

GROUNDINGS FOR REFUSAL OF ACCESS TO RECORDS OF A PRIVATE BODY

The information contained in this section is a summary of the grounds which a private body is entitled to raise, for the refusal of access to its records. This information is intended to provide a requester with clarity as to the reasons why a request may be refused by the private body. The list is a summary of the grounds contained in Part 3, Chapter 4 of PAIA, and is by no means exhaustive.

Mandatory protection of privacy of a third party who is a natural person

The head of a private body must refuse a request for access to a record, if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

However, a record may not be refused if it consists of information:

- About an individual who has consented in writing to the disclosure of the information to the requester;
- Already publicly available
- Given to the public body by the individual to whom it relates, and that individual is informed by the public body before it is disclosed that the information belongs to a class of information that may already be publicly available;
- About an individual's physical or mental health, or well – being, who is under the care of the requester, and who is under the age of 18 years or incapable of understanding the nature of the request, and further if the disclosure would be in the individual's best interests;
- About an individual who is deceased and the requester is the individual's next of kin, or is making the request with the written consent of the individual's next of kin;
- About an individual who is or was an official of a private body, and the information relates to the position or functions of the individual.

Mandatory protection of commercial information of a third party

The head of a private body must refuse a request for access to a record if it contains:

- Trade secrets of a third party;
- Financial, commercial, scientific or technical information of a third party, other than trade secrets, where the disclosure thereof would be likely to cause harm to the commercial or financial interests of that third party; or
- Information disclosed to the third party in confidence, and if disclosed would place the third party at a disadvantage in contractual or other negotiations, or prejudice the third party in commercial competition.

However, a record may not be refused if it consists of information:

- About a third party who has already consented in writing, to its disclosure to the requester;
- About the results of any product or environmental testing or other investigation supplied by the third party (not preliminary testing) or the results of any such testing or investigation carried out by or on behalf of the third party, and its disclosure would reveal a serious public safety or environmental risk.

Mandatory protection of certain confidential information of a third party

The head of a private body must refuse a request for access to a record of that body, if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

Mandatory protection of safety of individuals, and protection of property

The head of a private body must refuse a request for access to a record of that body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual.

The head of a private body may refuse a request for access to a record of that body if its disclosure would be likely to prejudice or impair:

- The security of a building, structure, or system, including a computer or communication system; a means of transport or any other property.
- The methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme; the safety of the public or part of the public or the security of a building, structure, or system, including a computer or communication system; a means of transport or any other property.

Mandatory protection of records privileged from production in legal proceedings

The head of a private body must refuse a request for access to a record of that body, if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived such privilege.

Commercial information of a private body

The head of a private body **may** refuse a request for access to a record of that body if the record:

- Contains trade secrets of the private body;
- Contains financial, commercial, scientific or technical information, other than trade secrets of the private body, and the disclosure thereof would likely cause harm to the commercial or financial interests of that body;
- Contains information, the disclosure of which could reasonably be expected to put the private body at a disadvantage in contractual or other negotiations; or prejudice the body in commercial competition; or
- Is a computer program as defined in the Copyright Act, No. 98 of 1978, which is owned by the private body, unless it is required to give access to a record in terms of PAIA.

However, a record may not be refused if it consists of information:

- About the results of any product or environmental testing or other investigation (excluding preliminary testing), supplied by the private body or the results of any such testing or investigation carried out by or on behalf of the private body, and the disclosure thereof would reveal a serious public safety or environmental risk.

Mandatory protection of research information of a third party, and protection of research information of a private body

The head of a private body must refuse a request for access to a record of that body, if the record contains information about research being carried out or to be carried out, by or on behalf of a third party, and if this were to be disclosed, it would likely:

- Expose the third party or the person carrying out the research or will be carrying out the research on behalf of the third party, or the subject matter of the research, to a serious disadvantage.

The head of a private body may refuse a request for access to a record of that body, if the record contains information about research being carried out or about to be carried out, by or on behalf of the private body, and if this were to be disclosed, it would likely:

- Expose the private body or the person carrying out the research or will be carrying out the research on behalf of the private body, or the subject matter of the research to a serious disadvantage.

Mandatory disclosure in the public interest

Despite the above listed grounds of refusal, the head of a private body must grant a request for access to a record of that body if, the disclosure thereof would reveal evidence of:

- A substantial contravention of, or failure to comply with, the law; or an imminent and serious public safety or environmental risk; and the public interest in the disclosure of the record, outweighs the harm contemplated under the grounds for refusal.