



**INFORMATION
REGULATOR
(SOUTH AFRICA)**

*Ensuring protection of your personal information
and effective access to information*



GUIDE

**ON HOW TO USE THE
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF
2000, AS AMENDED**

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PAIA GUIDE

FOREWORD BY THE CHAIRPERSON

The Constitution of the Republic of South Africa, 1996¹ (“Constitution”) states that South Africa is a sovereign and democratic state that is founded on the advancement of human rights and an accountable, responsive and transparent system of governance as part of its values. Before South Africa became a constitutional democracy with an enforceable Bill of Rights, the system of Government in South Africa amongst others, resulted in a secretive and unresponsive culture in both public and private bodies which often led to the abuse of power and human rights violations. It is in this regard that section 32(1) of the Bill of Rights in the Constitution, provides for the right of access to information held by the state; and any information held by another person that is required for the exercise or protection of any rights. Section 32(2) of the Constitution in turn provides for the enactment of national legislation that will give effect to this right, by respecting, protecting, promoting and fulfilling this right.

The Promotion of Access to Information Act, No. 2 of 2000 (hereinafter referred to as “**PAIA**”, or “the Act” interchangeably), as amended, is the national legislation which was enacted in accordance with the above-mentioned section 32(2) of the constitution.

The aim of **PAIA**, is to foster a culture of transparency and accountability in public and private bodies. It does that by giving effect to the right of access to information and actively promoting a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights and also to realise South Africa’s goals of an open and participatory democracy.

This **PAIA** Guide has been developed in fulfilment of the Information Regulator’s (“Regulator”) obligation under Section 10 of the **PAIA**, which requires the Regulator to update and make available the existing Guide that has been compiled by the South African Human Rights Commission.

This Guide has been designed to be a guiding, user-friendly and accessible tool for any person who wishes to exercise any right contemplated in **PAIA** and the Protection of Personal Information Act, 2013.



Adv Pansy Tlakula

CHAIRPERSON OF THE INFORMATION REGULATOR

¹ Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)

DISCLAIMER

*This Guide does not relieve the user from the responsibility to exercise their own skill and care in relation to the requirement or obligations imposed by any legislation. Furthermore, this Guide does not provide legal advice and is not intended to replace **PAIA** or Regulations issued under **PAIA**. The Regulator accepts no liability for any loss that may be suffered as a result of reliance on this Guide.*

1. LIST OF ACRONYMS AND ABBREVIATIONS

CEO	Chief Executive Officer
CFO	Chief Financial Officer
Constitution	Constitution of the Republic of South Africa, Act No. 108 of 1996
DIO	Deputy Information Officer
Doj & CD	Department of Justice and Constitutional Development
IO	Information Officer
Members	Members of the Information Regulator
Minister	Minister of Justice and Correctional Services
PAIA	Promotion of Administrative Justice Act, 2000
PFMA	Public Finance Management Act No. 1 of 1999 as amended
POPIA	Protection of Personal Information Act No. 4 of 2013
Regulator	Information Regulator
SAHRC	South African Human Rights Commission

2. USEFUL TERMS EXPLAINED IN AN EASILY COMPREHENSIBLE FORM AND MANNER

Term	Description
Access Fee	This access fee is paid by the requester to the body from which you are requesting the information, to cover the costs of finding and copying the records you require. What can be charged is prescribed by regulation.
Administrator	Is an organ of state or any natural or juristic person taking administrative action.

Term	Description
Administrative Action	<p>Is any decision taken, or any failure to take a decision, by</p> <ul style="list-style-type: none"> (a) an organ of state, when: <ul style="list-style-type: none"> (i) exercising a power in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation; or (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision. <p>which adversely affects the rights of any person and which has a direct, external legal effect.</p>
Authorised Person	<p>The authorised person is the person who is making a request on behalf of someone else, and who has been properly authorised in writing to do so.</p>
Automatically Available Records	<p>These are records that a public or private body will provide to a requester without them needing to file a request. These records are listed in a 'voluntary disclosure notice', which should be made public.</p>
Data Subject	<p>Is the person to whom personal information relates.</p>
Days	<p>Unless specified as a 'working day' in a section in PAIA, a day is considered to be a calendar day. To calculate time period, the day on which the request is received is excluded, and every day thereafter is included including weekends and public holidays until the final day is counted. If the final day for responding to a request falls on a Sunday or public holiday, the next day is counted as the final day.</p>
Deemed Refusal	<p>If not response is received to a request within the prescribed time, this is defined as a 'deemed refusal'.</p>
Form 2	<p>This form is prescribed by regulation and should be used to request access to information held by a public or private body.</p>
Form 4	<p>This form is prescribed by regulation and should be used when appealing a decision made by a public body in relation to a request for access to information.</p>

Term**Description****Guide**

This Guide, made in pursuance of section 10 of **PAIA**, as amended which seeks to assist a person who wishes to exercise any right contemplated in **PAIA** and the Protection of Personal Information Act, 2013.

Information Officer

The information Officer is the person authorised to handle **PAIA** requests. The following are categories of Information Officers per specific Body -

Public Body or Organ of State (as defined in section 239 of the Constitution)	National Department	Director-General or the person who is acting as such.
	Provincial Administration	Head of Department or the person who is acting as such.
	Municipality	Municipal Manager or the person who is acting as such.
	Public Institutions listed in PFMA Schedule 1, 2, 3A, 3B, 3C & 3D	Chief Executive Officer or the person who is acting as such.
Private Body	Natural Person	Sole proprietor who carries on any trade business or profession, but only in such capacity and not in his personal capacity.
	Partnership	Any partner of the partnership or any person duly authorised by the partnership.
	Political Party	Leader of the political party or any person duly authorised by that leader.

Term	Description	
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Information Officer	Private Body	Juristic Person	Chief Executive Officer or the Managing Director or equivalent officer of the juristic person or any person duly authorised by the leader. NB: The Chief Executive Officer or equivalent officer may authorise any natural person as information Officer of a Private Body.

Deputy Information Officer

The Deputy Information Officer is the person designed or delegated by the Information Officer of a public body to assist the requester with their information request, and to whom the Information Officer can delegate other **PAIA** powers to.

NB: Whilst only a public body can designate or delegate a Deputy Information Officer(s), in terms of Section 17(1) of **PAIA**, the Protection of Personal Information Act 2013 ("**POPIA**") extends the power to designate a Deputy Information Officer to the private body in terms of section 56(1) thereof.

Information Regulator

The Office of the Information Regulator has been established, in terms of section 39 of **POPIA**, to monitor and enforce compliance with both **POPIA** and **PAIA**. In this Guide the Office of the Information Regulator or the information Regulator is referred to as the Regulator.

Internal Appeal

An internal appeal is the process for challenging a decision made in terms of a **PAIA** request to a public body, which must be completed before a challenge can be made to the Regulator or to a court having jurisdiction.

Private Body

A private body is a person, company or other kind of juristic entity that carries on trade, business or profession, including a political party.

Term	Description
Public Body	A private body means a government department or other functionary or institution, which is performing a public function. However, with regard to internal appeal, any reference to “public body” has been changed to “Government”, in order to avoid confusion in respect of public bodies in which appeal is not applicable.
Record	A record is any recorded information regardless of the form, including, for example, written documents, audio, digital and video materials. A record requested from a public or private body refers to a record that is in that body’s possession regardless of whether that body created the record.
Regulations	PAIA allows the Minister to issue regulations that supplement the Act, which must be published in the Government Gazette, and covers issues like the forms to be used and fees that may be charged for certain processes.
Relevant Authority	PAIA uses the term the ‘relevant authority’ to define the person within a National, Provincial and Local Government to whom an internal appeal must be lodged, which is generally the political head of the body concerned (this function can be officially delegated).

3. CONTACT DETAILS OF THE REGULATOR

Information Officer

Chief Executive Officer:

Contact Person:

Email:

Mr. Mosalanyane Mosala

Ms. Pfano Nenweli

PNenweli@justice.gov.za

Deputy Information Officer:

Email:

Ms. Varsha Sewlal

VarSewlal@justice.gov.za

Physical Address:

JD House, 27 Stiemens Street
Braamfontein
Johannesburg
2001

Postal Address:

P.O. Box 31533
Braamfontein
Johannesburg
2017

Telephone:

010 023 5200

4. PURPOSE OF THIS PAIA GUIDE

- 4.1 The purpose of this Guide is to provide information that is needed by any person who wishes to exercise any right contemplated in the Promotion of Access to Information Act of 2000 (**PAIA**) and Protection of Personal Information Act, 2013 ("**POPIA**"). Any person, irrespective of citizenship, can apply for access to information under **PAIA**.
- 4.2 This Guide will specifically assist a person, also called a data subject, on how to access his/her personal information in terms of section 23 of **POPIA**. Under **POPIA**, person or data subject has the right to -
 - 4.2.1 request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about them, and
 - 4.2.2 request from a responsible party the record or a description of the personal information about the data subject held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information;
 - 4.2.3 request a responsible party to -
 - (a) correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or
 - (b) destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain.
- 4.3 This guide will also assist any person on how to request access to records under **PAIA**. The Guide will also assist requesters in:
 - 4.3.1 understanding **PAIA**, its benefits and background;
 - 4.3.2 learning the step-by-step process by which to make a request and additional tips for making that process easier;
 - 4.3.3 learning the types of information which can be requested using **PAIA**;
 - 4.3.4 understanding the process by which a requester can challenge a decision taken in relation to their request;

- 4.3.5 being introduced to the changes that will occur to **PAIA** once **POPIA** is fully operational.
- 4.4 This guide will also assist people in understanding how to challenge the granting of access to their records or how to participate in the process of accessing their records.

5. ABOUT PAIA

- 5.1 The right to access to information is "one of the most effective ways of upholding the constitutional values of *transparency, openness, participation and accountability*². The above-mentioned constitutional values cannot be attained if the government has a monopoly on the information that informs its actions and decisions. Therefore, access to information is not only fundamental to a properly functioning participatory democracy, but it also increases public confidence in government and enhances its legitimacy. Other benefits of the right to access to information are for instance, that it discourages fraud and corruption, uncertainty and other improper governmental conduct.
- 5.2 When the South African Constitution was being drafted in the period following the fall of Apartheid in the 1990s, various organisations and individuals campaigned for the inclusion of a right of access to information. It was hoped that the inclusion of this right in the Bill of Rights would ensure that atrocities such as Apartheid could never again take place, as the state and private corporations would be obliged to act in an accountable and transparent manner by providing access to information, and therefore, would be unable to hide behind the veil of secrecy. It was seen as a necessary step for helping to create a culture of justification that would lead to fairer relations between people, and those in power. In one of the earliest cases³ to deal with the question whether an accused person is entitled to access to all the information contained in the police docket. Jones J acknowledged its importance in these terms:

“The purpose ... is to exclude the perpetuation of the old system of administration, a system in which it was possible for government to escape accountability by refusing to disclose information even if it had bearing upon the exercise or protection of rights of the individual. This is the mischief it is designed to prevent [...] Demonstrable fairness and openness promotes public confidence in the administration of public affairs generally. This confidence is one of the characteristics of the democratically governed society for which the Constitution strives”.

² Hoexter *Administrative Law* 94

³ 1994 (1) SACR 635 (E)

- 5.3 Section 32 of the Constitution enshrines the right of access to information held by both public and private bodies. Section 32 also states that legislation must be enacted to give effect to the right of access to information by detailing the ways in which information from public and private bodies can be accessed, and by providing grounds on which a public and private body could refuse access to information.
- 5.4 **PAIA** was enacted in response to the above-mentioned constitutional mandate, and came into force in large part in March 2001. Its preamble acknowledges the "secretive and unresponsive culture" of the pre-democratic era, and asserts that one of the objects of **PAIA** is to "foster a culture of transparency and accountability in public and private bodies."
- 5.5 **PAIA** is meant to give effect to a person's rights of access to information and accountability. It is designed to empower people to use the law, and so helps to facilitate requesting access to information in different ways. One does not need a lawyer to make a request for access to information in terms of **PAIA**.

6. THE OBJECTS OF PAIA

- 6.1 The objects of **PAIA** are not to replace the constitutional right, but to give effect to the right in section 32 subject to justifiable limitations, and in a way which helps balance all the other rights contained in the Constitution. It hopes to promote a human rights culture and social justice for people, the public sector and the private sector. **PAIA** seeks to promote transparency, accountability and effective governance of all institutions (both public and private) by empowering people to understand their access to information rights, act on them, and both scrutinise, and engage with, decision-making that affects them.
- 6.2 The right of access to information is a very powerful constitutional right, as it helps people realise other rights. A person can use it to help monitor and assess the delivery of government services, or to access historical records that might be of interest.
- 6.3 The objectives of **PAIA** are -
- 6.3.1 to give effect to the constitutional right of access to
 - 6.3.1.1 any information held by the State; and
 - 6.3.1.2 any information that is held by another person and that is required for the exercise or protection of any rights.

- The requirement relating to the protection of rights is confined to information held in private hands. Private bodies are thus subjected to a less stringent standard of transparency than public bodies. The private sector, in other words, is entitled to keep its information to itself, unless that information is needed to protect rights.
- **PAIA** recognises, in terms of Section 8(1) thereof, that a body may be "public" or "private" for the purposes of the Act depending on whether the record in question "relates to the exercise of a power or the performance of a function as a public body or as a private body."

6.3.2 to give effect to that right -

6.3.2.1 subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and

6.3.2.2 in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution;

6.3.3 to give effect to the constitutional obligations of the State in promoting a human rights culture and social justice, by including public bodies in the definition of 'requester', and allowing them, amongst others, to access information from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest;

6.3.4 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 public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and

6.3.5 generally, to promote transparency, accountability and effective governance of all public and private bodies by, including but not limited to, empowering and educating everyone -

6.3.5.1 to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

6.3.5.2 to understand the functions and operation of public bodies; and

6.3.5.3 to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

6.4 The Promotion of Access to Information Amendment Act, 2019

- 6.4.1 In the matter of ***My Vote Counts NPC v Minister of Justice and Correctional Services and Another [2018] ZACC 17***, the constitutional court held that *“the State is under an obligation that flows from a proper reading of sections 32, 19 and 7(2) of the Constitution to do everything reasonably possible to give practical and meaningful expression to the right of access to information and the right to vote. The majority further contended that this is so because the exercise of the right to vote must be an informed choice, and there is a vital connection between the proper exercise of the right to vote and the right of access to information. And “without access to information, the ability of citizens to make responsible political decisions and participate meaningfully in public life is undermined”.* The Constitutional Court confirmed the order of constitutional invalidity and ordered Parliament to amend **PAIA** and take any other measure it deems appropriate to provide for the recordal, preservation and facilitation of reasonable access to information on the private funding of political parties and independent candidates within a period of 18 months.
- 6.4.2 In accordance with the above-mentioned constitutional court judgment, the President has, on 3rd June 2019, assented to the Promotion of Access to Information Amendment Act, 2019 (**PAIA amendment Act 2019**)⁴. The **PAIA** amendment Act 2019 includes a political party in the definition of a private body, which effectively means that the leader of the political party or any person duly authorised by that leader is an information officer or head. The **PAIA** amendment Act 2019 now extends the right of access to any records of the political party.
- 6.4.3 The amendment Act provides for information on the private funding of political parties and independent candidates to be recorded, preserved and made available.
- 6.4.4 In terms of section 52A of the **PAIA** amendment Act 2019, the head of a political party must create and keep records of any donation exceeding the prescribed threshold, of **R100 000.00**, that has been made to that political party in any given financial year and the identity of the persons or entities who made such donations. The head of a political party is also required to make the records available on a quarterly basis, as prescribed; and keep the records for a period of at least five years after the records concerned have been created.

⁴ Promotion of Access to Information Amendment Act, No. 31 of 2019

6.4.5 This means that whilst the Political Party Funding Act makes provision for mandatory disclosure to the Electoral Commission, the **PAIA** amendment Act 2019 now extends the right of access, to the records of any donation exceeding **R100 000.00**, to any person, that has been made to that political party.

6.5 Other legislation that protects the right of access to information

PAIA also exists within a whole legal environment, which is designed to create a “culture of justification”. In recognition of this, **PAIA** states that any other law that gives a person an avenue for accessing information that is less onerous than **PAIA**, can be used instead⁵.

6.5.1 Companies Act 71 of 2008

6.5.1.1 Section 26(1) of the Companies Act provides a person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the records of the company.

6.5.1.2 In terms of section 26(7)(b) of the Companies Act, “the rights of access to information set out in this section are in addition to, and not in substitution for, any rights a person may have to access information in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)”.

6.5.2 The Political Party Funding Act, 2018 (Act No. 6 of 2018)

6.5.2.1 The Political Funding introduces a strict regulatory framework for the private funding of all registered political parties, whether represented in the national and provincial legislatures or not. This includes setting limits for the source, size and use of donated funds by political parties.

6.5.2.2 To ensure transparency and accountability, political parties are required to disclose all donations received above the disclosure threshold of **R100 000.00** to the Electoral Commission regularly every three months (as well as ahead of general elections).

