

### **Grounds for Refusal to a request for access to information from a public body**

The information contained in this section is a summary of the grounds upon which a public body is entitled to raise, as a ground for the refusal of access to its records. The information is intended to provide a person with clarity as to the reasons why a request may be refused by the public body. The list is a summary of the grounds contained in Part 2, Chapter 4 of PAIA, and is by no means exhaustive or complete.

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

The information officer of a public body must refuse a request for access to a record of that public body, if the 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 a third party who has consented in writing to the disclosure of the information;
- 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, and the information belongs to a class of information that might already be publicly available;
- That is already publicly available;
- Relating to 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 is incapable of understanding the nature of the request, and further 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 public body, and the information relates to the position or functions of the individual.

### **Mandatory protection of certain records of South African Revenue Service**

The information officer must refuse a request for access to a record of the South African Revenue Services ("SARS"), if it contains information obtained or held by SARS for the purposes of enforcing legislation concerning the collection of revenue in terms of the South African Revenue Service Act, No. 32 of 1997; unless the record requested consists of information about the requester or the person on whose behalf the request is being made, in which case the record may not be refused.

### **Mandatory protection of commercial information of a third party**

The information officer of a public 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 other than trade secrets of a third party, where the disclosure thereof would be likely to cause harm to the commercial or financial interests of that third party; or
- Information supplied by a third party in confidence, and if disclosed would reasonably be expected to 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:

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

### **Mandatory protection of certain confidential information, and protection of certain other confidential information of a third party**

The information officer must refuse a request for access to a record of that public body, if the disclosure thereof would constitute a breach of a duty of confidence owed to a third party in terms of an agreement.

The information officer of a public body may refuse a request for access to a record of that body, if the record consists of information supplied in confidence by the third party, and if disclosed, could prejudice the future supply of similar information or information from the same source; and it is in the public interest that the information from the same source continue to be supplied.

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

- Already publicly available;
- About the third party and the third party has already consented in writing, to its disclosure to the requester.

### **Mandatory protection of safety of individuals, and protection of property**

The information officer of a public 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 information officer of a public body may refuse a request for access to a record of that body, if its disclosure would likely 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 information officer of a public body may refuse a request for access to a record of that body, if its disclosure would likely prejudice or impair the methods, systems, plans or procedure for the protection of:

- An individual under a witness protection scheme;
- The safety of the public, or any part of the public;
- 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 police dockets in bail proceedings, and protection of law enforcement and legal proceedings**

The information officer of a public body must refuse a request for access to a record of the body, if the access to that record is prohibited in terms of section 60(14) of the Criminal Procedure Act, No. 51 of 1977. The information officer has a discretionary ground of refusal in terms of section 39(1)(b) of PAIA.

A record may not be refused if it consists of information about the general conditions of detention of persons in custody.

### **Mandatory protection of record privileged from production in legal proceedings**

The information officer of a public body must refuse a request for access to a record of a public body if the record is privileged from production in legal proceedings, unless such privilege has been waived.

### **Defence, security and international relations of the Republic**

The information officer of a public body may refuse a request for access to a record of that body, if its disclosure could reasonably be expected to cause prejudice to:

- The defence of the Republic;
- The security of the Republic;

- The international relations of the Republic.

The information officer of a public body may refuse a request for access to a record of that body, if its disclosure would reveal information:

- Supplied in confidence by or on behalf of another State or an international organisation;
- Supplied by or on behalf of the Republic to another State or international organisation in terms of an arrangement or international agreement, which requires the information be held in confidence; or
- Required to be held in confidence by an international agreement or customary international law contemplated under sections 231 or 232 of the Constitution.

### **Economic interests and financial welfare of the Republic and commercial activities of public bodies**

The information officer of a public body may refuse a request for access to a record of that body, if its disclosure would likely materially jeopardise the economic interests or financial welfare of the Republic, or the ability of the government to manage the economy of the Republic effectively, in the best interests of the Republic.

The information officer of a public body may refuse a request for access to a record of that body if the record:

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

The information officer may not refuse a request for access to a record of that body, if the record consists of information:

- Already publicly available;
- About or owned by a public body, other than the public body to whom the request is made, and this public body has consented in writing to its disclosure to the requester; or
- About the results of any product or environmental testing or other investigation (excluding preliminary testing) supplied by the public body, or the results of any such testing or investigation carried out by or on behalf of a public 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 public body**

The information officer of a public 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, 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 information officer of a public 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 on behalf of a public body and if this were to be disclosed, it would likely:

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

### **Operation of public bodies**

The information officer of a public body may refuse a request for access to a record of a public body, if the record contains an opinion, advice, report or recommendation obtained or prepared; or an account of a consultation, discussion or deliberation, including the minutes of meetings, for the purposes of assisting to formulate policy or taking a decision in the exercise of a power or the performance of a duty in terms of the law.

The information officer of a public body may refuse a request for access to a record of that body, if the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies, by inhibiting the candid communication of an opinion, advice report or recommendation; or the conduct of a consultation, discussion or deliberation; or if the disclosure of the record could by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

The information officer of a public body may refuse a request for access to a record of that public body, if:

- The disclosure of the record could reasonably be expected to jeopardise the effectiveness of a testing, examining, or auditing procedure used by a public body;
- The record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise, which was made to the person who supplied the material; and the material or the identity of the person who supplied it would be held in confidence; or
- The record contains a preliminary, working or other draft of an official of a public body.

### **Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources**

The information officer of a public body may refuse a request for access to a record of that public body, if the request is manifestly frivolous or vexatious; or if the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

### **Mandatory disclosure in the public interest**

Despite the above listed grounds of refusal, the information officer of a public body must grant a request for access to a record of a public 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.