period under review, the PAIA Unit conducted 20 training workshops. Through the training sessions, 600 DIOs were reached. This number applies only to the training workshops conducted and is separate from the number of DIOs reached through other awareness raising interventions, which will be discussed below.

### *Trends and challenges*

An analysis of the training requests received by the SAHRC show that the majority of the requests for training came from national and provincial government departments. In the local government sphere, only one request for training was received from Frances Baard Municipality. Frances Baard Municipality is one of best performing municipalities in terms of PAIA. Since the SAHRC's first engagement with the Municipality, the Municipality has complied with PAIA and has created a programme to train all personnel in the Municipality, including frontline staff. Frances Baard Municipality was awarded a Golden Key Award for compliance with PAIA.

The analysis above mirrors the compliance landscape. In terms of compliance with section 32 and PAIA as a whole, local government remains at the bottom of the ranking. This trend is cause for concern. While the SAHRC makes efforts to provide support to public bodies in various ways, the SAHRC cannot impose training

<sup>2</sup> 2012/2013 PAIA Annual Report provides statistics on the request trends at national, provincial and local government.

<sup>3</sup> Principle 6: Openness and Transparency: 'A key aspect of openness and transparency is that the public should know more about the way national, provincial and local government institutions operate, how well they utilise the resources they consume, and who is in charge. It is anticipated that the public will take advantage of this principle and make suggestions for improvement of service delivery mechanisms, and to even make government employees accountable and responsible by raising queries with them'.

on institutions. Therefore, institutions that have not been trained remain non-compliant and inaccessible.

### *Highlights*

Training interventions have yielded noteworthy success. Most public bodies that were trained during this reporting period were previously non-compliant but since the interventions have taken place, they have taken steps to ensure compliance with PAIA. The response from these departments was not simply a tick box exercise and instead, a firm commitment was made to ensure compliance.

The Department of International Relations and Cooperation (DIRCO) is an example of a public body which has demonstrated commitment to PAIA. DIRCO requested the SAHRC to present to senior management and one of the DDGs on compliance with PAIA. The Department subsequently requested a follow up training session for the DG and all DDGs. DIRCO has since compiled its information manual in terms of section 14 of PAIA and has submitted its section 32 compliance report.

The Road Accident Fund (RAF) is another institution that has taken steps to ensure compliance with PAIA since a SAHRC training intervention. Prior to the training, the RAF was not compliant but since receiving training, which was attended by senior officials in the various divisions of the RAF, it has prepared its information manual as prescribed in section 14 of PAIA and complied with section 32.

At provincial level, the Mpumalanga Department of Social Development scheduled training sessions for all officials in the regional and district offices. This Department was also previously non-compliant, but since the training has complied with both the section 14 and section 32 requirements.

Other training requests were received from institutions that had previously received training but which had experienced staff mobility and the appointment of new DIOs.

As mentioned, training interventions have yielded some positive results and an increase

in the number of public bodies requesting training is therefore desired. As PAIA has been in operation since 2001, public institutions ought to be fully compliant with PAIA. However, the SAHRC is optimistic that increased awareness will stimulate commitment from non-compliant institutions.

### **Community Outreach**

The SAHRC's promotional mandate requires it to provide training to communities on the right to access information. This aspect of the mandate is of critical importance in entrenching a culture of social justice, realising socio-economic rights and sustaining a healthy democracy based on accountability and transparency.

Service delivery protests have become the norm in South Africa. Since 2004, there has been a sharp increase in service delivery protests within communities.<sup>4</sup> Communities often protest as a result of government failing to provide essential services such as water, sanitation and housing. One of the primary causes for service delivery protests is the lack of communication between communities and government authorities.<sup>5</sup>

The SAHRC's PAIA Unit has established that communities are frustrated by the low levels of communication between themselves and government. In an attempt to bridge this gap, the PAIA Unit embarked on various community awareness programmes with the aim of educating communities on PAIA and how access to information can assist communities in asserting their rights and engaging with government. At the core of the training, the message is that the right to access information is an enabling right that can be used to address social ills, foster a culture of communication and access socioeconomic rights. The training emphasises the need to use PAIA to address concerns rather than engaging in protest action as the first avenue of recourse.

<sup>4</sup> Carin Runciman – Researcher at the Social Change Research Unit of the University of Johannesburg. <http://mg.co.za/article/2014-02-12-research-shows-sharp-increase-in-service-delivery-protests>

<sup>5</sup> Kevin Allan and Karen Heese: 'Understanding why service delivery protests take place and who is to blame'.

In the period under review, the PAIA Unit reached a number of communities, including a community in Limpopo that had lodged a complaint at the SAHRC's Provincial Office and a community in Soshanguve through the SAHRC's Gauteng Provincial Office. The PAIA Unit also supported ODAC by providing training to a community in Lenasia. During the training sessions, emphasis was placed on the role of information in community development and how access to information can be used to address concerns about service delivery and other related matters.

### PAIA Law Clinics

The PAIA Unit launched PAIA Law Clinics in the 2013/2014 financial year. In terms of an agreement entered into with the law clinic at the University of the Witwatersrand (WITS), students in their final year of study of the LLB qualification are assigned to PAIA Law Clinics and are supervised by an attorney from the Law Clinic.

Although primarily based on PAIA, members of the public are also assisted with other legal issues during the Law Clinics. The primary objectives of the Law Clinics were to:

- a) introduce PAIA into the curriculum of final year law students;
- b) create an interest for human rights based litigation; and
- c) provide assistance to communities through PAIA.

The structure of the Law Clinics provide the SAHRC with the opportunity to present to students on the right to access information, PAIA and how PAIA can be used to obtain information required by communities to address social ills. The students consult with community members and open case files where necessary. Students are therefore encouraged to make use of PAIA to resolve complaints, where applicable.

The PAIA Unit hosted 20 clinics in the period under review, 8 of which were held in Alexandra Township, Soweto, Leondale, Rabie Ridge, Kagisho and Mogale City. During the Law Clinics, assistance was provided to members of the public and a number of requests for information were filed in terms of PAIA as a means of resolving complaints. The use of PAIA to resolve complaints lodged at the Law Clinics laid an important foundation for possible future litigation in terms of PAIA. Due to the success of the WITS Law Clinic, the PAIA Unit expanded the programme to the University of the Western Cape where an additional 4 law clinics were held.

# 3 NATIONAL INFORMATION OFFICERS FORUM

The SAHRC annually hosts the National Information Officers Forum (NIOF) in celebration of the international **'Right to Know'** day.

Launched in 2003, the NIOF has become a prominent calendar event for the access to information community. The NIOF is one of the SAHRC's largest awareness raising activities as it brings together DIOs from national, provincial and local government, as well as DIOs from parastatals. Through the NIOF, the SAHRC aims to:

- a) Provide a platform for sharing information, issues and challenges relating to PAIA;
- b) Celebrate and raise awareness about the international 'Right to Know' day;
- c) Reinforce the link between the right to access information and the realization of socio-economic rights and service delivery;
- d) Develop capacity building tools;
- e) Keep stakeholders abreast of local, regional and international developments on access to information.
- f) Increase compliance with and implementation of PAIA; and
- g) Create networking opportunities.

Since its inception, NIOF has taken the format of a full day conference attended primarily by DIOs. Although the participation of DIOs has played a significant role in raising awareness of PAIA within public bodies, it has unfortunately not succeeded in securing complete buy-in from IOs, who are the heads of public bodies. Noting that decisions on implementation are taken by IOs, their participation in events such as the NIOF is crucial.

Considering the low attendance rate by IOs at the NIOF, the structure of the NIOF was reviewed with the intention of creating a programme

specifically for IOs. The NIOF hosted during the period under review reflected the new structure where a separate breakfast between heads of departments was held while the DIOs attended the main NIOF event. The breakfast meeting for IOs sought to secure senior management buy-in at the DG level in respect of compliance with and implementation of PAIA.

The annual NIOF held during the second session focused on the following theme: ***'Deconstructing the Bureaucracy of PAIA: Enabling the Proactive and Voluntary Disclosure of Information'***.

The NIOF focused on proactive disclosure and its importance in furthering the right to access information. In this regard, section 15 of PAIA requires public bodies to submit notices on automatically available information to the Minister of Justice and Correctional Services (formally known as the Department of Justice and Constitutional Development). The notice must provide details of records that can be accessed by members of the public without having to rely on the formal PAIA request procedures. Emphasis was therefore placed on the need for public bodies to ensure greater accessibility of information by for example, making information available on websites and through public centres that are easily accessible to the general public.

The Deputy Minister of Justice and Constitutional Development (now Justice and Correctional Services), Mr John Jefferey, delivered the keynote address. In his address, he explained the role and importance of access to information in a democratic state, confirming that in a developmental state where citizens are reliant on the state to access socio-economic rights, clear communication lines between the state and the public must be established. He

stated that transparency and openness should be central to all operations of the state and on that basis, urged DIOs to implement initiatives aimed at making information easily available to members of the public.

Pregs Govender, the Deputy Chairperson of the SAHRC and the SAHRC Commissioner responsible for PAIA and access to information also emphasised the need for public bodies to adopt the principles of proactive disclosure and transparency. Recognising that public bodies are custodians of information, the Deputy Chairperson stated that DIOs have a fundamental role in the realisation of the right to access information.

Mr Akhalwaya from the Department of Performance Monitoring and Evaluation provided an overview to attendees of the Monitoring Performance Assessment Tool (MPAT). In this regard, he referred to the need to secure compliance with PAIA as failure to do so results in failure to comply with the requirements of MPAT. A presentation on compliance with section 15 (voluntary disclosure) was delivered by Mr Eddie Laubscher, the DIO for Eskom Limited.