⁵ Section 2(1) of PAIA

- 6.5.2.3 Any person or organisation making a donation to a political party which individually or cumulatively exceeds **R100 000.00** per year must report that donation to the Electoral Commission within 30 days of making the donation or within 30 days of when the cumulative donations exceeded **R100 000.00**.
- 6.5.2.4 Lastly, the Political Party Funding Act places an obligation on the Electoral Commission to make public every three months the donations reported by political parties and to report annually to Parliament on all donations made to political parties during the year.
- 6.5.3 Protection of Personal Information Act, 2013 (Act No. 4 of 2013)
- 6.5.3.1 Section 23 of **POPIA** provides the data subject with the right of access to personal information held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.
- 6.5.3.2 This means that whilst access to a record containing personal information about a requester is excluded from **PAIA** in terms Section 11(2) thereof, data subject can request –
- 6.5.3.2.1 access to his/her personal information; and/or
- 6.5.3.2.2 identity of all third parties, and/or categories of third parties, who have, or have had, access to the information.
- 6.5.3.2.3 correction or deletion of personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or
- 6.5.3.2.4 the record of his/her personal information that the responsible party is no longer authorised to retain to be destroyed or deleted.
- 6.5.3.3 A responsible party may refuse to disclose any personal information requested, in accordance with the grounds for refusal of access to records, as set out in paragraph 19.4 below.

6.5.4 The Promotion of Administrative Justice Act 3 of 2000

- 6.5.4.1 Another important law to remember when considering access to information is the Promotion of Administrative Justice Act (**PAJA**). **PAJA** gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33(2) of the Constitution⁶.
- 6.5.4.2 In terms of section 5(1) of **PAJA**, any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned to furnish written reasons for the action. The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reason in writing for the administrative action.

7. ESTABLISHMENT OF THE INFORMATION REGULATOR

- 7.1 To ensure the promotion and enhancement of the **PAIA** objectives, which are to give effect to that right of access to information in a manner which enables persons to obtain access to records of public and private bodies as swiftly and inexpensively as reasonably possible, the Information Regulator (“the Regulator”) was established in terms of section 39 of **POPIA**.
- 7.2 In order to ensure that uncomplicated and inexpensive administrative procedures follow when a request for access to information is made, complaints to the Regulator and court applications should be the exception rather than the rule.
- 7.3 **POPIA** amends the role of the **SAHRC** in relation to the **PAIA** mandate. Effective from 30 June 2021, all the functions of the **SAHRC**, as enumerated in **PAIA**, will be handled by the Regulator, which also has additional enforcement powers.
- 7.4 Whilst the **SAHRC** will still maintain its broader constitutional obligations to promote, protect and monitor the rights enshrined in the Bill of Rights, the **SAHRC** and the Regulator will work closely alongside one another.

⁶ Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

8. THE ROLE OF THE INFORMATION REGULATOR

- 8.1 The Regulator has a very important role in relation to **PAIA**. The Regulator is mandated by **PAIA**, under Part 4, Chapter 1A and Part 5 and other sections, to:
 - 8.1.1 promote the right of access to information and assist the public in using **PAIA** where reasonably possible to do so,
 - 8.1.2 monitor and further the implementation of **PAIA** by public and private bodies (which includes promoting effective ways to make information timeously available),
 - 8.1.3 make recommendations to strengthen **PAIA**, and
 - 8.1.4 report annually to Parliament.
- 8.2 Section 77C (1) and (2) of **PAIA** makes provision for the following powers, duties and functions of the Regulator, to -
 - 8.2.1 investigate a complaint made to the Regulator in the prescribed manner;
 - 8.2.2 refer the complaint to the Enforcement Committee established in terms of section 50 of the **POPIA**; or
 - 8.2.3 decide, in accordance with section 77D, to take no action on the complaint or, as the case may be, require no further action in respect of the complaint; and
 - 8.2.4 act, where appropriate, as conciliator in relation to such complaint in the prescribed manner.
- 8.3 The Regulator may, in terms of section 77H(1) of **PAIA**, and on its own initiative, or at the request by or on behalf of information officer or head of a private body or any other person conduct as an assessment whether a public or private body generally complies with the provisions of **PAIA**, insofar as its policies and implementation procedures are concerned.
- 8.4 The Regulator is empowered, in term of section 77F of **PAIA**, to use its best endeavours to secure a settlement of a complaint, if it appears from the complaint, or any written response made in relation thereto that it may be possible to settle the complaint. This means that the Regulator can only try to assist parties to settle their disputes, if there is a complaint lodged with the Regulator, unless it has decided, on its own initiative, to conduct an assessment, as stipulated in paragraph 8.3 above.

9. MAKING A REQUEST FOR A RECORD

Please refer to the step-by step process chart flow in paragraph 27 below, on how to request access to the records.

9.1 Getting started: **PAIA Manuals**

9.1.1 While this Guide has been published to assist the public from all walks of life to uphold their constitutional right to access to information, there are other sources of information that can also assist a person in making a request to access to records. **PAIA** requires that all public bodies, and private bodies, compile and make available a **PAIA** manual⁷.

9.1.2 Before any person takes steps to access the information or records of a particular body, the **PAIA** Manual is the first tool to read.

9.1.3 At its most basic, the **PAIA** manual is useful for a person to:

9.1.3.1 check the nature of the records which may already be available without the need for submitting a formal **PAIA** request;

9.1.3.2 have an understanding of how to make a request for access to information held by a particular body;

9.1.3.3 access all the relevant contact details of the person who will assist the public with the records any person intends accessing;

9.1.3.4 know all the remedies available from the body to which access to the records is being requested, before approaching the Regulator or the Courts;

9.1.3.5 know the description of the services available to members of the public from the body and how to gain access to those services;

9.1.3.6 know if the body will process personal information, the purpose of processing of personal information and the description of the categories of data subjects and of the information or categories of information relating thereto;

9.1.3.7 know if the body has planned to transfer or process a person's personal information outside the Republic of South Africa; and

⁷ Section 14 and section 51 of PAIA

- 9.1.3.8 know whether the body has appropriate security measures to ensure the confidentiality, integrity and availability of the information which is to be processed.

9.2 Where to find PAIA manuals?

9.2.1 PAIA Manual of public bodies

- 9.2.1.1 All public bodies must make the **PAIA** Manual easily available in at least three official languages⁸.
- 9.2.1.2 At the very least, they are required to make a copy of a **PAIA** Manual freely available, except if a printed hard copy is requested
 - 9.2.1.2.1 on the web site of the public body;
 - 9.2.1.2.2 at the head office of the public body for public inspection during normal business hours;
 - 9.2.1.2.3 if a person wants a hard copy, the public body must make a copy, but it may request payment of a reasonable fee for the provision of a hard copy; and
 - 9.2.1.3.4 to the Regulator upon request.

9.2.2 PAIA Manual of private bodies

- 9.2.2.1 Private bodies are also required to compile a **PAIA** manual⁹, but there is no requirement to compile it in more than one language or in a specific language, although it is recommended that the **PAIA** Manuals of private bodies should be at least in English. If a specific body is providing services to majority of people without formal education, the Regulator recommends that the manual of that body may also be in any other official language.
- 9.2.2.2 At the very least, the private bodies are required to make a copy of a **PAIA** Manual freely available¹⁰, except if a printed hard copy is requested -
 - 9.2.2.2.1 on the web site of the private body;
 - 9.2.2.2.2 at the principal place of business of the private body for public inspection during normal business hours;

⁸ Section 14(1) of PAIA

⁹ in terms of section 51 of PAIA

¹⁰ Section 51(3) of PAIA

9.2.2.2.3 if a person wants a hard copy, the private body must make a copy, but it may request the payment of a reasonable fee for the provision of the hard copy; and

9.2.2.2.4 to the Regulator upon request.

9.2.3 The Minister of Justice and Correctional Services has powers to exempt¹¹ certain private bodies or category of private bodies from the obligation to compile a manual. Currently, and until 31 December 2021, the Minister has exempted¹² all private bodies, except any company which -

- (a) (is not a private company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); and
- (b) is a private company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008) which operates within any of the sectors mentioned in column one of the schedule to this Notice and -
 - (i) has 50 or more employees in their employment; or
 - (ii) has a total annual turnover that is equal to or more than the applicable amount mentioned in column 2 of below table,

from compiling the manual contemplated in section 51(1) of the first mentioned Act for a period of six (6) month from **1 July 2021** to **31 December 2021**: -

Sector	Annual Turnover
Agriculture	R 6 million
Mining and Quarrying	R 22.5 million
Manufacturing	R 30 million
Electricity, Gas and Water	R 30 million
Construction	R 15 million
Retail and Motor Trade and Repair Services	R 45 million
Wholesale Trade, Commercial Agents and Allied Services	R 75 million
Catering, Accommodation and other Trade	R 15 million
Transport, Storage and Communications	R 30 million
Finance and Business Services	R 30 million
Community, Special and Personal Services	R 15 million

¹¹ Section 51(4) of PAIA

¹² Government Gazette no: 39504, 11 December 2015

9.2.4 Due to the significance of the legislative requirement for compiling the **PAIA** Manual, especially the amendment¹³ of section 51 of **PAIA** (which come into operation on 30 June 2021), in terms of which the scope of the information that the manual must cover has been widened to include matters relating **POPIA**, private bodies will no longer be exempted from the obligation to compile **PAIA** manual. Therefore, from, 1st January 2022, every private and public body will be required to have their **PAIA** Manual available, as prescribed in paragraph 9.2.2.2 above.

9.2.5 The exemption of private companies from the obligation to compile **PAIA** manual does not exempt those private companies from compliance with **PAIA**. This means that any person can still submit a request for access to information to exempted private body. The exemption just means that those private companies don't have to compile a **PAIA** manual.

9.2.6 Remember too, that not all private bodies are companies, as the definition of private body includes natural person, sole proprietor and partnership. However, it may still be worthwhile checking their website, as some Companies create a **PAIA** manual regardless of the number of their employees or their annual turnover.

9.3 Voluntary disclosure and automatic availability of certain records

9.3.1 Automatically available records are those that a public or private body will provide without the need for a requester to submit a **PAIA** request (in other words, a person can just request it without completing the **PAIA** Form 2).

9.3.2 The Information Officer of a public body is required, in terms of section 15(1) of **PAIA**, to make available a list or categories of records that are automatically available, as prescribed in paragraph 9.3.4 below.

9.3.3 Automatically available records of a private body may also be made available, in terms of section 52(1) of **PAIA**, but on a voluntary basis in accordance with paragraph 9.3.4 below.

9.3.4 A description of the categories of automatically available records must be made available -

- (a) to the Information Regulator;
- (b) on the website of a body; and
- (c) for inspection, at the offices of a body concerned during normal office hours.

¹³ Section 110 of POPIA

- 9.3.5 Please note that the Regulator will upload the description of automatically available records of a public body on its website.
- 9.3.6 This list includes records that might be required to be made available by other laws, and any other records that a body chooses to include. In order to avoid the formality of complying with the **PAIA** request process, a requester is advised to check the **PAIA** Manual of the public or private body concerned. Should a person wish to access records that fall within the body's list of automatically available records, that person may merely request access to them without needing to complete **PAIA** Form 2.
- 9.3.7 Political Party Funding Act 6 of 2018 introduces some changes through **PAIA**, in terms of which the heads of political parties are required to record and preserve records of private donations, which will need to be made public without a person having to file a **PAIA** request.

10. CONTACT DETAILS OF INFORMATION OFFICERS

- 10.1 Although the contact details of the Information Officers of every public body are required to be published in every telephone directory, in terms of section 16 of **PAIA**, the Regulator has specific contact details of all Information Officers (including Deputy Information Officers, designated in terms of section 17 and 56 of **PAIA** and **POPIA** respectively) registered with it in terms of section 55(2) of **POPIA**.
- 10.2 Whilst getting the correct contact details may often be a very challenging part of making a **PAIA** request, as roles change frequently in the public sector and **PAIA** manual may not necessarily be up-to-date, the first place to find contact details should be the body's **PAIA** Manual. However, if a requester cannot find the manual, calling the switchboard of the body to ask for the relevant details may also assist.
- 10.3 For Municipalities, the South African Local Government Association (**SALGA**) places the contact details for all Municipalities at this link:
<http://www.salga.org.za/Municipalities%20MCD.html>
- 10.4 Government communication also provides national and provincial contacts as well as the contact details of State-Owned Enterprises under this link:
<https://www.gov.za/about-government/contact-directory>. Always remember that the definition of the Information Officer helps to identify whose contact details are needed to identify the Information Officer.

11. PROCESS FOR MAKING A REQUEST FOR INFORMATION

11.1 The forms of request

- 11.1.1 A request for access to information can be made to both public and private bodies.
- 11.1.2 **PAIA** requires that if you want to make such a request, you have to submit the request on the required form (these forms are prescribed by Regulations). There are two forms that can be used in pursuing the right to access to information

Form 2	Form 4
This form can only be used if you want to request access to the records of a public or private body.	This form can only be used if you want to submit an internal appeal against the decisions of the Information Officers or that of the Deputy Information Officers of a National, Provincial or Local Sphere of Government to which an internal appeal is applicable.

- 11.1.3 These forms can be obtained on the Regulator's website at <https://www.justice.gov.za/inforeg/>

11.2 Deciding whether a request relates to information held by a private or public body

- 11.2.1 A public body performs a public function, such as providing electricity or water to the public. So, a public body is not just a National, Provincial or Local Government Department– it would include state-owned enterprises or Organs of State such as the Regulator, **Eskom**, or **PRASA**, however, a distinction must be made regarding a public body for purpose of internal appeal, which only refers to National, Provincial or Local Government.
- 11.2.2 A private body performs a private function. Such a body (which can be a person) carries on a trade, business or profession. It is very important to note that when submitting a **PAIA** request to a private body a person must state which right he is protecting or exercising by asking for this information. With regard to any information that is held by another person, Streicher JA summed up the position as follows, in **Cape Metropolitan Council v Metro Inspection Services (Western Cape) CC and Others**¹⁴,

¹⁴ 2001 (3) SA 1013 (SCA) para 28 at 1026F–G

“Information can only be required for the exercise or protection of a right if it will be of assistance in the exercise or protection of the right. It follows that, in order to make out a case for access to information in terms of section 32, an applicant has to state what the right is that he wishes to exercise or protect, what the information is which is required and how that information would assist him in exercising or protecting that right”.

11.2.3 Sometimes the question of whether a record is a public or private record can be complicated and the public are advised to seek legal advice. For example, if a public body appoints a private body to render certain services on its behalf, such as installation of water metres in certain communities, access to the numbers of installed metres, even if such information is held by such private body, will be treated as information of a public body.

11.3 How does a person explain the right he is hoping to exercise or protect?

11.3.1 When explaining which right one is hoping to exercise when making a request to a private body, one cannot refer to the right of access to information. One has to explain how the record one is asking for is reasonably required for one to protect, or exercise, another right. This could include rights that are not just constitutional rights.

11.3.2 One may for example require the master plans from a company that has the potential to impact the pollution levels in a community, in order to help protect one’s right to the environment through monitoring its activities. Or one may require records, which will help one determine if one has the right to file a civil claim against an entity. One therefore needs to:

11.3.2.1 Specifically identify the right one hopes to protect or exercise, and then

11.3.2.2 Explain clearly why the *record* one is asking for is reasonably required to help one with that right.

11.3.3 In contrast, when submitting a **PAIA** request to a public body, one does not have to have a reason for requesting the information.

12. WHO CAN MAKE A PAIA REQUEST?

12.1 Any person, whether South African or non-South African, is allowed to make a request under **PAIA**. The requester can be a natural person or juristic person.

- 12.2 A public body is considered a juristic person and may make a request for access to records held by private bodies, but only if the public body is -
- 12.2.1 acting in the interests of the public, and
 - 12.2.2 if the records are required to fulfil or protect any rights other than those of the public body.
- 12.3 Under **PAIA** a requester cannot request access to a record, of the public body, containing personal information about the requester from the public body¹⁵, however the requester or data subject can, in terms of section 23(1)(b) of **POPIA**, request from a responsible party the record or a description of the personal information about the data subject held by the responsible party. This means that any person can now request access to their personal information held by the public or private body upon production of adequate proof of identity. The personal information that a requester may request from the responsible body may include information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information.
- 12.4 In terms of section 50(1) of **POPIA**, any person can request access to a record, of a private body, containing personal information about the requester or the person on whose behalf the request is made.

13. TO WHOM CAN A REQUEST BE MADE TO?

- 13.1 The Information Officer of a public body is required to designate a Deputy Information Officer(s), who must ensure that access to the records of the public body is as reasonably accessible as possible. Although this was not a requirement with regard to the private body under **PAIA**, a private body may designate the above-mentioned Deputy Information Officer, in terms of section 56 of **POPIA**.
- 13.2 The request for access to information, although it may be directed to the Information Officer, can be submitted to the Deputy Information Officer. Particulars of Deputy Information Officer(s) can be obtained in the **PAIA** manual of that particular body or from the Regulator.

14. COMPLETING THE FORM

- 14.1 Form 2 - request for access to a record of a public or private body:
- 14.1.1 In order to complete the **PAIA** form, a person needs to provide sufficient detail to allow the Information Officer or Deputy Information Officer to identify the records the requester seeks.

¹⁵ Section 11(2) of PAIA

- 14.1.2 **PAIA** Regulations specify the form to be used, which must be sent to the Information Officer, or Deputy Information Officer of the body.
- 14.1.3 Requesters who are unable to read or write can make verbal requests to the Information Officer or Deputy Information Officer of a public body, who is then responsible for completing the form 2 on behalf of the requester. The current form will require you to complete the following sections:

Information Required	Description
Particulars of public private body	This section should contain the relevant email and fax number of the Information Officer and/or Deputy Information Officer.
Particulars of person requesting access to records	This should contain enough information about the requester to make the requester reasonably easy to identify, including the contact details of the requester: postal address, email address, fax and/or telephone number in South Africa. It also asks for your identity number to authenticate your identity. If you are requesting the information on behalf of someone else, proof of the capacity in which you are making the request must be provided (as the 'authorised person').
Particulars of record requested	Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. (If the provided space is inadequate, please continue on a separate page and attach it to the form. All additional pages must be signed.
Type of record	This should contain enough information about the record to make it reasonably easy to identify. If the information required cannot fit in the space provided in the form, additional typed or handwritten page may be used to give more detail of the request, as long as each additional page is signed

Information Required	Description
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	and attached to the request form. You might, for example, include an extract from a report or news story that references the record you are looking for. It allows you to include a reference number for the record, if it is applicable.
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Fees

The body, to which a requester intends submitting a request for access to a record, including record containing personal information about his or herself, may request that you pay request fee (access fee) or deposit fee, but that amount must not be excessive, as the fees must be for the reasonable time required to search for and prepare a record. The Minister may by notice in the Gazette exempt the payment of fees as listed on paragraph 51.1 below.

A space is provided for the requester to indicate why he believes he or she should be exempted from paying any fees. The reason may include, for example, that he or she is unemployed.

Form of access to record

This section allows you to note with an "X" your preferences for the form of access to the record may be provided in a printed copy of record and/or flash drive and/or compact disc drive.

Manner of access

Under this section you are required to note your preference in relation to which language the record should be in (this may not be possible in relation to all records, but you should still indicate your preference). The manner of access of the record may contribute to a refusal of access due to higher fees. For example, if a requester wants document in your preferred language,

Information Required	Description
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fees for changing the documents to your preferred language may become payable. However, if the record is not available in the language you prefer, access may be granted in the language in which the record is available. The manner of access to record may include personal inspection of record, record sent by email, or fax or courier or postal.

<p>Notice of decision regarding request for access</p>	<p>A space is provided for the requester to describe the manner in which he wishes to be informed about the decision to grant or deny the request. The requester can specify for instance that he would prefer to be contacted by email or by telephone or the response can be posted or couriered to him.</p>
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<p>Particulars of right to be exercised or protected</p>	<p>When requesting information from a private body a requester is required to describe the “particulars of right to be exercised or protected”. Here he must state the right he is relying on (such as his right to a healthy environment) and how the record he is requesting will help you either exercise, or protect, that right. He must show a connection between the record he wants, and the exercise or protection of the right.</p>
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Unfortunately, unlike the request for access to record of a public body, he cannot access a record of the private body unless he specifies the right(s) he intends protecting or exercising should access for information be granted. This can include the fact that after he gains access to records, he will then exercise his right to equal protection and benefit of the law¹⁶ by suing that body for damages that he may have suffered.

¹⁶ Section 9(1) of the constitution of the Republic of South Africa, Act 108 of 1996

14.1.4 If for any reasons his request does not comply with the requirements listed above, the Information Officer may not just refuse his request, unless he notified the requester that he intends to refuse the request and the reasons are provided. The Information Officer must also notify that he will assist the requester or give him an opportunity to correct the error.

15. THE FEES INVOLVED

15.1 Generally, fees need to be paid both for making a request, but also to cover the cost of providing access to records in terms of a request. There are, however, some exceptions. If the requester is granted access to the records he or she requested and he or she is not exempted from paying any fees, as indicated in paragraph 15.2 below, the Information Officer or Deputy Information Officer of a public or private body can charge the prescribed fees relating to the following categories -

NB: The fee structure in respect of fees payable to the Public and Private Bodies can be accessed on the Regulator’s website.

Item	Description
1	The request fee payable by every requester
2	Photocopy of A4 size page
3	Printed copy of A4 size page
4	For a copy in a computer-readable form on: <ul style="list-style-type: none"> (i) Flash drive (to be provided by requestor) (ii) Compact disc <ul style="list-style-type: none"> • If provided by requestor • If provided to the requestor
5	For a transcription of visual images per A4 size page
6	Copy of visual images
7	Transcription of an audio record, per A4 size page
8	Copy of an audio record on: <ul style="list-style-type: none"> (i) Flash drive (to be provided by requestor) (ii) Compact disc <ul style="list-style-type: none"> • If provided by requestor • If provided to the requestor
9	To search for and prepare the record for disclosure for each hour or part of an hour, excluding the first hour, reasonably required for such search and preparation. To not exceed a total cost of the prescribed maximum amount
10	Deposit: If search exceeds 6 hours
11	Postage, e-mail or any other electronic transfer

15.2 The requester does not need to pay an access fee¹⁷ to a public body if:-

15.2.1 He is a single person whose annual income, after permissible deductions, such as **PAYE** and **UIF**, is less than **R14 712.00** a year, or

15.2.2 He is married and the joint income with his partner, after permissible deductions, such as **PAYE** and **UIF**, is less than **R27 192.00** per year.

15.3 Please note that the public or private body can request, in Form 4 to the Regulations, a deposit from the requester, but only if they believe that the information or records requested will take more than six (6) hours to search, but the deposit amount cannot be more than one-third of the prescribed fee.

16. WILL THE INFORMATION OFFICER HELP THE REQUESTER MAKE A PAIA REQUEST?

16.1 The role of the Information Officers and/or Deputy Information Officers of both public and private bodies is to, in so far as it relates to the processing of requests for access to records:

16.1.1 receive the **PAIA** or **POPIA** request;

16.1.2 coordinate the processing of the request within the body;

16.1.3 make a decision as to whether to grant or refuse access to the records being requested;

16.1.4 liaise with the requester (e.g. they may need to ask the requester for more details or they may need to request an extension of time to deal with the request, etc.);

16.1.5 Advise the requester of the outcome of their **PAIA** request, which advice must be given as soon as is reasonably possible but within 30 days after receiving the request. The initial period of 30 days may be extended once for a further period of not more than 30 days, if for example, the requester has agreed to the extension or the request requires a search for records that cannot reasonably be completed within the original period;

16.1.6 provide the requester with reasons for the decision to refuse access. It is very important that the reasons given for a refusal are clear and detailed and must include reference to the specific sections of **PAIA** (see paragraph 19.4 below, regarding the grounds for refusal of access to records¹⁸);

¹⁷ as per Government Notice R991 of 14 October 2005

¹⁸ Section 33 to 46 of PAIA

- 16.1.7 inform relevant third parties through the third-party notification process, in terms of section 47 of **PAIA**; and
- 16.1.8 if access to the records is granted, provide the requester with a copy of the record.
- 16.2 When notifying the requester about the decision, also outline the forms of recourse available and the relevant time-lines (the recourse available is different for public and private bodies).
- 16.3 The additional role and responsibilities of the Information Officers and/or Deputy Information Officers are those detailed in the Guidance Note on Information Officers and Deputy Information Officers which Guidance Note is available at <https://www.justice.gov.za/infoereg/docs.html>
- 16.4 Because the role of the Information Officers and/or Deputy Information Officers is to facilitate the request for access to information, this also means they have a variety of duties to those making a request.
- 16.5 The Information Officers and/or Deputy Information Officers must provide the assistance for free.
- 16.6 The Information Officers and/or Deputy Information Officers of a public body have the following special tasks:

Duties of Information Officers	Description
Assist with completing the form	The Information Officer must provide reasonable assistance to the requester in completing their PAIA form, and may not refuse to accept a form that is not properly completed unless they have either given that help, or offered that help and the assistance or help has been refused.
Provide relevant information	If it is reasonably possible, the Information Officer must provide the requester with any other information that may be relevant, even if not specifically requested.
Transfer the request	This is a very important duty. When a PAIA request is made to the wrong public body, the Information Officer must transfer the

Duties of Information Officers	Description
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request to the correct public body within **14 days** of receiving the request and must inform the requester in writing of having done so. Once transferred, the correct Information Officer must then respond with a decision within **30 days**.

<p>Deferral of release</p>	<p>The Information Officer may decide to defer the release of a record to a requester if that record will be published within 90 days or if the record is required by law to be published but is yet to be.</p>
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16.7 With both public and private bodies, the Information Officer must, if they are unable to find the particular records requested or believe that the records do not exist, submit a detailed affidavit or affirmation¹⁹ to the requester giving notice that the records in question do not exist or cannot be found, but also outline the steps they took to locate them.

17. ASSISTANCE AVAILABLE FROM THE INFORMATION REGULATOR IN TERMS OF PAIA AND POPIA

17.1 The Information Officer of a public body has an obligation to render such reasonable assistance²⁰, free of charge, as is necessary to enable that requester or data subject to comply with the manner of access as contemplated in sections 18 of the **PAIA** and section 23 of **POPIA**.

17.2 However, should the Information Officer fail to comply with his/her duty, referred in paragraph 17.1 above, a requester or a data subject can may lodge a complaint with the Regulator and the Regulator may, upon investigation, issue an Enforcement Notice directing the Information Officer to provide the reasonable assistance.

17.3 The Regulator may, if reasonably possible, on request, assist any person wishing to exercise any right contemplated in **PAIA** and **POPIA**²¹, and this includes providing reasonable assistance, free of charge, as is necessary to enable that requester or data subject to comply with the manner of access as contemplated in sections 18 and 53 of the **PAIA** and section 23 of **POPIA**.

17.4 The above includes providing guidance on how to complete a request for access form or completing a form on behalf of an illiterate or blind person.

¹⁹ Section 23(1) and 51(1) of PAIA

²⁰ Section 19(1) of PAIA

²¹ Section 83(3)(c) of PAIA

18. CAN THE INFORMATION OFFICER EXTEND THE TIMELINES INVOLVED?

- 18.1 An outline of the process and the key time-lines involved are contained in the diagram of the **PAIA** request process, in paragraph 27 below. Having specific time-lines is an important part of **PAIA**, as it fosters the effective management of requests for access to records.
- 18.2 As a reminder, once you have submitted your request correctly the Information Officer or Deputy Information Officer, to whom the request is made or transferred, must respond to you as soon as is reasonably possible but in any event **within 30 days**²². However, the Information Officer of a public or private body can request a single **30 day extension**²³, but only if:
- 18.2.1 the request is for a large number of records or requires that a large number of records are searched and, without an extension, this search would interfere with the normal activities of the body concerned;
 - 18.2.2 the request requires a search through records in an office of that body not situated in the same city or town and could thus not be completed **within the 30 days**; and/or
 - 18.2.3 it requires a level of consultation in order to act on the request, which cannot reasonably be completed **within just 30 days**.
- 18.3 The Information Officer must notify the requester of his or her intention to extend the initial time period, and indicate the period of extension, the reason for the extension, and notify the requester of his or her or its right to -
- 18.3.1 Appeal to the relevant authority;
 - 18.3.2 complain to the Regulator; or
 - 18.2.3 launch proceedings in court against the extension as the case may be.
- 18.4 The Information Officer must also inform the requester of the process for each of the above-mentioned rights in the notice²⁴.

19. RESPONSES TO A REQUEST FOR INFORMATION

- 19.1 **PAIA** has provided the public with the right to request access to records from any public or private body. It is often described as the law that keeps citizens in the know about their government. Public bodies are required to disclose any information requested under the **PAIA** unless it falls under one of **twelve (12)**

²² Section 25(1) of PAIA

²³ Section 26(1) of PAIA

²⁴ Section 26(3) of PAIA - the extension notice must state that the requester may lodge an internal appeal, complaint to the Information Regulator or an application with a court, as the case may be, against the extension, and the procedure (including the period) for lodging the internal appeal, complaint to the Information Regulator or application, as the case may be.

exemptions or reasons why access to records of a public body may or must not be granted²⁵ and seven (7) exemptions or reasons why access to records of private body may or must not be granted²⁶. The nineteen (19) exemptions provided for in **PAIA** are intended to protect interests such as personal privacy, national security, and law enforcement.

19.2 The guiding principle underlying the administration of **PAIA** is the presumption of openness. This means that any reason for limiting this openness must be justifiable. Public bodies should also consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they must sever or redact the information that cannot be disclosed and disclose the rest.

19.3 Types of responses to requests

19.3.1 When a request for access to a record is made, the Information Officer or Deputy Information Officer must, if a request for access to a record is granted or refused, inform the requester of -

- (a) his or her decision; and
- (b) the fees payable, if any,

on a form that corresponds substantially with **Form 3** of Annexure A to the Regulations:

19.3.2 However, **PAIA** provides a list of reasons or grounds (exemptions) (see paragraphs 19.4 and 19.6 below) why the request may or must be refused. This is important, as the request can only be refused on the basis of one of these listed grounds for refusal of access to records.

19.3.3 Despite the above-mentioned reasons for refusal of access to records, the Information Officer of a public body must grant a request for access to a record of the body if the public interest in the disclosure of the record clearly outweighs the harm contemplated in the listed reasons for refusal²⁷. This means the requester can rely on public interest whenever any of the grounds of refusal of access to records is being invoked.

19.3.4 In short, the reasons behind why information cannot be disclosed relate to whether the disclosure of the information would cause more harm than non-disclosure would. There are two different types of listed grounds for refusal for access to records of a body:

²⁵ Chapter 4 of PAIA- grounds for refusal of access to records (section 34-45 of PAIA)

²⁶ Chapter 4 of PAIA -grounds for refusal of access to records (section 63-69 of PAIA)

²⁷ Section 46 of PAIA

19.4 Mandatory grounds of refusal (grounds of exemption)

19.4.1 With mandatory grounds, the Information Officer or Deputy Information Officer must refuse a request because they apply to the record.

19.4.2 There are more mandatory grounds than discretionary grounds. The following are the mandatory grounds of refusal, and the Information Officer or Deputy Information Officer must refuse a request because they apply to the record –

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

The Information Officer of a public or private body must not allow a requester access to the personal information of another person if it amounts to ‘an unreasonable disclosure’. The sections themselves indicate a few reasons when this does not apply, like when records are already in the public knowledge, or where a person has given consent. The consent issue is particularly important as it connects to another part of the process the requester should be aware of, which relates to third party notifications, in terms of chapter 5 of **PAIA**.

19.4.2.2 **Mandatory protection of certain records of the South African Revenue Service;**

The Information Officer of **SARS** must not allow a requester access to records obtained, or held, by **SARS** for its revenue collection purposes. However, records obtained or held by **SARS** may not be refused if a request is done by personal requester or the person on whose behalf the request is made.

19.4.2.3 **Mandatory protection of commercial information of third party;**

The Information Officer of a body must not allow a requester access to the commercial information of another person (in other words, who is not the requester or requestee. This would include information like trade secrets, or that might threaten that third party’s commercial interests. For example, **KFC** use certain recipes, including some ingredients manufactured by a third party, which are the trade secrets of that third party and its disclosure might threaten the commercial interests of that third party.

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

The Information Officers of both a public and private body must not allow a requester access to a record if its release would amount to a breach of a duty of confidence owed to a third party in terms of an agreement or contract.

19.4.2.5 **Mandatory protection of safety of individuals, and protection of property;**

The Information Officer of both a public or private body must not allow a requester access to a record if its release could reasonably be expected to compromise the safety of an individual. In the same sections, it also states that the Information Officer of a body may refuse access if it would be likely to impair the security of a building or property.

19.4.2.6 **Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings;**

The Information Officer of a public body must not allow a requester access to records like bail proceeding records that are already protected by section 60 of the Criminal Procedure Act. In the same section, it also states that an Information Officer of a public body may refuse access to records of law enforcement that reveal its methods, techniques, procedures for prevention of crimes, or prosecution of crimes, as well as certain other records relevant to legal proceedings that are happening.

19.4.2.7 **Mandatory protection of records privileged from production in legal proceedings;**

The Information Officer of a private body must not allow a requester access to a record if the record is privileged from production in legal proceedings, unless the person entitled to the privilege has waived the privilege.

19.4.2.8 **Mandatory protection of research information of third party, and protection of research information of public or private body.**

The Information Officer of a body must not allow a requester access to a record if the record relates to research that is, or will be, undertaken by the body in question and its release would be likely to expose the researcher, the third party or the matter under research to a serious disadvantage.

19.4.3 Please note that the above mandatory grounds for refusal of access to records are somewhat the same for public and private bodies, except for the mandatory protection of certain records of South African Revenue Service, of police dockets in bail proceedings, of law enforcement and of legal proceedings, which are only applicable to public bodies.

19.4.4 If only part of the record is linked to an exemption ground, the Information Officer or Deputy Information Officer of both a public or private body is under an obligation to consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible and they should take reasonable steps to sever or redact that part that cannot be released to the requester and grant access to the rest of the record.

19.5 Deemed refusal of request²⁸

19.5.1 A failure to respond properly to a request within the correct timeframe is considered to be a 'deemed refusal'. This is important, because **PAIA** allows the requester to challenge a decision when no decision has been made and the request has been ignored. The requester would merely state in the internal appeal that no response was received.

19.5.2 Request for access to records is deemed to be a refusal after the expiry of 30 days or any extended period and the public or private body fails to respond.

19.6 Discretionary grounds of refusal

19.6.1 With discretionary grounds, an Information Officer or Deputy Information Officer may consider whether or not to refuse a request because the grounds apply to the record requested. Because it is a discretion, the Information Officer must apply his/her mind objectively when considering the different grounds, which are:

19.6.1.1 **South Africa's defence, security and international relations:**

The Information Officer may refuse access if the release of the information could reasonably be expected to threaten the defence or security of the country. This could also apply where the release of the information might harm South Africa's relations with another country, such as revealing records supplied in confidence.

19.6.1.2 **Economic, financial and commercial interests:**

The Information Officer may refuse access if its release will be harmful to the economic and financial status of the Republic;

²⁸ Section 27 and 58 of PAIA

19.6.1.3 **Operations of public bodies:** The Information Officer of a public body may refuse access if the release of the information could reasonably hamper operations, for example if it is trying to formulate policy, or deliberate on an issue;

19.6.1.4 **Manifestly frivolous or vexatious requests:** The Information Officers may refuse a request for information if they are of the opinion that processing requests will be unreasonably time consuming and lead to a waste of resources. In addition, they may refuse access to a record if the request is seen to be made by a requester to unnecessarily annoy or provoke.