The programme also included speakers from civil society organisations. Ms Hugo from the Centre for Environmental Rights shared the organisation's experiences in dealing with public bodies when using PAIA to request information. Her presentation clearly highlighted the numerous challenges and frustrations

encountered by users of PAIA. She urged DIOs to prioritise PAIA and bear in mind that ordinary citizens rely on information to address numerous issues that affect their daily lives.

Ms Razzano from ODAC referred to the role of technology in proactively disclosing information in a swift and efficient manner as envisaged in PAIA. In this respect, she shared the details of noteworthy international initiatives that have been adopted, including public portals containing records of public bodies. Ms Razzano indicated that some civil society organisations in South Africa, such as ODAC, are keen to initiate projects that will enhance information sharing to enable members of the public to easily access information.

The presentations were followed by robust interactive discussion sessions which dealt with a number of key issues. Amongst the concerns raised by DIOs during these sessions was the lack of resources dedicated to PAIA implementation and the lack of synergy between policies relating to information within the departments, in particular, between records and knowledge management and PAIA. Lack of commitment from executive management was also raised as an important stumbling block in the effective implementation of PAIA by public bodies.

The 2013 NIOF has been hailed as a great success and the SAHRC is confident that the NIOF will continue to play a critical role in raising awareness on the right to access information.

### 3.1. THE COORDINATING COMMITTEE OF DEPUTY INFORMATION OFFICERS

The Coordinating Committee (CC) of DIOs was established in 2007. The rationale behind establishing the CC was to provide a platform for engagement between officials responsible for PAIA and the SAHRC. The CC's role entails identifying challenges faced by DIOs when implementing and complying with PAIA. The information provided to the SAHRC by the CC informs the development of awareness raising and support programmes that respond directly to the needs and challenges faced by DIOs.

The 2013/2014 NIOF marked the end of the two year tenure of the members of the CC elected in the 2011/2012 period. In delivering the report on the work of the CC, the chairperson of the CC highlighted the CC's participation in the various Provincial Information Officers Forums (PIOF) hosted by the SAHRC and the partnership with the South African Local Government Association (SALGA) aimed at addressing non-compliance in local government.

Delegates at the NIOF elected a new CC consisting of seven members who will serve a term of two years each.

### 3.2 THE GOLDEN KEY AWARDS

Every year, the NIOF culminates in the Golden Key Awards (GKA) ceremony which is aimed at awarding best practicing institutions, proactive DIOs and frequent users of PAIA. Through the GKA, the SAHRC seeks to incentivise non-performing institutions to begin implementing PAIA.

Recipients of the awards are identified through an intensive research process undertaken by the PAIA Unit of the SAHRC which entails analysing levels of compliance with PAIA by public bodies forming part of the research sample.

Prior to 2013, the research sample comprised of public bodies from all three spheres of government as well as parastatals. However, the research sample for the 2013 NIOF GKA focused on municipalities and revealed that local government is generally non-responsive and non-compliant with PAIA. Due to the low number of responses from municipalities, the research process was also open to nominations.

Information gathered from institutions forming part of the sample group was assessed and each institution was scored and ranked from the best to worse performing.

The SAHRC also included a new category in the 2013 assessment which seeks to recognise administrators who ensure that public bodies are accessible by directing requesters to the office of the relevant DIOs. This category was informed by the SAHRC's own experience when interacting with public bodies. The SAHRC has often made 'ghost' enquiries to government departments. In most instances, personnel to whom such requests were forwarded did not know the identity of the DIOs in their respective public body. The SAHRC has also expanded its research by conducting inspections *in loco* to assess the levels of awareness of PAIA within the department and to confirm whether DIOs have been appointed. In many instances, these inspections revealed that departments have

failed to put in place measures to ensure that requesters are able to easily reach the DIOs.

In practice, requesters are also hindered by security personnel who will not allow a requester to submit a PAIA application. This lack of internal education on PAIA serves as a major deterrent for information requesters. Based on these observations, the SAHRC saw fit to introduce the new award category.

*The award categories were as follows:*

- a) The best practice institution;
- b) Best Administrator; and
- c) The best DIOs.

*Awards were presented to the following:*

CATEGORY	NAME OF RECEIPT
Best Practice Institution	Eskom Ltd – Mr Eddie Laubscher
Best Administrator	Ms P Sabeka – National Department of Environmental Affairs
Best Dio	Adv Mark Serfontein – KZN Office of the Premier Ms Amelda Crooks – South African Police Services



# 4

## PROVINCIAL INFORMATION OFFICERS FORUM

**T**he SAHRC hosted the 8th PIOF in March 2014 in Gauteng at the head office of the SAHRC. The 2013/2014 PIOF forms part of a series of PIOFs launched in 2010 under the theme '**Access to Information, Promoting Accountability, Social Justice and Efficient Service Delivery**'.

The PIOFs were launched with the aim of establishing relationships with DIOs within provincial government and improving compliance within that sphere of government. In this regard, the SAHRC has adopted the practice of working with the Office of the Premier as a means of securing buy in of other departments within the province. PIOFs have in the past yielded positive results in the province where it was held, evidenced through increased levels of compliance within provincial government. By way of example, since the launch of PIOFs in KwaZulu-Natal and the Free State, compliance levels have notably increased with the latter excelling in its overall performance. Similar improvements have also been noted in Mpumalanga. In addition to improving compliance and implementation of PAIA, the PIOFs have also sought to establish Provincial Coordinating Committees (PCC) in each province and since the launch of PIOFs in 2010, a number of PCCs have been established.

The Gauteng PIOF brought together DIOs from various government departments within Gauteng. Although compliance levels in Gauteng are relatively satisfactory, 100% compliance is yet to be achieved. The Gauteng PIOF therefore focused on the need for substantial compliance and implementation of PAIA.

Speakers included DIOs from best practice institutions such as Ms Regina Makhuvele, the Records Manager from the Office of the Premier of Limpopo, who addressed the PIOF on records management and its inextricable relationship to PAIA. In her address, Ms Makhuvele stated that institutions can only implement PAIA as required if good records management practices are in place. The Limpopo provincial government is fully compliant with PAIA and on that basis, has received numerous awards.

Mr Eddie Laubscher, the National DIO for Eskom Limited, presented on a PAIA request system utilised by Eskom to manage PAIA requests. Through this system, Eskom has ensured timeous response to PAIA requests within prescribed timeframes.

At the close of the Gauteng PIOF, members of the Gauteng PCC were elected.



# PROMOTIONAL MATERIAL

# 5

## 5.1 A VIDEO DOCUMENTARY ON PAIA

In the period under review, the PAIA Unit produced a video documentary titled: 'Breaking the Steel Wall: Using the Promotion of Access to Information Act (PAIA) Documentary' in collaboration with the Centre for Applied Legal Studies (CALS). The documentary is based on a community that utilises PAIA as a means of addressing concerns and challenges. The documentary is aimed at educating members of the public about the right to access information and how such right can be exercised through PAIA. The documentary also demonstrates the link between the right to access information and the realisation of socio-economic rights. It is hoped that through this documentary, communities will be empowered and will have a greater understanding of the importance of access to information in the fight for social justice.

The documentary will form part of the advocacy tools used by Advocacy and Research Officers of the SAHRC when conducting human rights training initiatives within communities.

# 6

## THE SAHRC SECTION 10 GUIDE

**S**ection 10 of PAIA places an obligation on the SAHRC to develop a guide relating to the following:

- a) How to use PAIA;
- b) The request and appeal procedures
- c) Recourse available to a requester whose right to access information has been violated; and
- d) Contact details of all IOs and DIOs in public bodies

The guide, which must be reviewed and updated annually, is available on the SAHRC website: [www.sahrc.org.za](http://www.sahrc.org.za).

# THE PROTECTION MANDATE



**T**he protection of any right entails providing a right of recourse to an aggrieved person whose rights have been violated. In terms of the right to access information, the SAHRC provides assistance to members of the public who have been unsuccessful in using PAIA to access information. The PAIA Unit of the SAHRC receives complaints from members of the public through its various provincial offices and through enquiries directed to the PAIA Unit.

## 7.1. ANALYSIS OF COMPLAINTS

Complaints received by the PAIA Unit are a reflection of the usage of PAIA, the levels of responsiveness of public and private bodies who receive requests in terms of PAIA and the manner in which the law is being interpreted.

Complaints indicate that the level of awareness of the right of access to information is increasing as well as the usage of PAIA. Although the majority of complaints received relate to public bodies, complaints have also been received against private bodies. Interestingly there has been an increase in the number of complaints received from incarcerated inmates who are relying on PAIA to obtain court orders from the Department of Justice and Correctional Services. While this may indicate an increased awareness about the right to access information and PAIA, it is unfortunate that inmates are resorting to PAIA requests to gain access to records that should be made readily available to them. Most of these requests are not being responded to timeously and in certain instances, are not responded to at all.

Complaints received by the SAHRC demonstrate that public bodies are uncooperative, resistant to releasing information and do not provide information within the prescribed timeframes. In some instances, they also confirm that DIOs incorrectly interpret the provisions of PAIA and make use of the shortfalls in the legislation to decline access to records. For example, in terms of PAIA, tertiary institutions fall within the category of public bodies which do not have an internal appeals process. Complaints lodged against tertiary institutions indicate that these institutions either ignore requests for information or decline requests. The only right of recourse for requesters in such instances is to approach the courts. However, as most complainants cannot afford legal fees, they are unable to further pursue their requests. The intervention of the SAHRC has yielded positive results in some cases. Unsuccessful cases are marked by undue resistance from tertiary institutions who do not regard themselves as public bodies, such as the University of South Africa (UNISA) which refused to respond to a request alleging that it is not a public body and that the SAHRC has no jurisdiction in matters pertaining to it. The total disregard of the right to access information demonstrated by UNISA is clearly inconsistent with the values of the Constitution and PAIA and is therefore of great concern to the SAHRC.