20. MANDATORY DISCLOSURE OF RECORDS IN THE PUBLIC INTEREST

20.1 Even if a discretionary or mandatory ground for refusal exists in relation to a request for access to records of public or private bodies, there is always the possibility that the public interest in the disclosure of the record is more important than the harm created by the release of the record.

20.2 Where the importance of the public interest exists as stated above and the disclosure of the record 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, then the Information Officer of a body must grant a request for access to a record despite the existence of the exemption grounds listed above.

21. THIRD PARTY NOTIFICATION PROCESS²⁹

21.1 An Information Officer or Deputy Information Officer of a body is required, in terms of sections 47 and 71 of **PAIA**, to take all reasonable steps to inform a third party about a request for his or records that might be a record that contains either personal information,

21.1.1 a SARS record;

21.1.2 trade secrets;

21.1.3 Information the release of which could constitute grounds for an action for breach of a duty of confidence; or research information that could expose someone or the subject matter to serious damage.

21.2 The notice to the third party whose records or Information are subject of request should invite the third party to -

²⁹ Section 47 and 71 of PAIA

- 21.2.1 make written or oral representations to the Information Officer why the request for access should be refused; or
- 21.2.2 give written consent for the disclosure of the record to the requester.
- 21.3 Importantly for the requester, **PAIA** says that the written notices to the third party must be sent to the third party within 21 days of the request being received, and that the Information Officer or Deputy Information Officer must inform the requester that a notice has been sent to the third party.
- 21.4 Once that notification has been sent, the Information Officer or Deputy Information Officer must then make a final decision on whether or not to release the records **within 30 days** of that notice being sent.
- 21.5 The third party must be notified about the decision taken and adequate reasons for granting the request must also be provided. The third party must also be informed about the right and the procedure to challenge the decision as indicated in paragraph 22 below.

22. LEGAL REMEDIES AVAILABLE AGAINST A DECISIONS OR FAILURE TO TAKE A DECISION BY THE INFORMATION OFFICER OR DEPUTY INFORMATION OFFICER

- 22.1 Action to take once a decision is made on a request
 - 22.1.1 A requester can make a follow-up action in writing, on the pending decision of an Information Officer or Deputy Information Officer. It is encouraged that all correspondence between a requester and the Information Officer or Deputy Information Officer must be in writing for future reference purposes.
 - 22.1.2 There are different processes for public and private bodies, especially regarding internal appeals. For instance, with regard to a request for access to a record of a public body, the requester must first submit an internal appeal before approaching the Regulator or Court. However, there is no internal appeal against a decision (whether granting or refusal to grant access to records) or deemed refusal of access to records of a private body.
 - 22.1.3 This section will explain the legal remedies available to requesters who wish to challenge such decisions, which include internal appeals, lodging a complaint to the Regulator and applications to Court. See also diagram of **PAIA** request process flow, in paragraph 27 below.

22.1.4 A requester may, amongst others, challenge the following decision of a private and/or public body -

22.1.4.1 the tender or payment of the request fee;

22.1.4.2 the tender or payment of a deposit;

22.1.4.3 the access fee to be paid is too excessive;

22.1.4.4 the form of access granted;

22.1.4.5 the refusal of the request;

22.1.4.6 the procedure (including the period) for lodging the internal appeal;

22.1.4.7 inappropriate time extension taken to respond to a request for access;

22.1.4.8 failure to disclose records;

22.1.4.9 the granting of a request for access to a record;

22.1.4.10 refusal to grant request to waive the fees;

22.2 Internal remedies

22.2.1 How does a requester appeal internally against a public body's decision?

22.2.1.1 An internal appeal can only be lodged, in terms of section 74 of **PAIA**, with the relevant authority of the national or provincial sphere of government or any municipality in the local sphere of government as the case may be³⁰.

22.2.1.2 So for example, the City of Johannesburg is an example of a local sphere of government against which an internal appeal can be submitted. The Road Accident Fund or the Regulator is an example of a public body which is not part of the national, provincial or local sphere of government as it is set up by legislation, and therefore an internal appeal may not be lodged against it.

³⁰ Section 74(1) of PAIA

22.2.1.3 When a requester or a third party is unhappy with a decision made by the Information Officer or Deputy Information Officer of a national, provincial or local sphere of government, the requester or a third party has the right to file an internal appeal, in terms of section 74(1) or (2) of **PAIA**. The process for lodging an appeal is prescribed in the **PAIA** manual of that particular body and the manner for lodging an internal appeal is also detailed herein below.

22.2.1.4 If the response from the national, provincial or local sphere of government is a deemed refusal, in another words, it has failed to respond to a request within 30 days or any extended period, the requester may file an internal appeal, as per the processes outlined herein, before the requester may approach the Regulator or a Court.

22.3 **Preservation of records until final decision on request has been finally determined**

22.3.1 The Information Officer of a National, Provincial or Local sphere of government to which an internal appeal is applicable is required, in terms of section 21 of **PAIA**, to take appropriate steps that are reasonably necessary to preserve the record and cannot delete or destroy any re-requested record, until such time as all or any proceedings in an internal appeal or a complaint to the Regulator or an application to court, as the case may be, are finally determined.

22.3.2 This means that the information officer cannot delete or destroy any information requested, pending any process prescribed in paragraph 22.3.1. above.

22.4 **To whom should the internal appeal be directed to?**

22.4.1 Although the appeal will be considered by the relevant authority, an internal appeal must be delivered or sent to the Information Officer of the National, Provincial or Local Sphere of Government, as the case may be, at his address, fax number or electronic mail address³¹, the contact details of which can be found in the **PAIA** manual or as may be obtained from the Regulator.

22.4.2 The Information Officer of the national, provincial or local sphere of government, as the case may be, has a specific obligation, in terms of section 75(4) of **PAIA**, to submit the appeal to the

³¹ Section 75(1)(b) of PAIA

appeal authority, together with his reasons for the decision under appeal. The submission of the appeal to the relevant authority must be done within 10 working days after receipt of the appeal.

22.5 Who is the relevant authority?

22.5.1 The relevant authority, herein referred to as “appeal authority” is generally the political head of the body concerned (although this function can be officially delegated) and specifically refers to the following person.

Public body ("Government")	Relevant Authority ("Appeal Authority")
Office of the Presidency	The person designated in writing by the President, if any, otherwise the President is the appeal authority.
National Department	Minister responsible for that department or the person designated in writing by that Minister.
Office of a Premier	The person designated in writing by the Premier.
Provincial Department	Member of the Executive Council (MEC) responsible for that Provincial Department or the person designated in writing by the MEC;
Municipality	The Mayor, the Speaker or any other person designated in writing by the Municipal Council of that municipality;

22.5.2 Any other case, where it is not the office of the premier: the member of the executive who is responsible for that public body or the person designated in writing by that member.

22.5.3 If the appeal authority approves the Information Officers’ decision, then the internal appeal is denied and the original

22.5.4 decision of the Information Officer stands. However, should the appeal authority disagree with the Information Officer's decision, then the appeal is granted and the original decision is overturned.

22.6 Who can lodge an internal appeal?

22.6.1 Any requester whose **PAIA** request for access to the records of National, Provincial or Local sphere of Government, as the case may be, has been refused, and believes that one of the appeal grounds listed in paragraph 22.2.4 above is applicable to their request, has the right to file an internal appeal.

22.6.2 Third parties can also file internal appeals against the decision made by an Information Officer to grant access to a record that concerns them. If the internal appeal involves a third party, the appeal authority who received the internal appeal is required to notify those third parties (so the responsibility shifts from the Information Officer to the appeal authority).

22.7 Period within which to lodge an appeal

22.7.1 An internal appeal must be lodged-

22.7.1.1 within **60 days**³² after the decision was taken;

22.7.1.2 within **30 days**³³ after notice is given to the third party of the decision appealed against

22.7.2 Lodging an internal appeal after the above-mentioned period (late) may not be allowed, unless a valid reason for being late is provided to the appeal authority. An example, such as being hospitalised for more than 60 days may be accepted as valid reasons for being late.

22.7.3 If the appeal authority does not accept the late lodging of an internal appeal, it must provide you with reasons for rejecting the appeal and provide guidance of any additional information, if any, required in order to accept the appeal. The appeal authority must also advise you about the process to lodge a complaint against their decision with the Regulator or a court.

³² Section 75(1)(a)(i) of PAIA

³³ Section 75(1)(a)(ii) of PAIA

22.7.4 As indicated above, your appeal must be submitted by the Information Officer to the appeal authority within 10 working days after receipt of an internal appeal³⁴.

22.8 Notice of appeal by appeal authority to the requester or third party

22.8.1 The appeal authority must, as soon as is reasonably possible but in any event within **30 days** after the receipt of the internal appeal³⁵, notify -

22.8.1.1 the third party to whom or which the record under appeal belongs, or

22.8.1.2 the requester about the internal appeal against the granting of a request for access.

22.8.2 A requester or a third party to whom or which notice is given, may within **21 days** after that notice is given, make written representations to the appeal authority why the request for access should or should not be granted.

22.9 Decision on internal appeal and notice thereof³⁶

22.9.1 The appeal authority must decide the internal appeal as soon as reasonably possible but in any event within 30 days:

22.9.1.1 after the internal appeal is received by the Information Officer of a body;

22.9.1.2 after a third party is informed, as indicated in paragraph 22.8.1 above.

22.9.2 The decision of the appeal authority must be communicated to the appellant, third party and the requester. The decision of the appeal authority must be accompanied by adequate reasons for the decision, including the provision of **PAIA** or **POPIA** relied upon.

22.9.3 If the appeal authority fails to give notice of the decision on an internal appeal to the appellant within 30 days, the appeal is deemed to have been dismissed and the requester can proceed to lodge a complaint to the Regulator or approach the Court for appropriate relief³⁷.

³⁴ Section 75(4) of PAIA

³⁵ Section 76(2)(a) of PAIA

³⁶ Section 77 of PAIA

³⁷ Section 77(7) of PAIA

22.10 Completing the internal appeal - Form 4

- 22.10.1 In order to appeal against any decision by a National, Provincial or Local sphere of Government, the requester must lodge his internal appeal by completing Form 4. Form 4 must be submitted to the Information Officer of the sphere of government concerned, who is then required to forward it to the appeal authority, as stated above.
- 22.10.2 Form 4 is available on the Regulator's website, <https://www.justice.gov.za/inforeg/>, as well as in the website of the sphere of Government concerned.
- 22.10.3 The Information Officer or Deputy Information Officer of the sphere of Government concerned is not under an express obligation to help the requester complete the internal appeal form; however, the requester may still request the Information Officer to assist him in this regard.
- 22.10.4 Below is the step-by-step process to complete the internal appeal form -

Information Required	Description
Particulars of public body	This section should contain the name of the National, Provincial for Local sphere of Government concerned, and the name and surname of the Information Officer.
Particulars of appellant who lodges the internal appeal	This section should be completed by the appellant, whether in representative capacity or not. The full names and surname, identity number and the capacity, in which an internal appeal is lodged on behalf of another person, if relevant, must be provided. If the appeal is being in a personal capacity, such capacity must be recorded. Additional information required includes the contact details of the requester:

Information Required	Description
	<p>postal address, email address, fax and/or telephone number. This information should be the same as in the original request. If the person filling in the form is the representative of the requester, proof of the capacity in which appeal is lodged must be attached to this form.</p>
<p>Particulars of person on whose behalf request is made (If lodged by a third party)</p>	<p>This section only needs to be completed by a person who is requesting information for another person. If the person submitting the internal appeal is not the person who originally requested the information, the particulars of the requester must be provided herein. If the request is in one's personal capacity this section need not be completed.</p>
<p>The decision against which the internal appeal is lodged</p>	<p>The form provides space for the requester to indicate with an "x", which of the listed appeal grounds applies to the appeal.</p>
<p>Grounds for appeal</p>	<p>Under this section, the requester is required to describe in detail why he thinks the appeal grounds apply. He is required to provide reasons(s) why he thinks the decision of the Information Officer is incorrect. He also needs to attach any documents which support the appeal. The list of reasons supplies in support of the appeal can be outlined in greater detail on a separate page, if the space provided in the form is not sufficient. The additional pages submitted should be signed.</p>

Information Required	Description
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There must be sufficient reasons and supporting information to enable the appeal authority makes an informed decision. Therefore, one must also include an outline of everything that has happened in the run-up to the internal appeal. On the separate page, one can refer to specific sections of **PAIA** as a basis for the appeal.

<p>Notice of decision on appeal</p>	<p>A space is provided for a description of the manner in which the decision must be sent, for example by post, couriered or facsimile or e-mail. Please select the preferred manner of notification.</p>
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22.10.5 Whilst there is no prohibition against getting a lawyer to assist at any stage of the request for information, the various **PAIA** processes are meant to be user-friendly removing the need for a lawyer and for legal fees to be incurred.

23. COMPLAINT TO THE INFORMATION REGULATOR

23.1 A requester or third party may only submit a complaint to the Regulator after that requester or third party has exhausted the internal appeal procedure against a decision of the Information Officer of a national, provincial or local sphere of government. This means that one can only submit one’s complaint, against a particular sphere of government to the Regulator if one is not happy with the decision of the appeal authority. The Regulator will reject the complaint if an appeal process to the relevant sphere of government has not been completed.

23.2 However, with regard to a public body (in respect of which an internal appeal is not applicable) and a private body, a requester or third party may submit a complaint to the Regulator, if not satisfied by the decision of the body concerned.

23.3 A complaint to the Regulator by a requester or third party must be lodged within 180 days of receipt of the decision from the body.

23.4 A requester may lodge a complaint with the Regulator, if not happy with -

23.4.1 the outcome of an internal appeal to the appeal authority of any sphere of government;

23.4.2 a decision of the appeal authority to disallow the late lodging of an internal appeal;

23.4.3 a decision of the Information Officer of a public body that is not part of any sphere of government to -

23.4.3.1 refuse a request for access; or

23.4.3.2 extend the period to deal with request; or

23.4.3.3 grant access in a particular form.

23.4.4 a decision of the head of a private body to -

23.4.4.1 refuse a request for access; or

23.4.4.2 demand payment of the request fee, or a deposit of the access fee; or

23.4.4.3 extend a period to deal with request; or

23.4.4.4 grant access in a particular form.

23.5 A third party may lodge a complaint with the Regulator, if not happy with -

23.5.1 the outcome of an internal appeal to the appeal authority of the relevant sphere of government;

23.5.2 a decision of the Information Officer of a public body that is not part of any sphere of government to grant a request for access; or

23.5.3 a decision of the head of a private body to grant a request for access to a record of that body,

23.6 How does one complain to Regulator?

- 23.6.1 complaint to the Regulator must be made in writing and a complaint form must be completed, either manually or online. A complaint form, Form 5, can be downloaded from the Regulator's website, <https://www.justice.gov.za/inforeg/>
- 23.6.2 This means that the Regulator will not accept a complaint telephonically; however, the Regulator is required to provide reasonable assistance to any person who wishes to make a complaint and this includes assistance regarding completing a complaint form.
- 23.6.3 If one is challenging the decision of the Information Officer of a private body, one must provide sufficient evidence to prove that the record requested is required for the exercise or protection of any other right(s). Access to the records of a private body can only be granted if one can prove that one intends exercising or protecting any other right(s) with the record requested.

23.7 What happens after receipt of the complaint?

- 23.7.1 Upon receipt of one's complaint, the Regulator must -
- 23.7.1.1 investigate the complaint and refer its findings to the Enforcement Committee for a decision; or
 - 23.7.1.2 take no action on the complaint due to the fact that -
 - 23.7.1.2.1 The complaint has not been submitted within the period of 180 days and there are no reasonable grounds to condone the late submission of a complaint;
 - 23.7.1.2.2 the complaint is frivolous or vexatious or not made in good faith; or
 - 23.7.1.2.3 having regard to all the circumstances of the case, any further action is unnecessary or inappropriate. For example, the information requested has been made publicly available.
 - 23.7.1.3 Where appropriate conciliate or use its best endeavours to secure such a settlement or assist the parties to settle their dispute(s); and

23.7.1.4 Advise the complainant and the Information Officer, to whom the complaint relates, of the course of action to be undertaken.

23.8 **Regulator's first communication to the complainant and Information Officer regarding the complaint lodged**

23.8.1 If the Regulator decides not to take any further action on the complaint, the Regulator will inform the requester of that decision and the reasons for not taking further action on the complaint.

23.8.2 If the Regulator decides to investigate a complaint, the requester will receive a letter advising him that the Regulator has decided to conduct an investigation.

23.8.3 Upon receipt of a complaint, the Regulator will forward the details of the complaint to the Information Officer of the relevant body, and request him to submit to the Regulator, a written response to the complaint.

23.9 **Investigative powers of the Regulator**

23.9.1 The Regulator has powers, in terms of section 77G(2) of **PAIA**, to -

23.9.1.1 use its best endeavours to secure such a settlement;

23.9.1.2 summon and enforce the appearance of persons before the Regulator;

23.9.1.3 compel them to give oral or written evidence on oath and to produce any records;

23.9.1.4 receive and accept any evidence and other information, whether on oath, by affidavit;

23.9.1.5 enter and search any premises occupied by a responsible party;

23.9.1.6 conduct a private interview with any person in any premises entered; and

23.9.1.7 carry out in those premises any inquiries that the Regulator deems fit.

23.10 **Assessment of compliance with the provisions of PAIA**

- 23.10.1 The Regulator may conduct an assessment on whether a public or private body generally complies with the provisions of this **PAIA**.
- 23.10.2 The Regulator may randomly conduct a compliance assessment on a body, of its own volition, however, the Regulator can also conduct the compliance assessment upon request by or on behalf of the Information Officer of a body or any other person. This means that any person may request the Regulator to conduct compliance assessment on a body. A person can also submit an anonymous request to conduct a compliance assessment, by indicating that he or she request to remain anonymous.
- 23.10.3 The Regulator will provide the person who requested the assessment with the assessment report and a recommendation of action to be undertaken, if any.

23.11 **Information Notice**

The Regulator may serve the Information Officer of a body with an Information Notice requiring said party to furnish the Regulator with information specified in the notice. For example, if a complaint lodged with the Regulator relates to a refusal of access based on any of the exempted grounds, the Regulator may request, in an Information Notice, copies of the records to which access has been refused in order to determine if the reasons for refusal are valid or not.

23.12 **Establishment of Enforcement Committee**

- 23.12.1 The Regulator is required to establish an Enforcement Committee³⁸, which has powers to -
- 23.12.1.1 consider all matters referred to it by the Regulator in terms PAIA and make a finding in respect thereof; and
 - 23.12.1.1 make any recommendation to the Regulator regarding any action that should be taken against the Information Officer of a body.

23.13 **Enforcement Notice**

- 23.13.1 The Regulator may, after having considered the recommendations of the Enforcement Committee, serve the Information Officer of a body with an Enforcement Notice -

³⁸ Section 50 of POPIA

23.13.1.1 confirming, amending or setting aside the decision which is the subject of the complaint; or

23.13.1.2 Requiring the Information Officer to take such action or to refrain from taking such action as the Information Regulator has specified in the notice.

23.14 **What are consequences for non-compliance with Enforcement Notices?**

23.14.1 An Information Officer of a body who refuses to comply with an enforcement notice is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three years or to both such a fine and such imprisonment.

23.14.2 Section 77K of **PAIA** signifies the importance of the right of access to Information or records. This section also strengthens the importance of the Regulator in so far as promotion of right of access to information is concerned.

24. APPLICATION TO COURT

24.1 **Who can file an application to court against a decision?**

24.1.1 requester or third party may only apply to a court for appropriate relief in terms of section 82 in the following circumstances:

24.1.1.1 After that requester or third party has exhausted the internal appeal process referred to in paragraph **22.3** above; or

24.1.1.2 After that requester or third party has exhausted the complaints procedure referred to in section 77A.

24.1.2 In terms of section 78(1) of **PAIA**, a requester or a third party has two options, either to refer a decision, listed in paragraphs 22.2.4, 23.4 and 23.5 above, to the Regulator or the Court. Whilst one is not compelled to approach the Regulator before approaching the Court, it is advisable that one should consider approaching the Regulator, as the Regulator has extensive and quick dispute resolution mechanisms, as opposed to the Court.

24.1.3 However, for the Court to have jurisdiction to adjudicate the matter, a requester or a third party must -

24.1.3.1 be aggrieved by either of the decisions, listed in paragraph 22.2.4, 23.4 or 23.5 above; or

24.1.3.2 have exhausted the complaints procedure with the Regulator or withdraw the complaint to the Regulator. This means that one cannot approach the Court if one's complaint is still pending with the Regulator.

24.1.4 If one is challenging the decision of an Information Officer of a private body, one needs to provide sufficient evidence to prove that the record requested is required for the exercise or protection of any other right(s).

24.2 **When can one file an application to Court against a decision of a body or Regulator?**

24.2.1 An application to Court by a requester or third party, who is either unsuccessful in an internal appeal to the appeal authority of the relevant sphere of government or aggrieved by a decision of the Information Officer of a body (listed in 22.2.4, 23.4 or 23.5 above) or that of the Regulator must be filed within 180 days from the date of the applicable event.

24.2.2 The Information Officer of a body or appeal authority of a Government, as the case may be, aggrieved by a decision of the Regulator may apply to a court for appropriate relief in terms of section 82, within 180 days³⁹.

24.2.3 A requester, third party, or a body, may apply to court to have any of the decisions they are aggrieved by reviewed by the Court.

24.2.4 An application to Court under **PAIA** is done through civil proceedings, and should be used as a last resort.

24.2.5 Cases for access to information can be heard before the Magistrate's Courts, as a court of first instance⁴⁰, and the High Court having jurisdiction.

24.2.6 Failing to bring the application within a period of 180 days may be condoned by the Court if one shows that the interests of justice so require. This means that the court may accept the late application if the issue to be adjudicated is found to be in the interests of justice.

³⁹ Section 78(4) of PAIA

⁴⁰ Section 91A of PAIA and Promotion of access to information Rules, 2019

If the records to which access is requested will assist one in applying for an appeal against imprisonment or assist one in getting further medical attention, for example, the court is likely to grant condonation in this regard.

24.2.7 An application may be brought in accordance with the procedure set out in rule 53 of the High Court Rules or in terms of rule 55 of the Magistrates' Court Rules if no records have or an incomplete record has been furnished by the administrator.

24.2.8 If the record has already been furnished, the application shall be brought in terms of rule 55 Magistrates' Court Rules, provided that where there is reason for the applicant to believe that the full record of proceedings may not have been provided by the administrator, the applicant may proceed in accordance with the procedure set out in Rule 53 of the High Court Rules, at its election, but shall indicate in its founding affidavit why there is reason to believe that the full record has not been provided⁴¹.

24.3 **What is the legal status of the Regulator's decision pending the decision of the Court?**

The Regulator's powers are mainly sourced from the Constitution, **POPIA** and **PAIA**. As a result, the enforcement notice issued by the Regulator has legal consequences and is therefore binding until such time as the court of law has decided otherwise. The Regulator's decisions are therefore effective and enforceable unless directed otherwise by the relevant Court.

24.4 **What are orders the Court hearing an application may grant?**

24.4.1 The court (either Magistrates' or High Court) hearing an application may make the following orders -

24.4.4.1 confirm, amend or set aside the decision of either the Information Officer, or Appeal Authority or Information Regulator;

24.4.4.2 require the Information Officer or Appeal Authority to take such action or to refrain from taking such action as the Court considers necessary within a period mentioned in the order;

24.4.4.3 grant an interdict, interim or specific relief, a declaratory order or an order for compensation;

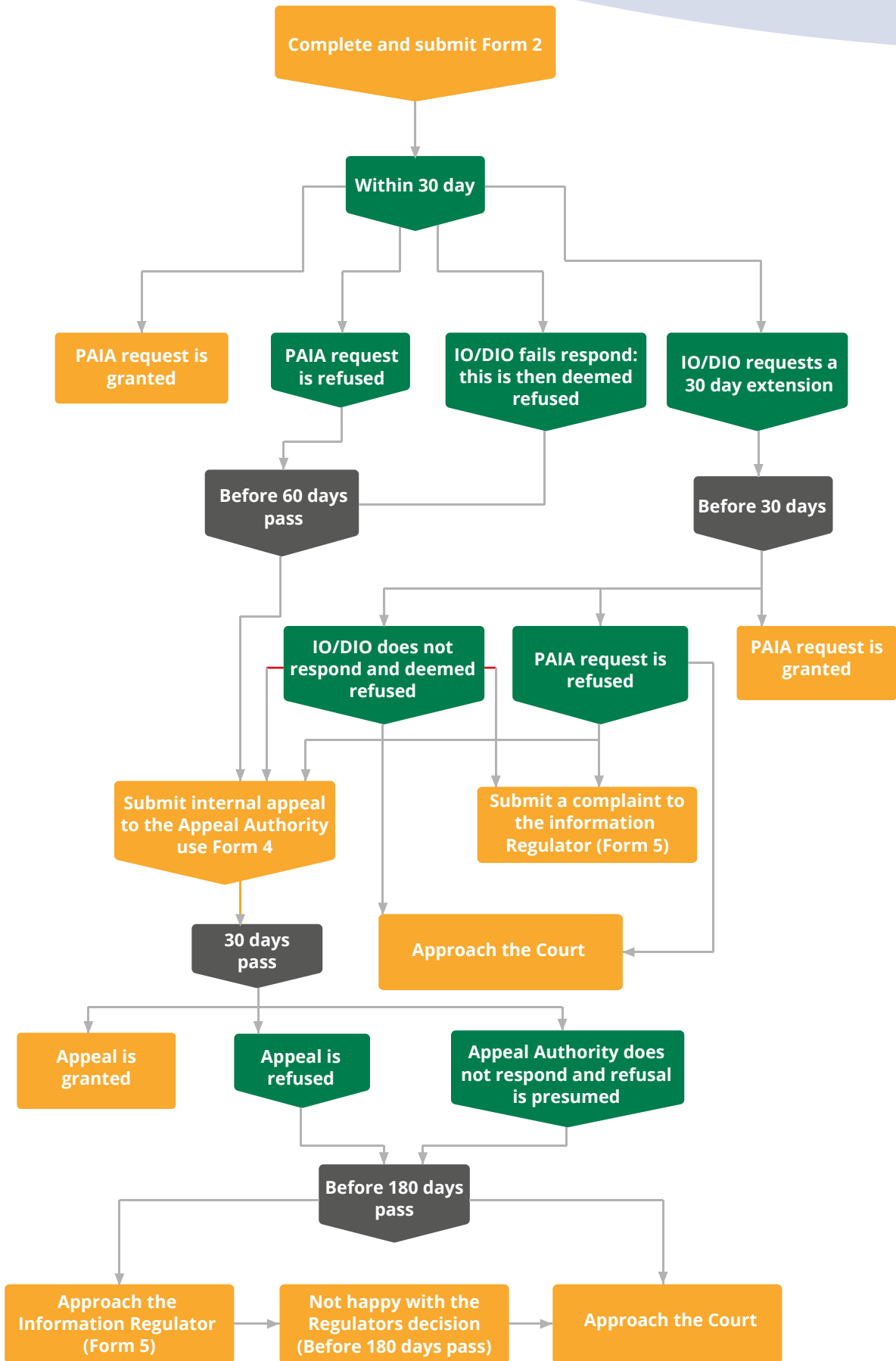
⁴¹ Rule 4 Promotion of access to information Rules, 2019

24.4.4.4 make an order of costs against any party;

24.4.4.5 in the interests of justice, condone non-compliance with the 180-day period within which to bring an application. As indicated above, sufficient grounds for failure to adhere to the prescribed period must be explained in detail in the accompanying application for condonation.

25. DIAGRAM OF PAIA REQUEST PROCESS

Please refer to the step-by step process chart flow, on the processes to be followed when exercise the right of access to information.



26. REGULATIONS MADE IN TERMS OF SECTION 92 OF PAIA

26.1 In accordance with section 92(1) and 92(4) of **PAIA**, Minister made Regulations relating to the Promotion of Access to Information, covering the following matters

26.1.1 Obligations of Information Regulator (**Regulation 2**)

26.1.2 Obligations of information officer (**Regulation 3**)

26.1.3 Automatic availability of certain records of public body (**Regulation 4**)

26.1.4 Voluntary disclosure and automatic availability of certain records of

26.1.5 Availability of records of political parties (**Regulation 6**)

26.1.6 Request for access to information (**Regulation 7**)

26.1.7 Outcome of request and fees payable (**Regulation 8**)

26.1.8 Internal appeal against decision of information officer of public body (**Regulation 9**)

26.1.9 Lodging of complaints (**Regulation 10**)

26.1.10 Procedure regarding investigation of complaints (**Regulation 11**)

26.1.11 Settlement of matter (**Regulation 12**)

26.1.12 Conciliation of matter (**Regulation 13**)

26.1.13 Assessment (**Regulation 14**)

26.1.14 Electronic communication (**Regulation 15**)

26.1.15 Offences and penalties (**Regulation 16**)

26.2 In accordance with section 79(1) of **PAIA**, the Rules Board for Courts of Law, with the approval of the Minister, made rules of procedure for -

26.2.1 a court in respect of applications in terms of section 78 of **PAIA**; and

26.2.2 a court to receive representations ex parte referred to in section 80(3)(a)

27. KEY LEGISLATIONS, REGULATIONS, NOTICES AND ACKNOWLEDGEMENT

Legislations, As May Be Amended From Time To Time

Promotion of Access to Information Act, Act 2 of 2000

Promotion of Administrative Justice Act, Act 3 of 2000

Promotion of Access to Information Amendment Act, Act 54 of 2002

Protection of Personal Information Act, Act 4 of 2013

Promotion of Access to Information Amendment Act, Act 31 of 2019

Political Party Funding Act, Act 6 of 2018

Regulations and Notices

Government Notice	Date of Publications	Subject and Description
Government Notice R.757 in GG No 45057	27 August 2021	Regulations relating to the Promotion of Access to Information, 2021
Government Notice R.991 in GG 28107	14 October 2005	Regulations that prescribe the grounds under which a person is exempt from having to pay fees.
Government Notice 397 in GG No. 44785	30 June 2021	Exemption of certain private bodies from compiling PAIA Manual.
Government Notice 1217 in GG 42717	19 September 2019	Designation of Magistrate Courts as having the capacity to hear PAIA matters.
Government Notice R.1284 in GG 42740	4 October 2019	Rules of procedure for applications to be made in terms of PAIA before High Court or Magistrates Court.

ACKNOWLEDGEMENT

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Issued by

INFORMATION REGULATOR



**INFORMATION
REGULATOR
(SOUTH AFRICA)**

*Ensuring protection of your personal information
and effective access to information*



TATAISO

**YA MOKGWA WA HO SEBEDISA MOLAO
WA KGOHALETSO YA PHUMANTSHO YA LESEDI
WA BO-2 WA 2000, JWALOKA HA O HLOMATHISITSWE**

SESO THO

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PAIA TATAISO

DITABA TSE ETELETSENG PELE TSA MODULASETULO

Molaotheo wa Riphabliki ya Afrika Borwa, 1996¹ ("Molaotheo") o re Afrika Borwa ke puso e ipusang le ya demokerasi e thehilweng hodima ntshetsopele ya ditokelo tsa botho mme ke mokgwa o ikarabellang, o arabelang wa taolo jwaloka karolo ya dikateng tsa boleng ba yona. Pele Afrika Borwa e ba le molaotheo wa demokerasi ka Bili ya Ditokelo e tlamang, mokgwa wa Mmuso wa Afrika Borwa hara e meng, o ile wa baka tlwaelo e nang le sephiri le e sa arabeleng ho ka bobedi makala a mmuso le a poraefete e leng seo hangata se ileng sa lebisa tshebedisong e mpe ya matla le kगतिकेलo ya ditokelo tsa botho. Ke lebakeng lena moo karolo 32(1) ya Bili ya Ditokelo ka hara Molaotheo, e fanang ka tokelo ya phumantsho ya lesedi le tshwerweng ke motho e mong le batlehang bakeng sa ho sebedisa kapa ho sireletsa ditokelo leha e le dife. Karolo 32(2) ya Molaotheo ka ho le leng e fana ka tshebediso ya molao wa naha o tla fana ka matla tokelong ena, ka ho hlompha, ho sireletsa, ho kgothaletsa le ho phethahatsa tokelo ena.

Molao wa Kgothaletso ya Phumantsho ya Lesedi, No. 2 wa 2000 (kamora mona o tla bitswa "**PAIA**", kapa "Molao" ka ho fapanyetsana), jwaloka ha o hlomathisitswe, ke molao wa naha o ileng wa sebediswa ho ya ka karolo 32(2) ya molaotheo.

Sepheo sa **PAIA**, ke ho qobella tlwaelo ya ponaletso le boikarabelo makaleng a mmuso le a poraefete. E etsa jwalo ka ho fana ka matla ho tokelo ya phumantsho ya lesedi le ho kgothaletsa ka matla setjhaba moo batho ba Afrika Borwa ba nang le phumantsho e hlwahlwa ya lesedi ho ba thusa ho sebedisa le ho sireletsa ka botlalo ditokelo tsa bona tsohle le hape ho fihlella merero ya Afrika Borwa ya demokerasi e bulehileng moo bohle ba nkang karolo.

Tataiso ena ya **PAIA** e hlahisitswe bakeng sa ho phethahatsa mosebetsi wa Bolaodi ba Lesedi ("Regulator") tlasa Karolo 10 ya **PAIA**, e reng Bolaodi bo ntlafatse le ho fana ka Tataiso e teng e hlophisitsweng ke Khomishene ya Ditokelo tsa Botho ya Afrika Borwa.

Tataiso ena e raletswe ho ba sesebediswa se tataisang, se bonolo ho sebediswa le ho fihlellwa ke motho leha e le ofe ya ratang ho sebedisa tokelo leha e le efe e lohothwang ho **PAIA** le ho Molao wa Tshireletso ya Lesedi la Bo Mong, 2013.



Adv Pansy Tlakula

MODULASETULO WA BOLAODI BA LESEDI

¹ Molaotheo wa Riphabliki ya Afrika Borwa, 1996 (Molao No. 108 wa 1996)

BOITSHWASOLLO

Tataiso ena ha e imolle boikarabelo ba mosebedisi ba hore a sebedise maitsebelo a hae le kelohlolo mabapi le tlhokeho kapa mesebetsi tse behwang ke molao leha e le ofe. Ho feta moo, Tataiso ena ha e fane ka keletso ya semolao mme ha e ya rerelwa ho nka sebaka sa **PAIA** kapa Melawana e ntshitsweng tlasa **PAIA**. Bolaodi ha bo amohela boikarabelo bakeng sa tahlehelo leha e ka ba efe e ka bang teng ka lebaka la ho itshetleha hodima Tataiso ena.