Public bodies also use the fee requirements in PAIA to prevent requesters from accessing information. After initially declining a request for information, the North West Department of Economic Development granted access to the

record but informed the requestor that payment in the amount of R30 000, 00 (thirty thousand rand) was required before the information could be made available. The amount charged by the department is not in line with the fees prescribed by PAIA. The actions of the department therefore go against the objectives<sup>6</sup> of PAIA which require public bodies to make information available in a swift and inexpensive manner.

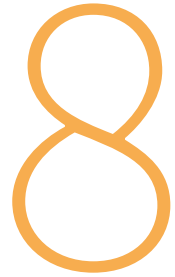
While the SAHRC provides assistance to members of the public, it remains cognizant that the right to information is not absolute. Therefore, in instances where the SAHRC has confirmed that steps taken by a public body are in line with PAIA, the complainant will be informed accordingly.

In addition to dealing with complaints, the SAHRC also provides general advice to members of the general public and DIOs regarding the application and implementation of PAIA.

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<sup>6</sup> Section 9(d) of PAIA 'The objects of PAIA are: to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of 5 public and private bodies as *swiftly, inexpensively and effortlessly as reasonably possible*'.

# PAIA MONITORING



## 8.1 COMPLIANCE AND IMPLEMENTATION AUDIT

The SAHRC is responsible for monitoring the implementation of PAIA within the public sector. This monitoring process includes conducting research and compliance audits. Compliance audits enable the SAHRC to track substantive compliance with PAIA and the implementation of PAIA by public institutions. For the period under review, the PAIA Unit conducted 14 compliance audits:

NATIONAL GOVERNMENT DEPARTMENTS	PROVINCIAL GOVERNMENT DEPARTMENTS	LOCAL GOVERNMENT
Office of the Presidency	KwaZulu-Natal Office of the Premier	City of Johannesburg Metropolitan Municipality
Department of Social Development	KwaZulu- Natal Department of Health	Ekurhuleni Metropolitan Municipality
National Treasury	Free State Office of the Premier	City of Cape Town
Department of Water Affairs	Free State Department of Cooperative Governance and Traditional Affairs	eThekweni Municipality
	North West Office of the Premier	
	North West Department of Education	

## 8.2 AUDIT PROCESS

The SAHRC selected to audit public bodies within the three tiers of government. The process is initiated by an audit notice which is delivered to the IO of a public body. The notice provides details of the audit process and a questionnaire which must be completed by the IO and returned to the SAHRC.

The audit process covers six focus areas:

### *a) Appointment of a Deputy Information Officer*

The SAHRC enquires whether a DIO has been appointed as prescribed in section 17 of PAIA. The enquiry does not only focus on the appointment of the DIO but also assesses associated personnel development. In this regard, IOs are requested to provide the SAHRC with information regarding the steps taken by

the public body to capacitate the appointed DIO.

#### i) Accountability

Another critical area tested through the audit process is that of accountability. In this regard, the SAHRC seeks to establish what mechanisms have been put in place to ensure that the DIO performs all required duties and whether the IO plays an appropriate supervisory role over the work of the DIO. Accountability is crucial in the proper implementation of PAIA within public bodies as proper accounting measures serve to secure continuous and sustainable implementation of the legislation.

Unfortunately, the SAHRC has noted that in many instances, IOs are removed from the implementation process and only serves as a signatory. This dynamic was further confirmed through engagements with public officials who cited the distant relationship between the IO and the DIOs as a barrier to the proper implementation of PAIA. This lack of synergy results in insufficient budget for PAIA implementation and lack of continuity in the event of a DIO leaving an institution.

The SAHRC's own experiences confirm the impact of this organisational dilemma within public bodies. In 2009, the City of Johannesburg was recognised as one of the best performing municipalities in respect of the implementation of PAIA. At the time, the appointed DIO was well versed in PAIA and proactive in securing compliance with the legislation. However, upon the DIO's departure, the municipality's performance significantly deteriorated.

The City of Johannesburg was audited during the period under review. Having sent audit notices to the municipality, it failed to respond and failed to provide the SAHRC with requested documents. While the municipality complies with formal requirements such as the submission of a section 32 report, its failure to respond to the SAHRC's audit process is cause for concern and may indicate poor coordination of PAIA functions within the municipality or perhaps the lack of sustainable systems which can operate beyond the lifespan of any one DIO.

#### (ii) Internal communiqué on the appointment of the DIO

It is critical for all staff within a public body to be aware of the identity of the appointed DIO. All too often however, such appointments are not properly communicated to all personnel. Although this may seem insignificant, it can prove to be a major deterrent to requesters.

In this regard, the SAHRC has conducted its own investigations by calling public bodies to obtain the details of the appointed DIO. Of the total number of institutions contacted, approximately 80% of respondents confirmed they did not know who the DIO was. The SAHRC's requests were often referred to numerous officials, none of whom could provide the necessary assistance. It is therefore imperative to advise personnel about the identity of the DIO as well as the role of the DIO within the institution.

#### **b) PAIA Implementation**

The second focal area is the assessment of methods used by public bodies to implement PAIA. In this regard, the SAHRC views the inclusion of PAIA implementation as a deliverable for the institution as a key component for overall success. The audit therefore focuses on the following:

##### **a) Is the implementation of PAIA incorporated in the institution's strategic plan?**

##### **b) Is a policy document detailing the implementation process available? In this regard, the SAHRC encourages inclusion of the following aspects in the policy document:**

- » Details of all units within the institution that will be directly incorporated in the implementation plan;
- » Reference to whether an independent PAIA unit is in place within the institution;
- » Confirmation of whether the implementation of PAIA has been incorporated in the personnel development plans for DIOs;
- » Confirmation of whether the public body develops training materials and / or conducts in-house training on the implementation of PAIA;

- » An overview of the role of records management in the implementation of PAIA;
- » Reference to whether a budget has been allocated for the implementation of PAIA and related activities; and
- » Confirmation of whether PAIA activities are reported on in the public body's annual report.

### ***c) Systems for processing requests***

Emphasis is placed on the following areas:

- » Whether there is a delegated person to receive requests for information submitted to the public body?
- » Whether a system is in place (manual or electronic) to track and monitor progress on requests received;
- » Whether a procedure is in place to guide the receipt of requests (submitted manually and electronically), the transfer of requests and responses by the DIO to such requests?
- » Whether guidelines are available for requesters on its website, front desks and / or reception and if so, whether the guidelines are translated into official languages;
- » Are templates available for acknowledging requests received, requests granted, refusals, transfers and third party notices?
- » Whether request and appeal forms are available at the public body's reception area and on its website?
- » Whether the public body accounts for monies received in terms of PAIA?
- » Whether the public body responds to requests within the prescribed time frames?
- » Whether an internal appeal committee has been established?

### ***d) Compliance***

- » Whether the public body is complaint with sections 14, 15, 16, 17 and 32 of PAIA?

### ***e) Peer review and best practice***

The audit process also aims to assess the level of engagement between public bodies

on PAIA implementation. In instances where an institution is failing to comply and not implementing PAIA, the SAHRC recommends that the DIO of the non-performing institution engage with other DIOs to obtain assistance on applicable best practices.

## **8.3 KEY AUDIT FINDINGS**

The audits yielded both positive and negative results. The most notable concern is the manner in which some institutions responded to the audit notice received from the SAHRC. Of the 14 institutions forming part of the sample, 7 failed to respond and 2 only submitted their response after receiving final notices from the SAHRC.

Data retrieved from the received submissions indicated a certain degree of improvement in the implementation of PAIA and the incorporation of such implementation into the operations of the respective public bodies. This was evidenced by the appointment of DIOs, inclusion of DIO duties in the key performance areas of relevant officials and the establishment of systems to receive and monitor requests for information.

Worth noting is the commitment demonstrated by the Office of the Premier in the Free State which has put in place systems to ensure compliance with PAIA. The Office of the Premier has also appointed three DIOs, created a performance assessment plan to assess their performance, has incorporated PAIA into the strategic plan of the department and has complied consistently with mandatory reporting requirements. Similar practices have been adopted by the KwaZulu Natal Office of the Premier.

Submissions also indicate some improvement in the implementation of PAIA, specifically in metropolitan municipalities. The City of Cape Town and Ekurhuleni Metropolitan Municipality have both demonstrated good implementation practices, including the appointment of DIOs, complying with reporting obligations, creating internal mechanisms to raise awareness on PAIA and developing systems to process requests for information, which includes accounting for monies received in terms of PAIA requests.

During the audit process, the SAHRC encountered numerous difficulties in respect of national departments. In some instances, the identity of the DIO was unknown and requested evidence was not provided on time or at all. Of critical concern is that some of the audited departments which submitted section 32 reports to the SAHRC were unable to demonstrate how PAIA was implemented globally within the institution, indicating the lack of a holistic approach to PAIA.

Over the years, the SAHRC has noted that public bodies do not comply substantively with PAIA and instead adopt a tick box approach. The consolidated audit report developed by the Commission in 2012<sup>7</sup> outlined common practices in the public sector that hinder the effective and efficient implementation of PAIA.

The most common factor is the absence of systems and policies that outline how PAIA should be implemented within departments.