1. LENANE LA DIAKRONIMI LE DIKGAOLETSO

CEO	Mohlanka e Moholo wa Phethahatso
CFO	Mohlanka e Moholo wa Ditjhelete
Molaotheo	Molaotheo wa Riphabliki ya Afrika Borwa, Molao No. 108 wa 1996
DIO	Motlatsi wa Mohlanka wa Lesedi
Doj & CD	Lefapha la Toka le Ntshetsopele ya Molaotheo
IO	Mohlanka wa Lesedi
Ditho	Ditho tsa Bolaodi ba Lesedi
Letona	Minister of Justice and Correctional Services
PAIA	Molao wa Kgothaletso ya Phumantsho ya Lesedi, Molao No. 2 wa 2000, jwaloka ha o hlomathisitswe;
PAJA	Molao wa Kgothaletso ya Toka ya Tsamaiso, 2000
PFMA	Molao wa Bolaodi ba Ditjhelete tsa Mmuso, No.1 wa 1999, jwaloka ha o hlomathisitswe
POPIA	Molao wa Tshireletso ya Lesedi la Bo Mong No.4 wa 2013
Bolaodi	Bolaodi ba Lesedi
SAHRC	Khomishene ya Ditokelo tsa Botho ya Afrika Borwa

2. MAREO A BOHLOKWA A HLAOSWA KA SEBOPEHO LE MOKGWA O UTLWISISEHANG HA BOBEBE

Lereo	Tlhaloso
Tefello ya Phumantsho	Tefello ena e lefuwa ke mokopi ho lekala leo o kopang lesedi ho lona, ho lefella ditjeo tsa ho batla le ho etsa dikhopi tsa direkoto tseo a di batlang. Se ka lefiswang se laelwa ke molawana.
Motsamaisi	Ke lekala la mmuso kapa motho leha e le ofe ya tlwaelehileng kapa ya ikemetseng semolao ya nkang kgato ya tsamaiso.

Lereo**Tlhaloso****Mohato wa Tsamaiso**

Ke qeto leha e le efe e nkuweng, kapa ho hloleha leha e le hofe ha ho nka qeto, ke

(a) lekala la mmuso, ha:

(i) le sebedisa matla ho ya ka Molaotheo kapa molaotheo wa provense; kapa

(ii) ho sebedisa matla a mmuso kapa ho etsa mosebetsi wa mmuso ho ya ka molao leha e le ofe; kapa

(b) motho ya tlwaelehileng kapa ya ikemetseng ka semolao, ntle le lekala la puso, ha a sebedisa matla a mmuso kapa a etsa mosebetsi wa mmuso ho ya ka pehelo e mo nehang matla.

e amang hampe ditokelo tsa motho leha e le ofe mme e na kgahlamelo e otlohileng, ya ka ntle ya semolao.

Motho ya Dumelletsweng

Motho ya dumelletsweng ke motho ya etsang kopo lebitsong la e mong, mme a dumelletswa ka lengolo ho etsa jwalo.

Direkoto tse Fumanehang ka ho Iketsahalla

Tsena ke direkoto tseo lekala la mmuso kapa la poraefete le tla di neha mokopi ntle le hore a kenye kopo. Direkoto tsena di boletswa 'tsebisong ya pepeso ya boithaopo', e lokelang ho tsebiswa setjhaba.

Monga Lesedi

Ke motho eo lesedi la boyena le mo amang.

Matsatsi

Ntle leha le boletswa e le 'letsatsi la tshebetso' karolong ya **PAIA**, letsatsi le nkuwa e le letsatsi la khalendara. Ho sebetsa bolelele ba nako, letsatsi leo kopo e amohetsweng ka lona ha le ballwe, mme letsatsi ka leng kamora moo le a kenyeletswa ho kenyeletsa mafelo a beke le matsatsi a phomolo ho fihlela ho balwa letsatsi la ho qetela. Haeba letsatsi la ho qetela la ho arabela e le Sontaha kapa letsatsi la phomolo, letsatsi le latelang le nkuwa e le letsatsi la ho qetela.

Se nkuwang e le Kganyetso

Haeba kopo e sa arabelwe hara nako e behilweng, sena se 'nkuwa e le kganyetso'.

Foromo 2

Foromo ena e laetswe ka molawana mme e lokela ho sebediswa ho kopa phumantsho ya lesedi le tshwerweng ke lekala la mmuso kapa la poraefete.

Foromo 4

Foromo ena e laetswe ka molawana mme e lokela ho sebediswa ha motho a ipiletsa ka qeto e entsweng ke lekala la mmuso mabapi le kopo ya ho fumantshwa lesedi.

Tataiso

Tataiso ena, e entsweng ho latela karolo 10 ya **PAIA**, jwaloka ha e hlomathisitswe, e reretsweng ho thusa motho ya batlang ho sebedisa tokelo leha e le efe e lohothwang ho **PAIA** le ho Molao wa Tshireletso ya Lesedi la Bo Mong, 2013.

Mohlanka wa Lesedi

Mohlanka wa Lesedi ke motho ya fuweng matla a ho sebetsana le dikopo tsa **PAIA**. Tse latelang ke mekgahlelo ya Bahlanka ba Lesedi bakeng sa Lekala le itseng -

Lefapha la Mmuso kapa Lekala la (jwaloka ha ho hlalositse ho karolo 239 ya Molaotheo)	Lefapha la Naha	Motsamaisi-Kakaretso kapa motho ya tshwereng mokobobo
	Tsamaiso ya Provense	Hlooho ya Lefapha kapa motho ya tshwereng mokobobo.
	Masepala	Molaodi wa Masepala kapa motho ya tshwereng mokobobo.
	Ditheo tsa Mmuso tse boletsweng ho Sekejule 1, 2, 3A, 3B, 3C LE 3D sa PFMA	Mohlanka e Moholo wa Phethahatso kapa motho ya Tshwereng Mokobobo.
Lekala la Poraefete	Motho ya tlwaelehileng	Monga thepa ka bo mong ya tsamaisang kgwebisano, kgwebo kapa profeshene leha e le efe, empa boemong bono feela mme e se boemong ba hae ka boyena
	Semphato	Mphato leha e le ofe wa semphato kapa motho leha e le ofe ya fuweng matla ke semphato.
	Mokga wa Dipolotiki	Moetapele wa mokga wa dipolotiki kapa motho leha e le ofe ya fuweng matla ke moetapele eo.

Mohlanka wa Lesedi

	Motho ya Ikemetseng ka Semolao	<p>Mohlanka e Moholo wa Phethahatso kapa Motsamaisi kapa mohlanka ya maemong a tshwanang le ao a motho ya ikemetseng semolao kapa motho leha e le ofe ya fuweng matla ke mohlanka eo.</p> <p>TEMOSO: CEO kapa mohlanka ya maemong a tshwanang le ao a ka neha motho leha e le ofe ya tlwaelehileng matla a ho ba Mohlanka wa Lesedi wa Lekala la Poraefete.</p>
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Motlatsi wa Mohlanka wa Lesedi

Motlatsi wa Mohlanka wa Lesedi ke motho behilweng kapa ya kgethilweng ke Mohlanka wa Lesedi wa lekala la mmuso ho thusa mokopi ka kopo ya lesedi, le eo Mohlanka wa Lesedi a ka mo nehang matla a mang a **PAIA**.

TEMOSO: Leha e le feela lekala la mmuso le kang le ka behang le ho kgetha Mo(ba)hlanka wa Lesedi, ho ya ka karolo 17(1) ya **PAIA**, Molao wa Tshireletso ya Lesedi la Bo Mong, 2013 ("**POPIA**") o atolosa matla a ho kgetha Motlatsi wa Mohlanka wa Lesedi lekaleng la poraefete, ho ya ka karolo 56(1) ya ona.

Bolaodi ba Lesedi

Ofisi ya Bolaodi ba Lesedi e thehilweng, ho ya ka karolo 39 ya **POPIA**, ho beha leihlo le ho qobella boimatahanyo le ka bobedi **POPIA** le **PAIA**. Tataisong ena Ofisi ya Bolaodi ba Lesedi kapa Molaodi wa Lesedi o tsejwa e le Molaodi.

Boipiletso ba ka hare

Boipiletso ba ka hare ke motjha wa ho phephetsa qeto e entsweng ho ya ka kopo ya **PAIA** lekaleng la mmuso, o lokelang ho phethelwa pele ho ka etswa phephetso ho Bolaodi lekgotleng le nang le tokelo ya tsamaiso.

Lekala la Poraefete

Lekala la poraefete ke motho, khamphani kapa setheo sa semolao se tsamaisang kgwebisano, kgwebo kapa profeshene, ho kenyetsa mokga wa dipolotiki.

Lereo

Tlhaloso

Lekala la Mmuso

Lekala la mmuso le bolela lefapha la mmuso ka setsi kapa setheo se seng, se etsang mosebetsi wa setjhaba. Leha ho le jwalo, mabapi le boipiletso ba ka hare, hohle ha ho buuwa ka "lekala la mmuso" ho se ho fetohetswe ho "Mmuso", bakeng sa ho qoba pherekano mabapi le makala a mmuso moo boipiletso bo sa sebetseng ho ona.

Rekoto

Rekoto ke lesedi leha e le le lefe le rekotuweng ho sa nantswe sebopeho, ho kenyeletswa, ka mohlala, ditokomane tse ngotsweng, tse mamelwang, thepa ya dijithale le ya vidiyo. Rekoto e kopuweng lekaleng la mmuso kapa la poraefete ho bolelwa rekotong e tshwerweng ke lekala leo ho sa natswe le haeba lekala leo ke lona le hlahisitseng rekoto eno.

Melawana

PAIA e dumella Letona ho ntsha melawana e tlatselatsang Molao, e lokelang ho phatlalatswa Koranteng ya Mmuso, le ho akaretsa dintlha tse kang diforomo tse lokelang ho sebediswa le ditjhelete tse ka lefuwang bakeng sa metjha e itseng.

Bolaodi bo Amehang

PAIA e sebedisa lereo 'Bolaodi bo amehang' ho hlalosa motho ya ka hara Mmuso wa Naha, Provense le wa Lehae eo boipiletso bo lokelang ho lebiswa ho yena, e leng ka kakaretso hlooho ya sepolotiki ya lekala le amehang (mosebetsi ona o ka fuwa moemedi wa semmuso).

3. DINTLHA TSA HO ITEANYA LE BOLAODI

Mohlanka wa Lesedi

CEO:

Mr. Mosalanyane Mosala

Lehokela:

Mofumahadi Ntombizodwa Harrieth Rikhotso

Imeile:

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2017

Mohala:

010 023 4200

4. SEPHEO SA TATAISO ENA YA PAIA

- 4.1 Sepheo sa Tataiso ena ke ho fana ka lesedi le hlokwang ke motho leha e le ofe ya batlang ho sebedisa tokelo leha e le efe e lohothwang ho Molao wa Kgothaletso ya Phumantsho ya Lesedi wa 2000 (**PAIA**) le Tshireletso ya Lesedi la Bo Mong, 2013 ("**POPIA**"). Mang kapa mang, ho sa natswe boahi, a ka kopa ho fumantshwa lesedi tlasa **PAIA**.
- 4.2 Tataiso ena e tla thusa ka kotloloho motho, eo hape a bitswang monga lesedi, ka mokgwa wa ho fihlella lesedi la hae ho ya ka karolo 23 ya **POPIA**. Tlasa **POPIA**, motho kapa monga lesedi o na le tokelo ya ho -
- 4.2.1 kopa mokga o ikarabellang ho netefatsa, mahala, haeba ke nnete kapa tjhe mokga o ikarabellang o na le lesedi la bo mong ka yena, le
- 4.2.2 ho kopa ho mokga o ikarabellang rekoto kapa tlhaloso ya lesedi la bo mong ka monga lesedi le tshwerweng ke mokga o ikarabellang, ho kenyeletswa lesedi ka boitsebiso ba mekga ya boraro kaofela, kapa mekgahlelo ya mekga ya boraro, e ileng, kapa e bileng, le phumantsho ya lesedi leo;
- 4.2.3 kopa mokga o ikarabellang ho -
- (a) lokisa kapa ho hlakola lesedi la bo mong la monga lesedi leo a nang le lona kapa le ka tlasa taolo ya ona le fosahetseng, le sa tsamaelaneng, le phophomang, le fetuweng ke nako, le sa fellang, le lahlehisang kapa le fumanweng ka mokunyata; kapa
- (b) ho senya kapa ho hlakola rekoto ya lesedi la bo mong ka monga lesedi leo mokga o ikarabellang o seng o se na matla a ho le boloka
- 4.3 Tataiso ena e tla boela e thusa motho leha e le ofe kamoo a ka kopang phumantsho ya direkoto tlasa **PAIA**. Tataiso e tla boela e thusa bakopi ka:
- 4.3.1 ho utlwisisa **PAIA**, melemo ya yona le nalane;
- 4.3.2 ho ithuta mohato-ka-mohato motjha wa ho etsa kopo le mawa a tlatsetso a ho etsa hore motjha o be bobebe;
- 4.3.3 ho ithuta mefuta ya lesedi le ka koptjwang ka tshebediso ya **PAIA**;
- 4.3.4 ho utlwisisa motjha oo ka ona mokopi a ka phephetsang qeto e entsweng mabapi le kopo ya hae;

4.3.5 ho tsebiswa diphethoho tse tla ba teng ho **PAIA** hang ha **POPIA** e se e sebetsa ka botlalo.

4.4 Tataiso ena e tla boela e thuse batho ho utlwisisa mokgwa wa phano ya phumantsho ya direkoto tsa bona kapa kamoo ba ka nkang karolo motjheng wa ho fihlella direkoto tsa bona.

5. DINTLHA KA PAIA

5.1 Tokelo ya phumantsho ya lesedi ke "e nngwe ya ditsela tse hlwahlwa ka ho fetisisa tsa ho baballa dintle tsa molaotheo tsa ponaletso, ho buleha, bonkakarolo le boikarabelo². Dintle tse ka hodimo mona tsa molaotheo di keke tsa fihlellwa haeba mmuso e le ona feela o nang le lesedi le buang ka diketso le diqeto tsa ona. Kahoo, phumantsho ya lesedi ha se feela motheo wa demokerasi e sebetsang hantle ya bonkakarolo, empa e boetse e eketsa tshepo ya setjhaba mmusong le ho matlafatsa boteng ba ona. Melemo e meng ya tokelo ya ho fihlella lesedi ke hore, e fedisa boqhekanyetsi le bobodu, ho hloka botsitso le boitshwaro bo bong bo sa lokang ba mmuso.

5.2 Ha Molaotheo wa Afrika Borwa o ne o ralwa nakong e latelang ho fela ha Kgethollo ka bo-1990, mekgatlo e fapafapaneng le batho ka bo mong ba ile ba lwanela ho kenyeletswa ho tokelo ya phumantsho ya lesedi. Ho ne ho tshepuwe hore kenyeletso ya tokelo ena ho Bili ya Ditokelo ho tla netefatsa hore bohanyapetsi bo kang Kgethollo bo keke ba hlola bo ba teng hape, kaha puso le dikgwebo tsa poraefete di ne di tla tlameha ho sebetsa ka mokgwa o nang le boikarabelo le ponaletso ka ho fana ka phumantsho ya lesedi, mme kahoo, di ne di sa tlo kgona ho ipata kamora kobo ya lekunutu. E ile ya bonwa e le mohato o hlokehang bakeng sa ho thusa ho bopa tlwaelo ya toka e tla lebisa tabeng ya dikamano tse hlokanang leeme pakeng tsa batho, le ba ka pusong. Ho e nngwe ya dinyewe tsa pele³ tsa ho sebetsana le taba ya hore na motho ya qoswang o na le tokelo ya ho fumantshwa lesedi kaofela le teng ka hara dokete ya sepolesa. Jones J o ile a ananela bohlokwa ba yona ka tsela ena:

“Morero ... ke ho fedisa ho latella mokgwa wa kgale wa tsamaiso, mokgwa oo ho ona ho neng ho kgoneha hore mmuso o balehe boikarabelo ka ho hana ho pepesa lesedi leha e ne e ba le na le kameho hodima tshebediso kapa tshireletso ya ditokelo tsa motho. Bona ke bosawana boo e reretsweng ho bo fedisa [...] Ho hloka leeme ho bonahalang le ponaletso di kgothaletsa tshepo ya setjhaba tsamaisong ya merero ya setjhaba ka kakaretso. Tshepo ena ke e nngwe ya matshwao a setjhaba se buswang ka demokerasi eo Molaotheo o e hahamallang”.

² Hoexter Administrative Law 94

³ 1994 (1) SACR 635 (E)

- 5.3 Karolo 32 ya Molaotheo e fupere tokelo ya phumantsho ya lesedi le tshwerweng ka bobedi ke makala a mmuso le a poraefete. Karolo 32 e boetse e bolela hore ho lokela ho ba le molao o tla fana ka matla ho tokelo ya phumantsho ya lesedi ka ho hlakisa ditsela tseo ho ka fihlellwang lesedi le tswang makaleng a mmuso le a poraefete, le ka ho fana mabaka ao ka ona lekala la mmuso le la poraefete le ka hanang ka phumantsho ya lesedi.
- 5.4 **PAIA** e ile ya laelwa bakeng sa ho arabela thomo ya molaotheo e boletsweng ka hodimo mona, le ho qala ho sebetsa haholo ka Tlhakubele 2001. Selekela sa yona se ananela "tlwaelo ya sephiri le e sa arabeleng" ya nako ya pele ho demokerasi, le ho tiisa hore o mong wa merero ya **PAIA** ke ho "qobella tlwaelo ya ponaletso le boikarabelo makaleng a mmuso le a poraefete."
- 5.5 **PAIA** e reretswe ho fana ka matla ho ditokelo tsa motho tsa phumantsho ya lesedi le boikarabelo. E reretswe ho matlafatsa hore ba sebedise molao, mme kahoo e thusa ka ho kopa lesedi ka ditsela tse fapaneng. Motho ha a hloke leqwetha hore a etse kopo ya phumantsho ya lesedi ho ya ka **PAIA**.

6. MERERO YA PAIA

- 6.1 Merero ya **PAIA** ha se ho tlosa tokelo ya molaotheo, empa ke ho fana ka matla ho karolo 32 mabapi le dithibelo tse lokileng, mme ka mokgwa o mong e thusa ho lekalekanya ditokelo tse ding kaofela ho Molaotheo. E lakatsa ho kgothaletsa tlwaelo ya ditokelo tsa botho le toka ya kahisano bakeng sa batho, lekala la mmuso le lekala la poraefete. **PAIA** e rerile ho kgothaletsa ponaletso, boikarabelo le taolo e hlwahlwa ya ditheo kaofela (ka bobedi tsa mmuso le tsa poraefete) ka ho matlafatsa batho hore ba utlwisise ditokelo tsa bona tsa ho fumantshwa lesedi, ho sebetsa ka tsona, mme ka bobedi ba shebisise, le ho sebetsana le, ho nka diqeto tse ba amang.
- 6.2 Tokelo ya ho fumantshwa lesedi ke tokelo ya molaotheo e matla haholo, kaha e thusa batho ho lemoha ditokelo tsa bona. Motho a ka e sebedisa ho thusa ho beha leihlo le ho lekola phano ya ditshebeletso tsa mmuso, kapa ho fihlella direkoto tsa nalane tse ka bang molemo.
- 6.3 Merero ya **PAIA** ke -
- 6.3.1 ho fana ka matla ho tokelo ya molaotheo ya ho fihlella -
- 6.3.1.1 lesedi leha e le lefe le tshwerweng ke Puso; le
- 6.3.1.2 lesedi leha e le lefe le tshwerweng ke motho e mong mme le batleha bakeng sa tshebediso kapa tshireletso ya ditokelo leha e le dife.

- Tlhokeho e amanang le tshireletso ya ditokelo e lekanyeditswe ho lesedi le matsohong a poraefete. Kahoo makala a poraefete a ka tlasa dithibelo tse seng matla haholo tsa ponaletso ho feta makala a mmuso. Lekala la poraefete, ka mantswa a mang, le na le tokelo ya ho ithuela lesedi, ntle le haeba lesedi leo le batleha bakeng sa ho sireletsa ditokelo.
- **PAIA** e ananela, ho ya ka Karolo 8(1) ya yona, hore lekala e ka ba la "mmuso" kapa la "poraefete" ka merero ya Molao ho itshetlehlwe hodima haeba rekoto eo ho buuwang ka yona "e amana le tshebediso ya matla ka ho nka bohato jwaloka lekala la mmuso kapa jwaloka lekala la poraefete."

6.3.2 ho fana ka matla tokelong eo -

6.3.2.1 ho itshetlehlwe hodima dithibelo tsa toka, ho kenyeletswa, empa ho sa fellwe ka dithibelo tse reretsweng tshireletso e utlwahalang ya sephiri, lekunutu la kgwebo le taolo e ntle le e hlwahlwa; le

6.3.2.2 ka mokgwa o lekalekanyang tokelo eo le ditokelo leha e le dife tse ding, ho kenyeletswa le ditokelo tse ka hara Bili ya Ditokelo ho Kgaolo 2 ya Molaotheo;

6.3.3 ho fana ka matla ho ditshwanelo tsa molaotheo tsa Puso tse mabapi le ho kgothaletsa tlwaelo ya ditokelo tsa botho le toka ya kahisano, ka ho kenyeletsa makala a mmuso tshalosong ya 'mokopi', le ho mo dumella, hara tse ding, ho fumantshwa lesedi ho tswa makaleng a poraefete kamora ho imatahanya le ditlhokeho tse nne Molaong ona, ho kenyeletswa tshwanelo ya tlatsetso bakeng sa makala a mmuso mabakeng a itseng bakeng sa ho sebetisa molemong wa setjhaba;

6.3.4 ho theha ditsela tsa boithaopo le tsa setlamo kapa metjha ya ho fana ka matla tokelong eo ka mokgwa o kgontshang batho ho fumantshwa direkoto tsa makala a mmuso kapa a poraefete ka potlako, ntle le ditjeo le ntle le mekutu ka toka kamoo ho ka kgonehang; le

6.3.5 ka kakaretso, ho kgothaletsa ponaletso, boikarabelo le taolo e hlwahlwa ya makala ohle a mmuso le a poraefete ka, ho kenyeletswa empa ho sa fellwe ka, ho matlafatsa le ho ruta bohle -

6.3.5.1 ho utlwisisa ditokelo tsa bona ho ya ka Molao ona bakeng sa ho sebedisa ditokelo tsa bona mabapi le makala a mmuso le a poraefete;

6.3.5.2 ho utlwisisa mesebetsi le tshebetso ya makala a mmuso; le

6.3.5.3 ho hlahlobisisa ka bokgabane, le ho nka karolo, tabeng ya ho nka diqeto ke makala a mmuso tse amang ditokelo tsa bona.

6.4 Sehlomathiso sa Molao wa Kgothaletso ya Phumantsho ya Lesedi, 2019

6.4.1 Nyeweng ya ***My Vote Counts NPC kgahlanong le Letona la Toka le Ditshebeletso tsa Tlhabollo ya Batshwaruwa le e Mong [2018] ZACC 17***, lekgotla la molaotheo le ile la bolela hore “Puso e tlasa tshwanelo e tlohang ho balweng ho nepahetseng ha dikarolo 32, 19 le 7(2) tsa Molaotheo ho etsa sohle se kgonehang ho fana ka pehelo e utlwahalang le e nang le moelelo bakeng sa tokelo ya phumantsho ya lesedi le tokelo ya ho vouta. Bongata bo ile ba tswella ho dumela hore sena se jwalo hobane tshebediso ya tokelo ya ho vouta e lokela ho ba kgetho e nang le tsebo, le hore ho na le momahano pakeng tsa tshebediso e nepahetseng ya tokelo ya ho vouta le tokelo ya phumantsho ya lesedi. Mme “ntle le phumantsho ya lesedi, bokgoni ba baahi ho etsa diqeto tse nang le boikarabelo tsa sepolotiki le ho nka karolo ka ho nepahala bophelong ba setjhaba bo a hatikelwa”. Lekgotla la Molaotheo le netefaditse hore taelo e hloka motheo ho ya ka molaotheo mme la laela Palamente ho fetola **PAIA** le ho nka mohato leha e le ofe o mong oo e bonang o tshwaneleha ho fana ka thuso ya phumantsho ya lesedi le rekotuweng le le bolokuweng mabapi le dithuso tsa ditjhelete tsa poraefete tsa mekga ya dipolotiki le baiketi ba ikemetseng nakong ya dikgwedi tse 18.

6.4.2 Ho ya ka kahlolo e ka hodimo mona ya lekgotla la molaotheo, Moporesidente o, ka la 3 Phuptjane 2019, ile a dumella Sehlomathiso sa Molao wa Kgothaletso ya Phumantsho ya Lesedi, 2019 (Sehlomathiso sa Molao wa **PAIA** 2019)⁴. Sehlomathiso sa Molao wa **PAIA** 2019 se kenyeletsa mokgatlo wa dipolotiki tlhalosong ya lekala la poraefete, e leng hantlente se boelang hore moetapele wa mokga wa dipolotiki kapa motho leha e le ofe ya fuweng matla ke moetapele eo ke mohlanka wa lesedi kapa hlooho. Sehlomathiso sa Molao wa **PAIA** 2019 jwale se atolosa tokelo ya phumantsho ya direkoto leha e le dife tsa mokga wa dipolotiki.

6.4.3 Sehlomathiso sena sa Molao se fana ka lesedi la thuso ya matlole ya poraefete bakeng sa mekgatlo ya dipolotiki le baiketi ba ikemetseng hore le rekotuwe, le baballwe le ho fumaneha.

6.4.4 Ho ya ka karolo 52A ya sehlomathiso sa Molao wa **PAIA** 2019, hlooho ya mokgatlo wa dipolotiki e lokela ho bopa le ho boloka direkoto tsa nyehelo leha e le efe e fetang sekepele se behilweng, sa **R100 000.00**, e entsweng ho mokgatlo oo wa dipolotiki selemong leha e le sefe sa ditjhelete le boitsebiso ba batho kapa ditheo tse entseng dinyehelo tseo. Hlooho ya mokga wa dipolotiki e boitse e lokela ho fana ka direkoto tseo kotara ka nngwe, jwaloka ha ho laetswe; le ho boloka direkoto bakeng sa bonyane dilemo tse hlano kamora hoba direkoto tseo di etswe.

⁴ Sehlomathiso sa Molao wa Kgothaletso ya Phumantsho ya Lesedi, No. 31 wa 2019

6.4.5 Sena se bolela hore leha Molao wa Dithuso tsa Ditjhelete tsa Mekgatlo ya Dipolotiki o etsa hore e be setlamo bakeng sa ho pepesetsa Khomishene ya Dikgetho, sehlopatso sa Molao wa **PAIA** 2019 jwale se atolosa tokelo ya phumantsho, ya direkoto tsa nyehelo leha e le efe e fetang **R100 000.00**, ho motho leha e le ofe, e entsweng ho mokgatlo oo wa dipolotiki.

6.5 Molao o mong o sireletsang tokelo ya phumantsho ya lesedi

PAIA e boetse e teng ka hara tikoloho yohle ya semolao, e reretsweng ho hlahisa “tlwaelo ya tokafatso”. Ho ananela sena, **PAIA** e re molao o mong leha e le ofe o nehang motho lepatlelo la ho fihlella lesedi le seng boima ho feta **PAIA**, ho ka nna ha sebediswa ho lona⁵.

6.5.1 Molao wa Dikhamphani wa bo-71 wa 2008

6.5.1.1 Karolo 26(1) ya Molao wa Dikhamphani o thusa motho eo e leng setho kapa ya nang le kgahlehelu thepeng leha e le efe e ntshuwang ke khamphani ya phaello, kapa eo e leng setho sa khamphani e sa etseng phaello, o na le tokelo ya ho hlahloba le ho etsa khopi, ntle le tefo bakeng sa tlhahlobo e kang eo kapa kamora tefo e sa feteng tjhelete e laetsweng bakeng sa khopi leha efe e jwalo, bakeng sa lesedi le teng direkotong tsa khamphani.

6.5.1.2 Ho ya ka karolo 26(7)(b) ya Molao wa Dikhamphani, “ditokelo tsa phumantsho ya lesedi tse tekilweng karolong ena ke tlatsetso ya, mme e se ho fetola, ditokelo leha e le dife tseo motho a ka bang le tsona tsa phumantsho ya lesedi ho ya ka Molao wa Kgothaletso ya Phumantsho ya Lesedi, 2000 (Molao No. 2 wa 2000)”.

6.5.2 Molao wa Dithuso tsa Ditjhelete wa Mekga ya Dipolotiki, 2018 (Molao No. 6 wa 2018)

6.5.2.1 Dithuso tsa Ditjhelete tsa Mekga ya Dipolotiki di tsebahatsa meralo e matla ya bolaodi bakeng sa matlole a mekga kaofela ya dipolotiki e ngodisitsweng, e bang e na le boemedi makgotleng a ketsamolao a naha kapa a provense kapa tjhe. Sena se kenyetsa ho teka dithibelo bakeng sa mohlodi, boholo le tshebediso ya matlole a nyehetsweng ke mekga ya dipolotiki.

6.5.2.2 Ho netefatsa ponaletso le boikarabelo, mekgatlo ya dipolotiki e lokela ho pepesa dinyehelo kaofela tse amohetsweng tse fetang sekepele sa **R100 000.00** ho Khomishene ya Dikgetho kgafetsa dikgwedi ka nngwe tse tharo (hammoho le pele ho dikgetho tse akaretsang)

⁵ Karolo 2(1) ya PAIA

- 6.5.2.3 Motho leha e le ofe kapa mokgatlo o etsang nyehelo mokgatlong wa dipolotiki oo ka bonngwe kapa ka mmoho e fetang **R100 000** ka selemo o lokela ho tlaleha nyehelo eo ho Khomishene ya Dikgetho nakong ya matsatsi a 30 a ho etsa nyehelo kapa nakong ya matsatsi a 30 a ha dinyehelo ka mmoho di ne di feta **R100 000**.
- 6.5.2.4 Qetellong, Molao wa Dithuso tsa Ditjhelete tsa Mekgatlo ya Dipolotiki o beha tshwanelo hodima Khomishene ya Dikgetho ho phatlalatsa dinyehelo tse tlalehilweng ke mekga ya dipolotiki dikgwedi ka ding tse tharo le ho tlalehela Palamente ka selemo mabapi le dinyehelo kaofela tse entsweng bakeng sa mekga ya dipolotiki nakong ya selemo.
- 6.5.3 Molao wa Tshireletso ya Lesedi la bo Mong, 2013 (Molao No. 4 wa 2013)
- 6.5.3.1 Karolo 23 ya **POPIA** e neha beng ba lesedi tokelo ya ho fumantshwa lesedi la bo Mong le tshwerweng ke mokga o ikarabellang, ho kenyeletswa lesedi ka boitsebiso ba mekga kaofela ya boraro, e nang, kapa e bileng, le phihlello ya lesedi.
- 6.5.3.2 Sena se bolela hore leha phumantsho ya rekoto e nang le lesedi la bo mong ka mokopi ha e kenyeletswe ho **PAIA** ho ya ka Karolo 11(2) ya ona, monga lesedi a ka kopa –
- 6.5.3.2.1 phumantsho ya lesedi la boyena; le/kapa
- 6.5.3.2.2 boitsebiso ba mekga kaofela ya boraro, le/kapa mekgahlelo ya mekga ya boraro, e nang, kapa e bileng, le phihlello ya lesedi.
- 6.5.3.2.3 tokiso kapa ho hlakolwa ha lesedi la bo mong la monga lesedi leo o le tshwereng kapa oo le o laolang le sa nepahalang, le sa tsamaelaneng, le phophomang, le felletsweng ke nako, le sa fellang, le lahlehisang kapa le fumanweng ka mokunyata; kapa
- 6.5.3.2.4 rekoto ya lesedi la boyena leo mokga o ikarabellang o seng o se na tokelo ya ho le boloka e lokela ho senngwa kapa e hlakolwe.
- 6.5.3.3 Mokga o ikarabellang o ka hana ho pepesa lesedi leha e le lefe la bo mong le koptjwang, ho ya ka mabaka a ho hana ka phumantsho ya direkoto, jwaloka ha ho tekilwe ho serapa 19.4 ka tlase mona.

6.5.4 Molao wa Kgothaletso ya Toka ya Tsamaiso 3 wa 2000

- 6.5.4.1 Molao o mong o lokelang ho hopolwa ha o lohotha ho fihlella lesedi ke Molao wa Kgothaletso ya Toka ya Tsamaiso (**PAJA**). **PAJA** e fana ka matla ho tokelo ya tshebetso ya tsamaiso e molaong, e utlwahalang le ho latela metjha ka ho hloka leeme le ho tokelo ya mabaka a ngotsweng bakeng sa tshebetso ya tsamaiso jwaloka ka ha e lohothwa ho karolo 33(2) ya Molaotheo⁶.
- 6.5.4.2 Ho ya ka karolo 5(1) ya **PAJA**, motho leha e le ofe eo ditokelo tsa hae di ileng tsa angwa ha bohloko le hampe ke tshebetso ya tsamaiso mme a sa nehwa mabaka bakeng sa ketso eo a ka, nakong ya matsatsi a 90 kamora letsatsi leo motho a lemohileng ketso eo kapa a ka be a lebeletse ho lemoha ketso eo, kopa motsamaisi ya amehang ho fana ka mabaka a ngotsweng a ketso eno. Motsamaisi eo kopo e lebisitsweng ho yena o lokela, nakong ya matsatsi a 90 kamora ho thola kopo, ho neha motho eo lebaka le utlwahalang le ngotsweng la mohato wa tsamaiso.

7. HO THEHWA HA BOLAODI BA LESEDI

- 7.1 Ho netefatsa kgothaletso le matlafatso ya merero ya **PAIA**, e tla fana ka matla ho tokelo eno ya phumantsho ya lesedi ka mokgwa o thusang batho ho fumana phihlello ya direkoto tsa makala a mmuso le a poraefete ka potlako le ka mokgwa o sa bitseng kahohle kamoo ho kgonehang, Bolaodi ba Lesedi (“Bolaodi”) bo thehilwe ho ya ka karolo 39 ya **POPIA**.
- 7.2 Mabapi le ho netefatsa hore metjha ya tsamaiso e sa rarahanang le e sa bitseng e ya latelwa ha ho etswa ha kopo ya phumantsho ya lesedi, ditletlebo ho Bolaodi le dikopo tsa lekgotleng la dinyewe di lokela ho ba mokgelo ho feta hore e be molao.
- 7.3 **POPIA** e fetola mosebetsi wa **SAHRC** mabapi le thomo ya **PAIA**. Ho tloha ka la 30 Phuptjane 2021, mesebetsi kaofela ya **SAHRC**, jwaloka ha e balwa ho **PAIA**, e tla sebetswa ke Bolaodi, boo hape bo nang le qobello ya matla ya tlatsetso.
- 7.4 Leha **SAHRC** e tla dula e na le ditshwanelo tsa molaotheo tse bataletseng tseo e lokelang ho di kgothaletsa, ho di sireletsa le ho beha leihlo ditokelo tse fuperweng ke Bili ya Ditokelo,
- 7.5 **SAHRC** le Bolaodi ba tla sebetsa mmoho ba bapile.