As the enforcement powers of the SAHRC are limited, corrective measures cannot be taken against institutions that fail to comply with PAIA. Noting this limitation, the SAHRC utilises its reporting obligation to the National Assembly as a platform to raise concerns about the implementation of PAIA, or the lack thereof. In this regard, it is recommended that steps be taken by Parliament to penalise public bodies which fail to comply or implement PAIA. Such sanctions would assist in securing the executive commitment of public bodies in respect of the implementation of PAIA within the public sector.

<sup>7</sup> The Promotion of Access to Information Act (PAIA) and Records Management Audit 2008-2012



# THE SAHRC'S OBLIGATION IN TERMS OF SECTION 83(3)

9

## 9.1 RECOMMENDATIONS SUBMITTED TO THE DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES

Section 83(3) places an obligation on the SAHRC to make annual submissions to the Department of Justice and Correctional Services regarding the enhancement, the development, improvement, modernisation and reform of PAIA.

*For the period under review, the SAHRC made the following submissions to the Minister of Justice and Correctional Services*

### **a) Section 32 Reporting**

Section 32 of PAIA places an obligation on public bodies to submit reports to the SAHRC on requests received. These reports assist the SAHRC in testing the usage of PAIA. While the Section 32 reports are useful in assessing the implementation of PAIA, they are limited for the following reasons:

- i) Section 32(d) requires public bodies to indicate the number requests for information that were refused but does not require public bodies to provide information on the specific exemptions relied on. Section 32(d) therefore does not provide a clear indication of whether exemption provisions are interpreted and applied in a manner that warrants the refusal. For this reason, the SAHRC recommended that section 32(d) be amended to include a requirement that public bodies must specify the exemptions relied on when refusing a request for access to a record;
- ii) The report only provides statistical information on formal requests received

in terms of PAIA. Reports generated by the SAHRC are therefore more statistical in nature rather than analytical as the SAHRC cannot test the veracity of the information provided by public bodies. This can be attributed to the fact that institutions are not required to report on the nature of requests received, which prevents the SAHRC from conducting a contextual analysis of the usage of PAIA;

- iii) Section 32 of PAIA states that reports must be submitted to the SAHRC annually but does not specify dates for submission. The SAHRC therefore requests institutions to submit their reports at the end of the SAHRC's financial year. This poses a challenge to local government whose financial year ends in June. As the absence of a specific submission period leads to inaccurate reporting, the SAHRC recommended that a specific reporting period be established; and
- iv) It was recommended that section 32 be amended to include statistics on the automatic disclosure of information.

### **b) Voluntary Disclosure**

Section 15 of PAIA makes provision for public bodies to proactively disclose information, which the SAHRC encourages as a means of advancing the right of access to information. On that basis, the SAHRC recommended that public bodies report on the electronic procedures which are in place to facilitate automatic disclosure in terms of section 83(3)(a)(ii) of PAIA.

### *c) Rules of procedure for application to court in terms of PAIA*

The right to access information has been dubbed a right for the elite in that it can only be fully realised by those with the financial muscle to litigate when a request for information has been refused. Prior to November 2009, PAIA matters could only be heard by the High Courts. This limitation proved to be detrimental to the realization of the right to access information by those who could not afford the legal fees associated with high court litigation.

In 2009, the Rules Board passed the Rules of Procedure for application to Court in terms of PAIA (Government Notice No. R965, Government Gazette No. 32622). In terms of these rules, PAIA matters can now be heard in Magistrates Courts which are more accessible and less costly. This development marks a further advancement of the right to access information.

Section 91A of PAIA requires that Magistrates be designated and trained before they can adjudicate PAIA matters and that the DG of the Department of Justice and Correctional Services creates a complete list of all Magistrates who have received the requisite training. Section 91(5) places an obligation on the Chief Justice to develop the content of the training courses for Magistrates.

Since the promulgation of the Rules of Procedure, the SAHRC has not received written confirmation of whether presiding officers have been designated and/or trained on PAIA. The SAHRC therefore recommended that the Department of Justice and Correctional Services, together with the office of the Chief Justice, facilitate and expedite the process of training and designating Magistrates to adjudicate PAIA matters.

### *d) Other provisions*

#### *i) Section 25 – Decision on a request and notice thereof*

In terms of PAIA, a DIO has 30 days within which to make a decision on a submitted request. Section 22 of PAIA provides that a record must only be made available once a requester has

paid the applicable fees. In monitoring the implementation of PAIA, the SAHRC has noted that DIOs utilize section 22(5) as a method of exceeding the 30 day timeframe by failing to inform requesters of the need to pay a fee, thus extending the period of time within which to handle the request until such time that a requester has paid the applicable fees. This practice is contrary to the objectives of PAIA which provide for the dissemination of information in a swift and inexpensive manner. In this regard, the SAHRC recommended that the 30 day timeframe be complied with at all times. The SAHRC further recommended that PAIA be aligned with the African Union Model Law on Access to Information passed by the African Commission in 2013 by reducing the time frame to 21 days for ordinary requests and 48 hours for urgent requests which relate to safeguarding the liberty and life of persons.<sup>8</sup>

#### *ii) Section 22 – Fees*

As stated in previous reports and submissions,<sup>9</sup> the SAHRC maintains its position that imposing fees on information held by government departments compromises the right to access information. On this basis, the SAHRC recommends that PAIA be amended to remove the fee requirement.

Should however the fee requirement be retained, the Commission emphasises that regulations relating to fees should clearly state that only the prescribed fees can be applied to PAIA requests to the exclusion of fee structures prescribed by any other law.

#### *iii) Section 74 – Internal Appeals*

Chapter 1 of PAIA distinguishes between two types of public bodies. Type A refers to national, provincial and local government and Type B refers to institutions exercising a public function in terms of the Constitution and institutions exercising a public function in terms of legislation.

<sup>8</sup> Model Law on Access to Information in Africa, (15)(2)

<sup>9</sup> Annual Report 2012/2013 tabled in Parliament in November 2013

Section 74 of PAIA limits internal appeals to Type A public bodies. In monitoring the manner in which requests for information are processed and responded to, the SAHRC has noticed that Type B public bodies tend to ignore or unjustifiably refuse requests for information being fully aware that requesters can only seek further recourse through the courts in such instances. IOs also use the technical gap in the legislation to ignore their obligations to requesters. The SAHRC therefore recommended that section 74 be amended to extend the internal appeal process to Type B public bodies.

#### iv) Section 46 Public Interest

Section 46<sup>10</sup> of PAIA sets out a three step test that must be satisfied before a record can be released in terms of the public interest. The SAHRC is of the opinion that the criteria as they currently stand are too onerous and places an undue burden on a requester. As such, the SAHRC recommended that the word ‘and’ separating paragraph (a) and (b) be substituted with the word ‘or’ to create a lower threshold for meeting the requirements of section 46. The SAHRC has unsuccessfully raised its concerns in this regard in the past.

#### e) Definitions – Information Officer at Provincial Government Level

PAIA designates DGs at provincial government as the IO of the department.

Based on such definition, all PAIA related obligations falling on provincial departments and in particular, compliance with section 32 of PAIA, must be attended to by the DG. Provincial departments have expressed a concern about the resultant impact of this definition, which is that it staggers the implementation process and hampers compliance with section 32. In practice,

departments only send section 32 reports to DGs for consolidation, creating the potential for inaccurate reporting. This practical reality also limits the SAHRC’s ability to individually monitor provincial departments. The SAHRC therefore recommended that the definition be reconsidered and that the definition of IO with specific respect to provincial departments should also recognise the heads of departments as the IO of their respective departments.

#### f) Assistance to People with Disabilities by Information Officers in Private Bodies

The duties of a DIO in public and private bodies differ with regard to persons with disabilities. Section 18(3)(a) of PAIA makes specific provision for a requester who is illiterate or who has a disability to make oral presentations to the DIO of a public body. Section 18(3) (b) requires the DIO to transcribe the oral presentations onto the prescribed form and to make a copy available to the requester. Section 19 also places an obligation on DIOs of public bodies to provide reasonable assistance to requesters to ensure that they comply with the procedural requirements of section 18(1).

The duties of DIOs in private bodies differ in that section 53 makes no provision for requesters who are illiterate or who may have a disability to be assisted by the DIO of a private body. The SAHRC therefore recommended that the duties of DIOs in private bodies be aligned with the duties of DIOs in the public sector to prevent the unfair discrimination of persons with disabilities.

The recommendations listed above were submitted to the Minister of Justice and Correctional Services as prescribed by section 83(3) of PAIA.

<sup>10</sup> An Information Officer of a public body must disclose a record that is exempt from disclosure (a) if the disclosure of the record would reveal evidence of—  
 (i) a substantial contravention of, or failure to comply with, the law; or  
 (ii) an imminent and serious public safety or environmental risk; and  
 (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

# 10

## LEGISLATIVE DEVELOPMENTS

In 2005, the South African Law Reform Commission (SALRC) issued a discussion paper<sup>11</sup> proposing the enactment of legislation to protect the right to privacy and in particular, the protection of personal information. The SALRC also proposed that a body be established to regulate privacy matters as well as matters relating to access to information. Since the tabling of the Protection of Personal Information Bill in 2009, the SAHRC has made various submissions relating to the Bill. The SAHRC welcomed the introduction of an Information Regulator as well as the mechanisms for the protection of privacy as envisaged by the Bill. The SAHRC further noted that the proposed legislation would have a direct

bearing on the right to access information as well as PAIA. The SAHRC therefore placed emphasis on the need to ensure that the right to access information was not unduly comprised. In 2013, the President signed the Protection of Personal Information Act 4 of 2013 (POPI) into law.

POPI will have a significant impact on the mandate of the SAHRC in terms of PAIA. The new legislation transfers the PAIA mandate of the SAHRC to the Information Regulator. However, while the SAHRC will no longer be responsible for PAIA, the SAHRC's constitutional mandate regarding the right to access information will remain.

<sup>11</sup> Discussion paper 109, October 2005: Privacy and Data Protection

# PRIVATE SECTOR INTERVENTIONS



**T**he SAHRC's mandate in respect of transparency falls in line with the United Nations (UN) Guiding Principles on Business and Human Rights which were adopted to guide states and businesses on their various roles and responsibilities in the protection of human rights.

When PAIA was enacted in 2000, it entered the unfamiliar territory of providing an individual right of access to information in private hands where that information relates to the exercise or protection of rights. Despite the potential for PAIA in this respect, utilisation of legislation has been limited in relation to access to private records.

In an effort to raise awareness about the right to access information in the private sector, the SAHRC held a conference on 'Business and Transparency'. The objective of the conference was to produce a report to assist the SAHRC and other stakeholders in developing a national action plan for various sectors relating to the implementation of the UN Guiding Principles as well as the establishment of good practices to drive voluntary reforms for transparency. It was intended that this national action plan would be used by stakeholders to promote transparency in various sectors of business and by government to guide its priorities with the private sector and in developing an effective regulatory regime.

The Business and Transparency conference was opened by the Deputy Chairperson of the SAHRC, Pregs Govender. The keynote address was delivered by the Minister in the Presidency for National Planning, Trevor Manuel. In contextualizing the discussion on business and transparency and the role of the corporate sector in fighting corruption, Hon. Trevor

Manuel referred to corruption and the need for transparency within the corporate sector to feature strongly in South Africa's National Development Plan (NDP). Hon. Trevor Manuel recalled the recent incident in South Africa where the Competition Commission fined 15 construction companies a total of R1.46 billion for price collusion in over 300 contracts as well as the 2007 bread collusion case, which in many ways was significantly more sinister as it directly affected the poor. The bread collusion was only exposed because of the active citizenship of a small businessperson who sounded the warning bell and compelled the Competition Commission to engage in the matter.

Discussions during the conference revolved around the notion of transparency and what it entails; incentives for and ethics of transparency; new insights to support the adoption of transparency norms; issues around corporate secrecy and applicable legislative frameworks. The conference participants also discussed the need for differentiating the different types of information required for different purposes. In terms of encouraging voluntary disclosure, it was suggested that appropriate liabilities or sanctions should be put in place. On the other hand, possible incentives for voluntarism was said to include enhanced reputation and trust, which ultimately translates into capital growth.

Participants noted the moral impulse implicit in the drive for transparency and that over time, through the cultivation of an appropriate culture around the issue, corporations could soon realize that their wellbeing is intricately bound to the wellbeing of stakeholders. In this regard, transparency should be understood as the disclosure of information that is relevant, clear, simple and concise. The managing director of the Black Management Forum,

Nicholas Maweni, referred to the complicity of the private sector in the apartheid era and argued for full disclosure of information by businesses. He also emphasized the importance of active citizenship to uncover corruption in the private sector where there is a deliberate attempt by corporate institutions to avoid public accountability.

Overall, the conference confirmed that compliance by the private sector with the provisions of PAIA, and particularly section 52 relating to the voluntary disclosure of information, needs to be improved.

# REPORTING IN TERMS OF SECTION 84

# 12

In terms of section 84 of PAIA, the SAHRC is obliged to submit a detailed report on how public departments have attended to information requests in each financial year. Below is the detailed analysis of the reports received from public departments in the 2013/14 financial year.

## 12.1 SECTION 32 COMPLIANCE REPORTS 2013/2014

Section 32 of PAIA places an obligation on all public bodies to submit annual reports to the SAHRC on the number of requests received and how those requests were processed. These section 32 reports serve the critical function of tracking developments in respect of the usage of PAIA and testing the responsiveness of public bodies. This is determined by analysing the number of requests for information granted by the public body, the number of requests that are appealed to the relevant authorities and the number of matters that result in litigation as a result of the public bodies refusing and/or failing to grant requests for information.

Since the enactment of PAIA, compliance by public bodies remains unsatisfactory notwithstanding some improvement. In this regard, although improvement has been noted at national and provincial levels, inconsistencies in compliance within these spheres negatively impacts on any progress that has been achieved. Local government consistently remains the least compliant.

In monitoring compliance, the SAHRC has noted that public bodies often produce inaccurate reports which may be due to the lack of appropriate systems to track and monitor received requests. Misinterpretation of the provisions of PAIA when dealing with requests may also result in public bodies submitting inaccurate reports.

## 12.2 ANALYSIS OF REPORTS SUBMITTED

### i) National Departments<sup>12</sup>

Compliance at national level decreased in the period under review. Only 26 departments submitted compliance reports in contrast to the 2012/2013 financial year when 28 departments submitted reports. This decrease is cause for concern. Of further concern is that certain departments that were compliant in previous years failed to comply in the current cycle. The current status on national compliance is 60%.

### NATIONAL DEPARTMENTS

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

<sup>12</sup> National Departments listed in this report refer to departments that were existed prior to the national elections, therefore newly established departments are not reflected in this report



## ii) Provincial Departments

For the period under review, compliance levels within provincial government were unsatisfactory. The North West province was the least compliant with only one department submitting a report. Since the inception of PAIA, the North West province has consistently failed to comply with PAIA despite numerous attempts by the SAHRC to provide assistance.

Another concern is that a number of departments that have previously complied failed to submit reports for the current period.

### PROVINCIAL DEPARTMENTS

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

## iii) Municipalities

Compliance at local government level remains consistently low. Of 289 municipalities, only 24 duly submitted their reports. It is of great concern to the SAHRC that 13 years after the inception of PAIA, only 8% of local government were compliant during the last reporting cycle.

## LOCAL GOVERNMENT

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

## iv) Chapter Nine Institutions

The compliance rate of Chapter Nine Institutions is and has remained low for a considerable period of time. This is particularly unfortunate considering that Chapter Nine Institutions should be at the forefront of compliance with PAIA due to their central role in a transparent and fully functional democracy.

Of concern is the Public Protector's failure to fully comply with PAIA. In this regard, Section 83(h) places an obligation on the Public Protector to report on the PAIA related complaints it receives. However, not only has the Public Protector failed to comply with this obligation in the past years, it has also failed to submit its own institutional compliance report. The Independent Electorate Commission and the Commission for Gender Equality have also failed to comply with PAIA for a long period of time. This performance does not reflect the values which these institutions are required to uphold.



## 12.3 CHALLENGES

The SAHRC's limited enforcement power in terms of PAIA has hindered its ability to enforce and demand compliance by public bodies with regards to section 32 reporting. In addition, non-compliance with section 32 reporting has not been listed as an offence in PAIA (although non-compliance with the development of a section 14 manual by public bodies has been). The failure of PAIA to penalise non-compliance with section 32 combined with the limited enforcement powers of the SAHRC has contributed to the disregard of the Section 32 obligations by public bodies.

As POPI provides for the establishment of an Information Regulator with powers to make orders and enforce such orders, it is anticipated that compliance levels will increase.

## 12.4 TRENDS ANALYSIS

Statistical data obtained from submitted reports provides an overview of the PAIA landscape. The reports cover the following 11 fields, which include:

- a) The number of requests received;
- b) The number of requests granted in full;
- c) The number of requests granted in the public interest;
- d) The number of requests refused in full;
- e) The number of partial refusals;
- f) The number of times a public body has relied on a provision to decline (in full or partially) a request;
- g) The number of times the prescribed timeframes was extended;
- h) The number of requests that went on appeal to the relevant authority;
- i) The number of requests granted as a result of an internal appeal;
- j) The number of appeals lodged as a result of a deemed refusal; and
- k) The number of requests that have been litigated on.

### National Departments

Reports submitted at national level show an overall decrease in the number of requests received compared to statistics from the previous reporting cycle. The total requests received during the current period totals 23 054 whereas in the previous cycle, a total of 23 380 requests were received. Large volumes of requests emanate from the Department of Justice and Correctional Services and the South African Police Services. Other departments that received high volumes of requests are the Departments of Correctional Services; Social Development; Mineral Resources and Agriculture, Fisheries and Forestry.

The number of requests granted in the public interest decreased in the current reporting period although reports from the past three years demonstrated an increase in the number of such requests. This increase appears to indicate increased responsiveness by public bodies. The number of PAIA matters which resulted in litigation is low when compared to the number of requests received. In this respect, a total of 3 applications were made to court in respect of requests submitted at national level (court action was instituted against the Department of Mineral Resources and the Department of Correctional Services). This low number could be interpreted to mean that requesters who have been unsuccessful at the internal appeal stage have been unable to apply to court for further recourse due to a lack of resources, alternatively, that public bodies are granting more requests for information.

Submitted reports show a practice within public departments of not relying on specific provisions of PAIA when refusing requests notwithstanding that PAIA places an obligation on IOs to base refusals on the exemptions provided for in chapter 4 of PAIA. This practice is of concern and indicates that the public bodies are not interpreting and applying PAIA correctly.

## National Departments



## Provincial Departments

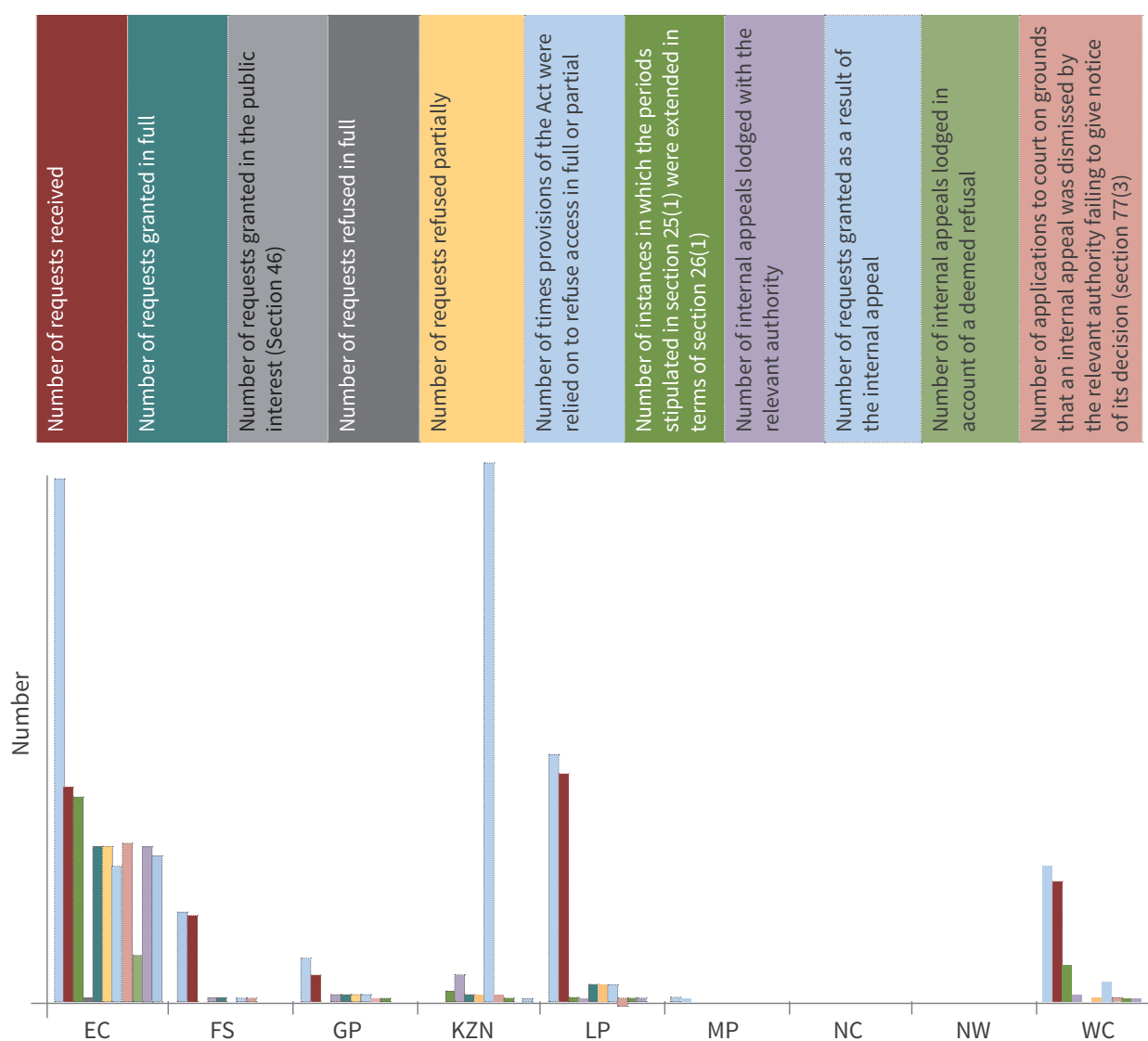
Reporting at provincial level confirms active usage of PAIA. KwaZulu Natal provincial departments received the highest volume of requests, totalling 11 138. Eastern Cape received 799 requests. Interesting to note is that litigation at provincial government level is significantly higher than at national level as 223 applications were made to courts in terms of PAIA. The Departments of Health in KwaZulu Natal and the Eastern Cape Provinces received the highest requests and were also involved in the highest number of court applications.

Provincial departments, like national departments, are not relying on the specific provisions of PAIA when refusing requests. This failure indicates negligence on the part of public bodies and may prove detrimental to requesters.

Of further concern is that public bodies tend to use the procedures in PAIA to decline requests

to access information. By way of example is a comment on the report submitted by the Limpopo Department of Education stating that a request was not processed because the requester had failed to use the prescribed form to submit the request in terms of section 18 of PAIA. While procedural requirements must be adhered to, PAIA places an obligation on IOs to assist requesters. In particular, section 19(1)(b) of PAIA states that IOs must provide reasonable assistance to requesters to enable them to comply with the procedural requirements prescribed in section 18(1). Section 19(2) further states that an IO cannot refuse to process a request for information on the basis that a requester has not complied with section 18. The actions of the Limpopo Department of Education are therefore in direct contravention of the provisions and objectives of PAIA.

## Provincial Departments



EC	799	331	315	5	239	240	207	243	71	239	221
FS	138	135	0	1	1	0	1	4	0	0	0
GP	65	39	0	11	7	8	12	2	1	0	0
KZN	11 168	10 571	15	37	11	13	828	8	3	0	1
LP	382	351	6	5	23	25	23	5	1	3	0
MP	3	2	0	0	0	0	0	0	0	0	0
NC	0	0	0	0	0	0	0	0	0	0	0
NW	0	0	0	0	0	0	0	0	0	0	0
WC	352	320	59	9	2	4	37	2	1	1	0

## Local Government

Reports submitted by local government appear to indicate that municipalities do not receive requests. It is however likely that this is an inaccurate representation of the usage of PAIA at local level, especially taking into account that the SAHRC often receives complaints from civil society organisations and individuals relating to the non-responsiveness of municipalities in respects of PAIA requests.

Possible factors contributing to the high levels of non-responsiveness may include the lack of adequate systems to receive, process and track requests for information. Statistics obtained from the received reports indicate that a higher volume of requests are received by metropolitan

municipalities. This can possibly be attributed to them being better financed than local and district municipalities and therefore better placed to implement effective PAIA systems. However, lack of resources does not justify poor implementation of PAIA at local government level.

According to the reports received, a total of 541 requests were recorded for the period under review. Noting that municipalities are at the coalface of service delivery and are the first interface between a member of the public and government, it is to be expected that more requests for information would be received at this level of government.

Local Government



## Chapter Nine Institutions

According to the reports submitted to the SAHRC, the number of requests for information received by Chapter Nine Institutions is low. These figures may be linked to the generally low compliance levels of Chapter Nine Institutions. PAIA therefore needs to be prioritised by these institutions as they play a pivotal role in advancing democracy.

# INSTITUTIONAL REPORTS

13

## 13.1 NATIONAL GOVERNMENT DEPARTMENTS

COMPLIANT NATIONAL DEPARTMENTS
Office of the Presidency
Department of International Relations and Cooperation
Department of Social Development
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 Performance Monitoring and Evaluation
Department of Science and Technology
Department of Energy
Department of Economic Development
Government Communication Systems
Public Administration, Leadership and Management Academy/National School of Government
National Treasury
Department of Tourism
South African Polices Service

NON-COMPLIANT NATIONAL DEPARTMENTS
Department of Arts and Culture
Department of Higher Education and Training
Department of Military Veterans
Civilian Secretariat of Police
Department of Public Works
Department of State Security
Department of Traditional Affairs
Department of Transport
Independent Police Investigative Directorate
Sport and Recreation South Africa
Statistics South Africa
Department of Women, Children and People with Disabilities
Department of Home Affairs
Department of Public Enterprises
Department of Higher Education and Training
Department of Water Affairs

NATIONAL DEPARTMENTS	Other information relating to implementation										
	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))
The Presidency	13	0	0	12	0	1	0	3	0	1	0
Department of Performance Monitoring and Evaluation	0	0	0	0	0	0	0	0	0	0	0
Department of International Relations and Cooperation	9	2	0	5	1	2	4	0	0	0	0
Department of Communications	8	5	0	0	1	1	1	0	0	0	0
Department of Trade and Industry	26	8	0	5	9	9	1	0	0	0	0
Department of Justice & Correctional Services	555	241	5	33	0	33	40	10	6	0	0
Public Administration Leadership and Management Academy	0	0	0	0	0	0	0	0	0	0	0
National School of Government											
Department of Economic Development	0	0	0	0	0	0	0	0	0	0	0
Department of Science and Technology	0	0	0	0	0	0	0	0	0	0	0
Department of Defence	43	22	0	4	2	6	43	7	0	1	0
											2 requests referred to another public body

NATIONAL DEPARTMENTS	Other information relating to implementation				Internal appeal pending. 27 other requests pending.				10 requests transferred to other public bodies 1 request was withdrawn 1 request where information could not be found			
	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))	Number of internal appeals lodged on account of a deemed refusal	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged with the relevant authority	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of requests refused partially	Number of requests refused in full	Number of requests granted in the public interest (section 46)	Number of requests granted in full	Number of requests received	
Department of Energy	0	1	0	3	36	30	24	7	0	24	65	
Department of Mineral Resources	1	6	-	-	0	72	0	71	0	509	686	
Department of Cooperative Governance	0	1	0	1	3	0	0	0	0	12	13	
Department of Correctional Services	0	3	0	3	80	0	0	0	0	59	105	
Department of Environmental Affairs	0	0	1	1	11	12	10	2	1	12	38	



NATIONAL DEPARTMENTS	Other information relating to implementation										
	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))
Department of Agriculture, Forestry and Fisheries	155	111	0	34	5	13	19	4	0	0	0
Department of Basic Education	7	3	0	2	0	0	3	0	0	0	0
Department of Social Development	192	190	0	2	0	0	1	0	0	0	0
National Treasury	17	0	0	6	0	1	2	0	0	0	0
South African Police Services	21035	19259	714	75	40	115	133	9	3	1	2
Department of Rural Development and Land Reform	8	1	0	4	0	4	2	2	0	2	0
Department of Public Service Administration	0	0	0	0	0	0	0	0	0	0	0
Department of Labour	15	8	0	7	0	2	0	0	0	0	0
Department of Health	43	7	0	3	0	3	0	0	0	0	0



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
	16	3	0	1	0	1	0	0	0	0	0	11 requests were transferred to other public bodies
	5	4	4	1	0	0	0	0	0	0	0	
	0	0	0	0	0	0	0	0	0	0	0	
	0	0	0	0	0	0	0	0	0	0	0	
	23 054	20 480	724	274	92	305	379	43	10	16	3	
	TOTALS											

## 13.2 PROVINCIAL GOVERNMENT DEPARTMENTS

### EASTERN CAPE PROVINCE

#### EASTERN CAPE PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier
Department of Planning and Treasury
Department of Social Development
Department of Sport, Recreation, Arts and Culture
Department of Safety and Liaison
Department of Local Government and Traditional Affairs
Department of Transport
Department of Human Settlements
Department of Health
Department of Roads and Public Works

#### EASTERN CAPE PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Economic Development, Environmental Affairs and Tourism
Department of Rural Development and Agrarian Reform
Department of Education
Department of Finance

PROVINCIAL DEPARTMENTS	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>EASTERN CAPE</b>												
Office of the Premier	8	7	0	1	0	1	1	1	0	0	0	
Department of Planning and Treasury	0	0	0	0	0	0	0	0	0	0	0	
Department of Safety and Liaison	0	0	0	0	0	0	0	0	0	0	0	
Department of Health	759	303	303	0	235	235	201	235	68	235	219	
Department of Local Government and Traditional Affairs	10	9	9	0	0	0	0	0	0	0	0	1 request pending
Department of Transport	7	3	3	4	4	4	1	2	2	2	1	
Department of Roads and Public Works	0	0	0	0	0	0	0	0	0	0	0	
Department of Human Settlements	10	6	0	0	0	0	4	3	1	0	0	
Department of Social Development	3	3	0	0	0	0	0	0	0	0	0	
Department of Sport, Recreation, Arts and Culture	2	0	0	0	0	0	0	2	0	2	1	
<b>TOTALS</b>	<b>799</b>	<b>331</b>	<b>315</b>	<b>5</b>	<b>239</b>	<b>240</b>	<b>207</b>	<b>243</b>	<b>71</b>	<b>239</b>	<b>221</b>	

## FREE STATE PROVINCE

### FREE STATE PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier

Department of Education

Department of Human Settlements

Department of Public Works

Department of Cooperative Governance and Traditional Affairs

Department of Sports, Arts and Culture

Department of Police, Roads and Transport

Department of Social Development

Department of Economic Development, Tourism and Environmental Affairs

Department of Agriculture and Rural Development

Department of Public Works

Department of Health

PROVINCIAL DEPARTMENTS	Other information relating to implementation										
	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))
FREE STATE											
Office of the Premier	134	132	0	1	1	0	1	4	0	0	0
Department of Sports, Arts and Culture and Recreation	1	1	0	0	0	0	0	0	0	0	0
Department of Human Settlements	0	0	0	0	0	0	0	0	0	0	0
Department of Education	2	1	0	0	0	0	0	0	0	0	0
Department of Cooperative Governance and Traditional Affairs	1	1	0	0	0	0	0	0	0	0	0
Department of Police, Roads and Transport	0	0	0	0	0	0	0	0	0	0	0
Department of Social Development	0	0	0	0	0	0	0	0	0	0	0
Department of Health	26	7	0	0	0	0	0	0	0	0	21 applications not completed, requesters not compliant with PAIA request procedures
Department of Agriculture and Rural Development	1	1	0	0	0	0	0	0	0	0	0
Department of Economic Development, Tourism and Environmental Affairs	0	0	0	0	0	0	0	0	0	0	0
Department of Public Works	0	0	0	0	0	0	0	0	0	0	0
TOTALS	165	143	0	1	1	0	1	4	0	0	0

## GAUTENG PROVINCE

### 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 Roads and Transport
Department of Community Safety

### GAUTENG PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Education
Department of Infrastructure Development
Provincial Treasury
Department of Sports, Culture and Recreation
Department of Roads and Transport

PROVINCIAL DEPARTMENTS	Other information relating to implementation										
	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))
<b>GAUTENG</b>											
Office of the Premier	7	4	0	0	0	0	4	0	0	0	
Department of Agriculture and Rural Development	43	23	0	8	7	7	6	2	1	0	0
Department of Economic Development	3	3	0	0	0	0	1	0	0	0	0
Department of Health and Social Development	5	3	0	2	0	0	0	0	0	0	0
Department of Finance	4	3	0	1	0	1	1	0	0	0	0
Department of Community Safety	3	3	0	0	0	0	0	0	0	0	0
<b>TOTALS</b>	<b>65</b>	<b>39</b>	<b>0</b>	<b>11</b>	<b>7</b>	<b>8</b>	<b>12</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>

## KWAZULU NATAL PROVINCE

### KWAZULU NATAL PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Office of the Premier
Department of Agriculture and Rural Development
Department of Health
Provincial Treasury
Department of Transport
Department of Public Works
Department of Social Development

### KWAZULU NATAL PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Department of Education
Department of Economic Development, Environment and Tourism
Department of Sports and Recreation
Department of Cooperative Government and Traditional Affairs
Department of Human Settlements
Department of Arts and Culture
Department of Community Safety and Liaison



PROVINCIAL DEPARTMENTS	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>KWAZULU NATAL</b>												
Office of the Premier	0	0	0	0	0	0	0	0	0	0	0	
Provincial Treasury	3	0	0	3	0	3	0	1	0	0	0	
Department of Agriculture and Environmental Affairs	7	4	0	0	0	4	0	0	0	0	0	2 requests are pending 1 request transferred to another public body
Department of Transport	1334	1332	0	0	1	1	0	0	0	0	0	
Department of Social Development	7	4	0	1	0	1	3	0	0	0	0	
Department of Health	9817	9231	15	33	10	4	825	7	3	0	1	
<b>TOTALS</b>	<b>11 168</b>	<b>10 571</b>	<b>15</b>	<b>37</b>	<b>11</b>	<b>13</b>	<b>828</b>	<b>8</b>	<b>3</b>	<b>0</b>	<b>1</b>	

## LIMPOPO PROVINCE

### 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
<b>LIMPOPO</b>												
Office of the Premier	10	10	0	0	0	0	1	0	0	0	0	
Department of Cooperative Governance, Human Settlement and Traditional Affairs	8	6	6	0	0	0	0	0	0	0	0	2 requests pending
Department of Agriculture and Rural Development	4	1	0	3	0	0	1	2	1	0	0	
Department of Public Works	5	2	0	0	3	3	0	0	0	0	0	
Department of Social Development	0	0	0	0	0	0	0	0	0	0	0	
Department of Health	309	309	0	0	0	0	1	0	0	0	0	
Department of Economic Development, Environment and Tourism	10	9	0	0	0	0	2	0	0	0	0	1 Request was transferred to the relevant public body
Department of Roads and Transport	25	5	0	1	20	21	20	2	0	2	0	
Department of Safety Security and Liaison	1	1	0	0	0	0	0	0	0	0	0	
Department of Sports, Arts and Culture	1	0	0	1	0	1	1	1	0	1	0	
Department of Education	2	1	0	0	0	0	0	0	0	0	0	1 request was placed on hold due to the requester not submitting the request on the prescribed form A
Provincial Treasury	7	7	0	0	0	0	0	0	0	0	0	
<b>TOTALS</b>	<b>382</b>	<b>351</b>	<b>6</b>	<b>5</b>	<b>23</b>	<b>25</b>	<b>23</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>0</b>	

## MPUMALANGA PROVINCE

### MPUMALANGA PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Department of Finance

Department of Culture, Sport and Recreation

Department of Social Development

Department of Co-operative Governance and Traditional Affairs

### MPUMALANGA PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Office of the Premier

Department of Health

Department of Human Settlements

Department of Community Safety, Security and Liaison

Department of Roads and Public Works

Department of Agriculture and Land Administration

Department of Economic Development, Environment and Tourism

Department of Education

PROVINCIAL GOVERNMENT	Other information relating to implementation										
	Number of request received	Number of requests granted in full	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))	
	2	1	0	0	0	0	0	0	0	0	
	0	0	0	0	0	0	0	0	0	0	
	0	0	0	0	0	0	0	0	0	0	
	1	1	0	0	0	0	0	0	0	0	
	3	2	0	0	0	0	0	0	0	0	

#### MPUMALANGA

Department of Cooperative Governance and Traditional Affairs

Department of Finance

Department of Culture, Sport and Recreation

Department of Social Development

**TOTALS**

## NORTHERN CAPE PROVINCE

### NORTHERN CAPE PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

Department of Cooperative Government and Human Settlements

### NORTHERN CAPE PROVINCIAL GOVERNMENT: NON COMPLIANT DEPARTMENTS

Office of the Premier

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 Roads and Public Works

Department of Economic Development, Environment and Tourism

Department of Health

Other information relating to implementation			
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))		0	0
Number of internal appeals lodged in account of a deemed refusal		0	0
Number of requests granted as a result of the internal appeal		0	0
Number of internal appeals lodged with the relevant authority		0	0
Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)		0	0
Number of times provisions of the Act were relied on to refuse access in full or partial		0	0
Number of request refused partially		0	0
Number of request refused in full		0	0
Number of requests granted in the public interest (section 46)		0	0
Number of requests granted in full		0	0
Number of request received		0	0
<b>PROVINCIAL GOVERNMENT</b>			
<b>NORTHERN CAPE</b>			
Co-operative Governance, Human Settlements and Traditional Affairs			
<b>TOTALS</b>			

## NORTH WEST PROVINCE

### NORTH WEST PROVINCIAL GOVERNMENT: COMPLIANT DEPARTMENTS

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

### NORTH WEST NON COMPLIANT DEPARTMENTS

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

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

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



Other information relating to implementation			
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))		0	0
Number of internal appeals lodged in account of a deemed refusal		0	0
Number of requests granted as a result of the internal appeal		0	0
Number of internal appeals lodged with the relevant authority		0	0
Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)		0	0
Number of times provisions of the Act were relied on to refuse access in full or partial		0	0
Number of request refused partially		0	0
Number of request refused in full		0	0
Number of requests granted in the public interest (section 46)		0	0
Number of requests granted in full		0	0
Number of request received		0	0
<b>PROVINCIAL GOVERNMENT</b>			
<b>NORTH WEST</b>			
Department of Social Development, Women, Children and people with disabilities	0		
<b>TOTALS</b>		0	0

## WESTERN CAPE PROVINCE

### WESTERN CAPE PROVINCIAL GOVERNMENT: COMPLIANT

Office of the Premier

Provincial Treasury

Department of Local Government

Department of Health

Department of Human Settlements

Department of Public Works, Roads and Transport

Department of Environmental Affairs and Planning

Department of Cultural Affairs and Sport

Department of Education

Department of Agriculture

Department of Social Development

Department of Community Safety

Department of Social Development

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
<b>WESTERN CAPE</b>												
Office of the Premier	105	104	0	0	1	0	0	1	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	59	59	4	0	0	25	0	0	0	8 requests pending	
Department of Health	119	109	0	3	0	3	5	1	1	1	0	
Department of Human Settlements	16	16	0	0	0	0	0	0	0	0	0	
Department of local government	0	0	0	0	0	0	0	0	0	0	0	
Provincial Treasury	1	1	0	0	0	0	1	0	0	0	0	
Department of Agriculture	7	5	0	0	1	1	0	0	0	0	0	
Department of Public Works, Roads and Transport	15	10	0	0	0	0	5	0	0	0	0	
Department of Education	5	5	0	0	0	0	0	0	0	0	0	
Department of Cultural Affairs	6	6	0	0	0	0	0	0	0	0	0	
Department of Community Safety	0	0	0	0	0	0	0	0	0	0	0	
Department of Social Development	7	5	0	2	0	0	1	0	0	0	0	
<b>TOTALS</b>	<b>352</b>	<b>320</b>	<b>59</b>	<b>9</b>	<b>2</b>	<b>4</b>	<b>37</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>0</b>	

### 13.3 LOCAL GOVERNMENT DEPARTMENTS

LOCAL GOVERNMENT	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>EASTERN CAPE</b>												
<b>GAUTENG</b>												
Mogale City	3	3	0	0	0	0	0	0	0	0	0	
Ekurhuleni Municipality	34	14	0	4	6	10	4	1	1	1	0	2 requests were transferred to other public bodies 3 requests pending
	2	0	0	0	0	0	2	0	0	0	0	
Madibeng Municipality	5	5	0	0	0	0	1	0	0	0	0	
City of Johannesburg	74	63	0	4	2	0	2	2	2	0	0	
City of Tshwane	18	16	0	2	1	2	7	0	0	2	0	
<b>FREE STATE</b>												
Sesotho Municipality	0	0	0	0	0	0	0	0	0	0	0	
Tswelopele Municipality	0	0	0	0	0	0	0	0	0	0	0	
Mangaung Metropolitan Municipality	32	12	0	1	17	17	0	0	0	0	0	
Mohokare Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
<b>KWAZULU- NATAL</b>												
UThungulu Municipality	2	2	0	0	0	0	0	0	0	0	0	
Umlalazi Municipality	1	1	0	0	0	0	0	0	0	0	0	
Nquthu Municipality	0	0	0	0	0	0	0	0	0	0	0	
Umsinga Municipality	0	0	0	0	0	0	0	0	0	0	0	

LOCAL GOVERNMENT	Number of request received	Number of requests granted in full	Number of requests granted in the public interest (section 46)	Number of request refused in full	Number of request refused partially	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of internal appeals lodged with the relevant authority	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged in account of a deemed refusal	Number of applications to court on grounds that an internal appeal was dismissed by the relevant authority failing to give notice of its decision (section 77(3))	Other information relating to implementation
<b>NORTHERN CAPE</b>												
Frances Baard Municipality	0	0	0	0	0	0	0	0	0	0	0	
<b>NORTH WEST</b>												
City of Matlosana	3	3	0	0	0	0	0	0	0	0	0	
<b>MPUMALANGA</b>												
Mbombela	4	2	0	0	1	0	3	1	0	1	1	
Umgindi Municipality	0	0	0	0	0	0	0	0	0	0	0	
Thembisile Hani Local Municipality	0	0	0	0	0	0	0	0	0	0	0	
FezileDabie	0	0	0	0	0	0	0	0	0	0	0	
<b>LIMPOPO</b>												
<b>WESTERN CAPE</b>												
Theewaterskloof Local Municipality	5	5	0	0	0	0	0	0	0	0	0	
Cape Winelands Municipality	1	1	0	0	0	0	0	0	0	0	0	
City of Cape Town	306	170	0	40	38	34	22	7	0	0	0	17 requests pending 10 requests abandoned 15 requests withdrawn 7 requests transferred to other public bodies
Drakenstein Municipality	12	10	0	1	1	0	0	0	0	0	0	
Overstrand Municipality	39	20	6	19	0	16	0	0	0	0	0	
<b>TOTALS</b>	<b>541</b>	<b>327</b>	<b>6</b>	<b>71</b>	<b>66</b>	<b>79</b>	<b>41</b>	<b>11</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>-</b>

### 13.4 CHAPTER NINE INSTITUTIONS

CHAPTER NINE INSTITUTIONS	Other information relating to implementation										
	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))	Number of internal appeals lodged in account of a deemed refusal	Number of requests granted as a result of the internal appeal	Number of internal appeals lodged with the relevant authority	Number of instances in which the periods stipulated in section 25(1) were extended in terms of section 26(1)	Number of times provisions of the Act were relied on to refuse access in full or partial	Number of request refused partially	Number of request refused in full	Number of requests granted in the public interest (section 46)	Number of requests granted in full	Number of request received
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	0	0	0	0	0	0	0	0	0	0	0
Public Service Commission	4	0	0	0	0	0	0	2	0	2	4
Auditor General South Africa	3	0	0	0	0	0	3	3	0	0	3
<b>TOTALS</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>5</b>	<b>0</b>	<b>2</b>	<b>7</b>

## 13.5 OTHER PUBLIC BODIES

OTHER BODIES	Other information relating to implementation										
	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))
	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0
	15	2	0	12	1	0	2	0	0	0	0
	1	0	0	1	0	1	0	0	0	0	0
	27	23	0	4	0	4	0	0	0	0	0
	7434	7017	1	11	12	0	31	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0
	3	3	0	0	0	0	0	0	0	0	0
	43	14	0	11	12	23	22	5	0	0	0
27	24	0	3	0	3	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	
21	21	0	0	0	0	0	0	0	0	0	
1	1	0	0	0	0	0	0	0	0	0	
0	0	0	0	0	0	0	0	0	0	0	

OTHER BODIES	Other information relating to implementation										
	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))
South African Social Security Agency	716	714	0	2	0	2	1	0	0	0	0
WRSETA	0	0	0	0	0	0	0	0	0	0	0
Land and Agricultural Development Bank of South Africa	1	0	0	0	1	1	0	0	0	0	0
Ithala Development Finance Corporation	3	3	0	0	0	0	0	0	0	0	0
South African Qualifications Authority	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
Development Bank of South Africa	3	3	0	0	0	0	1	0	0	0	0
South African Reserve Bank	9	0	0	6	6	0	0	0	0	0	0
Airports Company South Africa	2	1	0	1	0	0	0	0	0	0	0
Gauteng Gambling Board	5	5	0	0	0	0	0	0	0	0	0
Umgeni Water	3	1	0	0	2	0	0	0	0	0	0
Legal Aid South Africa	3	0	0	0	3	0	2	0	0	0	0
National Nuclear Regulator	5	3	0	1	0	0	2	0	0	0	0



# CONCLUSION 14

**T**he right to access information is fundamental in sustaining a healthy democracy. As a leveraging right, access to information enables members of the public to engage with government, participate in public debate and hold the state accountable for the delivery of services. Noting the importance of the right to access information, the state should adopt a more proactive stance in making this right a reality.

PAIA has been hailed as one of the most progressive access to information laws in the world for its dual application to information held by the state and private bodies. However, of great concern is that implementers of PAIA are not acting in accordance with the objectives of PAIA. It is also unfortunate that since the

inception of PAIA, the state of compliance with PAIA remains unsatisfactory within the public sector. Considering that PAIA has been in place for more than a decade, it is expected that compliance and implementation should be at an advanced stage.

The current status is indicative of a lack of commitment to PAIA and callous disregard of the right to access information and the principles of transparency. The SAHRC remains committed to furthering the right to access information. As such, the SAHRC calls on the implementers of PAIA to commit to making the right to access information a reality by creating systems to properly administer and implement the requirements set out in PAIA.





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