⁶ Bohle bao ditokelo tsa bona di anngweng hampe ke ketso ya tsamaiso ba na le tokelo ya ho fuwa mabaka a ngotsweng

8. MOSEBETSI WA BOLAODI WA LESEDI

- 8.1 Bolaodi o na le mosebetsi wa bohlokwa mabapi le **PAIA**. Bolaodi o laelwa ke **PAIA**, tlasa Karolo 4, Kgaolo 1A le Karolo 5 le dikarolo tse ding, ho:
 - 8.1.1 kgothaletsa phumantsho ya lesedi le ho thusa setjhaba mabapi le ho sebedisa **PAIA** moo ho kgonehang ho etsa jwalo,
 - 8.1.2 beha leihlo le ho tswella ka ho kenya tshebetsong **PAIA** ke makala a mmuso le a poraefete (ho kenyeletsang ho kgothaletsa ditsela tse hlwahlwa tsa ho etsa hore lesedi le fumanehe ka nako),
 - 8.1.3 etsa dikgothaletso tsa ho matlafatsa **PAIA**, le
 - 8.1.4 ho tlalehela Palamente selemo ka seng.
- 8.2 Karolo 77C (1) le (2) ya **PAIA** e betla tsela ya matla a latelang, mesebetsi le mehato tsa Bolaodi, ho -
 - 8.2.1 batlisisa tletlebo e entsweng ho Bolaodi ka tsela e laetsweng;
 - 8.2.2 fetisetsa tletlebo ho Komiti ya Qobello e thehilweng ho ya ka Karolo 50 ya **POPIA**; kapa
 - 8.2.3 ho etsa qeto, ho ya ka karolo 77D, ho nka mohato hodima tletlebo kapa, ho ya kamoo maemo a leng kateng, ho batla ho nka mehato e meng mabapi le tletlebo; le
 - 8.2.4 ho nka mohato, moo ho tshwanetseng, jwaloka monamodi mabapi le tletlebo e jwalo ka tsela e laetsweng.
- 8.3 Molaodi a ka, ho ya ka karolo 77H(1) ya **PAIA**, mme ka boikitlaetso ba yona, kapa ka kopo ya kapa lebitsong la mohlanka wa lesedi kapa hlooho ya lekala la poraefete kapa motho leha e le ofe ho etsa tekolo ya haeba lekala la mmuso kapa la poraefete ka kakaretso le imatahanya le dipheho tsa **PAIA**, ho ya kamoo maano a yona le ho kenngwa tshebetsong ho emeng kateng.
- 8.4 Bolaodi bo na le matla, ho ya ka karolo 77F ya **PAIA**, ho sebedisa maiteko a bona a hlwahlwa ka ho fetisisa a ho fihlella tharollo ya tletlebo, ha ho hlahella tletlebong, kapa ho karabelo leha e le efe e entsweng ho bona ya hore ho ka nna ha kgonahala ho rarolla tletlebo. Sena se bolela hore Bolaodi bo ka leka feela ho thusa mekga ho rarolla diqaka tsa yona, haeba ho na le tletlebo e kentsweng ho Bolaodi, ntle le ha ho na le qeto, ka boikitlaetso ba yona, ho etsa tekolo, jwaloka ha ho tekilwe serapeng sa 8.3 ka hodimo mona.

9. HO ETSA KOPO YA REKOTO

O koptjwa ho sheba ho motjha wa mohato-ka-mohato tjhateng e serapeng sa 27 ka tlase mona, mabapi le mokgwa wa ho fumantshwa direkoto.

9.1 Ha re qala: **Dibukana tsa PAIA**

9.1.1 Leha Tataiso ena e phatlaladitswe ho thusa setjhaba ka makgalo ohle bakeng sa ho baballa ditokelo tsa sona tsa molaotheo tsa ho fihlella lesedi, ho na le mehlodi e meng ya lesedi eo le yona e ka thusang motho ho etsa kopo ya ho fihlella direkoto. **PAIA** e batla hore makala kaofela a mmuso, le a poraefete, a hlophise le ho fana ka bukana ya **PAIA**⁷.

9.1.2 Pele motho leha e le ofe a nka mehato ya ho fumantshwa lesedi kapa direkoto tsa lekala le itseng, Bukana ya **PAIA** ke ntho ya pele eo a lokelang ho e bala.

9.1.3 Ka motheo wa yona o tebileng, bukana ya **PAIA** e bohlokwa ho motho bakeng sa:

9.1.3.1 ho lekola mofuta wa direkoto tseo e ka bang di se di le teng ntle le hore motho a kenye kopo ya semmuso ya **PAIA**;

9.1.3.2 ho ba le kutlwisiso ya kamoo kopo ya phumantsho ya lesedi le tshwereng ke lekala le itseng e ka etswang;

9.1.3.3 ho fihlella dintlha kaofela tsa boiteanyo tsa motho ya tla thusa setjhaba ka direkoto tseo motho a batlang ho di fihlella;

9.1.3.4 ho tseba ditokiso tse teng kaofela ho tswa lekaleng leo ho lona ho koptjwang direkoto, pele motho a leba ho Bolaodi kapa Makgotleng a Dinyewe;

9.1.3.5 ho tseba tlhaloso ya ditshebeletso tse teng bakeng sa ditho tsa setjhaba ho tswa ho lekala leo le kamoo motho a ka fihlellang ditshebeletso tseo;

9.1.3.6 ho tseba haeba lekala le tla tswellisa lesedi la bo mong, sepheo sa ho tswellisa lesedi la bo mong le tlhaloso ya mekgahlelo ya beng ba lesedi le ya lesedi kapa mekgahlelo ya lesedi e amanang le seo;

9.1.3.7 ho tseba haeba lekala le rerile ho fetisetsa kapa ho tswellisa lesedi la bo mong ka ntle ho meedi ya Afrika Borwa; le

⁷ Karolo 14 le karolo 51 tsa PAIA

9.1.3.8 ho tseba haeba lekala le na le mehato ya tshireletso ya ho netefatsa sephiri, seriti le boteng ba lesedi le lokelang ho tswelliswa.

9.2 O ka fumana dibukana tsa PAIA hokae?

9.2.1 Bukana ya PAIA ya makala a mmuso

9.2.1.1 Makala a mmuso kaofela a lokela ho etsa hore Bukana ya PAIA e fumaneha ha bobebe ka bonyane dipuo tse tharo tsa semmuso⁸.

9.2.1.2 Bonyane, a lebeletswe ho etsa hore khopi ya Bukana ya PAIA e fumaneha mahala, ntle le haeba ho koptjwa khopi e hatisitsweng

9.2.1.2.1 websaeteng ya lekala la mmuso;

9.2.1.2.2 ntlokgolo ya lekala la mmuso bakeng sa tlhahlobo ya setjhaba nakong ya dihora tsa tshebetso tse tlwaelehileng;

9.2.1.2.3 haeba motho a batla khopi e hatisitsweng, lekala la mmuso le lokela ho etsa khopi, empa e ka nna ya qosa tefo ya tjhelete e amohelang bakeng sa phano ya khopi e hatisitsweng; le

9.2.1.3.4 ho Bolaodi ha ho etswa kopo.

9.2.2 Dibukana tsa PAIA tsa makala a poraefete

9.2.2.1 Makala a poraefete a boetse a lebeletswe ho hlophisa bukana ya PAIA⁹, empa ha ho tlhokeho ya hore a e hlophise ka dipuo tse fetang e le nngwe kapa ka puo e itseng, leha ho kgothaletswa hore Dibukana tsa PAIA tsa makala a poraefete di be bonyane ka Senyesemane. Haeba lekala le itseng le fana ka ditshebeletso ho batho ba sa kenang sekolo, Bolaodi bo kgothaletsa hore bukana ya lekala leo e ka nna ya ba ka puo leha e le efe ya semmuso.

9.2.2.2 Bonyane, makala a poraefete a lebeletswe ho etsa hore khopi ya Bukana ya PAIA e fumaneha mahala¹⁰, ntle le haeba ho koptjwa khopi e hatisitsweng -

9.2.2.2.1 websaeteng ya lekala la poraefete;

9.2.2.2.2 sebakeng sa sehlooho sa kgwebo ya lekala la poraefete bakeng sa tlhahlobo ya setjhaba nakong ya dihora tse tlwaelehileng tsa tshebetso;

⁸ Karolo 14(1) ya PAIA

⁹ ho ya ka karolo 51 ya PAIA

¹⁰ Karolo 51(3) ya PAIA

9.2.2.2.3 haeba motho a batla khopi e hatisitsweng, lekala la poraefete le lokela ho etsa khopi, empa e ka nna ya qosa tefo ya tjhelete e amohelehang bakeng sa phano ya khopi e hatisitsweng le

9.2.2.2.4 ho Bolaodi ha ho etswa kopo.

9.2.3 Letona la Toka le Ditshebeletso tsa Tlhabollo ya Batshwaruwa le na le matla a ho kotela¹¹ makala a itseng a poraefete kapa mokgahlelo wa makala a poraefete tabeng ya ho hlophisa bukana. Hajwale, le ho fihlela ka la 31 Tshitwe 2021, Letona le kotetse¹² makala ohle a poraefete, ntle le khamphani leha e le efe eo -

- (a) e seng khamphani ya poraefete jwaloka ha ho hlalositse ho karolo 1 ya Molao wa Dikhamphani, 2008 (Molao No. 71 wa 2008); le
- (b) ho ba khamphani ya poraefete jwaloka ha ho hlalositse ho karolo 1 ya Molao wa Dikhamphani, 2008 (Molao No. 71 wa 2008) e sebetsang ka hara makala leha e le afe a boletsweng ho kholomo ya pele ya sekejule sa Tsebiso ena le
 - (i) ho ba le basebeletsi ba fetang 50 khirong ya bona; kapa
 - (ii) e na le tlhahiso yohle e lekanang le kapa ho feta tjhelete e sebetsang e boletsweng ho kholomo 2 ya theibole e ka tlase mona,

tabeng ya ho hlophisa bukana e lohothwang ho karolo 51(1) ya Molao o boletsweng pele bakeng sa nako ya dikgwedi tse tshelletseng (6) ho tloha ka la 1 Phupu 2021 ho isa ka la 31 Tshitwe 2021: -

Lekala	Annual Turnover
Temo	R6 milione
Merafo le Dikwari	R22.5 milione
Tlhahiso	R30 milione
Motlakase, Kgase le Metsi	R30 mllione
Kaho	R15 milione
Mabenkele le Kgwebo ya Makoloi le Ditshebeletso tsa Tokiso	R45 milione
Dikgwebo tsa Dihoulseile, Diakgente tsa Kgwebo le Ditshebeletso tse Tsamaelanang	R75 milione
Phepo, Bodulo le Kgwebo e nngwe	R15 milione
Dipalangwang, Distoro le Dikgokahanyo	R30 milione
Ditshebeletso tsa Ditjhelete le Kgwebo	R30 milione
Ditshebeletso tsa Badudi, tse Ikgethang le tsa Bowena	R15 milione

¹¹ Karolo 51(4) ya PAIA

¹² Government Gazette no: 39504, 11 Tshitwe 2015

- 9.2.4 Ka lebaka la bohlokwa ba tlhokeho ya ketsamolao bakeng sa ho hlophisa Bukana ya **PAIA**, ka ho qolleha sehlophiso¹³ sa karolo 51 sa **PAIA** (se tla sebetsa ka la 30 Phuptjane 2021), ho ya ka mothamo wa lesedi oo bukana e lokelang ho o o akaretsa o bataladitswe bakeng sa ho kenyeletsa dintlha tse amanang le **POPIA**, makala a poraefete ha a sa tla hlola a kotelwa tshwanelong ya ho hlophisa bukana ya **PAIA**. Kahoo ho tloha ka la, 1 Pherekgong 2022, lekala le leng le le leng la poraefete le la mmuso le tla lokela ho etsa hore le be le Bukana ya **PAIA** ya lona, jwaloka ha ho laetswe ho serapa 9.2.2.2 ka hodimo mona.
- 9.2.5 Kotelo ya dikhamphani tsa poraefete tshwanelong ya ho hlophisa bukana ya **PAIA** ha e kotele dikhamphani tseo tsa poraefete tabeng ya ho imatahanya le **PAIA**. Sena se bolela hore motho leha e le ofe a ka nna a kenya kopo ya phumantsho ya lesedi ho lekala le kotetsweng la poraefete. Kotelo e bolela feela hore dikhamphani tseo tsa poraefete ha di a lokela ho hlophisa bukana ya **PAIA**.
- 9.2.6 Hopola hape, hore ha se makala a poraefete kaofela ao e leng dikhamphani, jwaloka ha tlhaloso ya lekala la poraefete e kenyeletsa motho ya tlwaelehileng, rakgwebo a le mong le semphato. Leha ho le jwalo, ho ka nna ha ba bohlokwa ho lekala websaete ya bona, kaha Dikhamphani tse ding di hlophisa bukana ya **PAIA** ho sa natswe palo ya basebeletsi ba tsona kapa tlhahiso ya tsona ya selemo.
- 9.3 Pepeso ka boithaopo kapa boteng ba direkoto tse itseng ka ho iketsahalla
- 9.3.1 Direkoto tse teng ka ho iketsahalla ke tseo lekala la mmuso kapa la poraefete le ka fanang ka tsona ntle le hore mokopi a etse kopo ya **PAIA** (ka mantswa a mang, motho a ka nna a le kopa feela ntle le ho tlatsa Forom 2 ya **PAIA**).
- 9.3.2 Mohlanka wa Lesedi wa lekala la mmuso o lebeletswa, ho ya ka karolo 15(1) ya **PAIA**, ho fana ka lenane kapa mekgahlelo ya direkoto tse teng ka ho iketsahalla feela, jwaloka ha ho laetswe ho serapa 9.3.4 ka tlase mona.
- 9.3.3 Direkoto tse fumanehang ka ho iketsahalla feela tsa lekala la poraefete di ka nna tsa fumaneha, ho ya ka karolo 52(1) ya **PAIA**, empa boemong ba boithaopo ho ya ka serapa 9.3.4 ka tlase mona.
- 9.3.4 Tlhaloso ya mekgahlelo ya direkoto tse fumanehang ka ho iketsahalla di lokela ho ba teng -
- (a) bakeng sa Bolaodi ba Lesedi;
 - (b) websaeteng ya lekala; le
 - (c) bakeng sa tlhahlobo, diofising tsa lekala le amehang nakong ya dihora tse tlwaelehileng tsa tshebetso.

¹³ Karolo 110 ya POPIA

- 9.3.5 O koptjwa ho lemoha hore Bolaodi bo tla laetjha tlhaloso ya direkoto tse fumanehang ka ho iketsahalla feela tsa lekala la mmuso websaeteng ya bona.
- 9.3.6 Lenane lena le kenyeletsa direkoto tse ka lokelang hore di fumanehe ho ya ka melao e meng, mme direkoto leha e le dife tse ding tseo lekala le kgethang ho di kenyeletsa. Bakeng sa ho qoba melawana ya ho imatahanya le motjha wa kopo ya **PAIA**, mokopi o eletswa ho lekola Bukana ya **PAIA** ya lekala la mmuso kapa la poraefete le amehang. Haeba motho a lakatsa ho fumantshwa direkoto tse welang tlasa lenane la lekala leo la direkoto tse fumanehang ka ho iketshalla feela, motho eo a ka di kopa feela ntle le ho lokela ho tlatsa Foromo 2 ya **PAIA**.
- 9.3.7 Molao wa Dithuso tsa Ditjhelete tsa Mekga ya Dipolotiki, Molao 6 wa 2018 o tsebahatsa diphethoho tse itseng ka **PAIA**, oo ka ona dihlooho tsa mekga ya dipolotiki di lebeletsweng ho rekota le ho boloka direkoto tsa dinyehelo tsa poraefete, tse tla lokela ho phatlalatswa ntle le hore motho a etse kopo ya **PAIA**.

10. DINTLHA TSA HO ITEANYA LE BAHLANKA BA LESEDI

- 10.1 Leha dintlha tsa ho iteanya le Bahlanka ba Lesedi ba lekala la mmuso leha e le lefe di lebeletsweng ho phatlalatswa bukeng e nngwe le e nngwe ya mehala, ho ya ka karolo 16 ya **PAIA**, Bolaodi bo na le dintlha tsa mohala tse tobileng tsa Bahlanka ba Lesedi kaofela (ho kenyeletswa Batlatsi ba Bahlanka ba Lesedi, ba thontsweng ho ya ka karolo 17 le 56 ya **PAIA** le **POPIA** ka tatelano) tse ngodisitsweng ho ya ka karolo 55(2) ya **POPIA**.
- 10.2 Leha ho thola dinomoro tse nepahetseng tsa mohala hangata e ba karolo e nang le mathata ya ho etsa kopo ya **PAIA**, kaha mesebetsi e fetofetoha kgafetsa lekaleng la mmuso le bukana ya **PAIA** e ka nna ya ba ha e kgeme le maemo, tulo ya pele moo o ka tholang dintlha tsa boiteanyo e lokela ho ba Bukana ya **PAIA** ya lekala. Leha ho le jwalo, haeba mokopi a sa fumane bukana, ho letsetsa setsha sa mehala sa lekala bakeng sa ho kopa dintlha tse batlehang le hona ho ka thusa.
- 10.3 Bakeng sa Bomasepala, Mokgatlo wa Afrika Borwa wa Mebuso ya Lehae (**SALGA**) o maneha dintlha tsa boiteanyo tsa Bomasepala kaofela linking ena:
<http://www.salga.org.za/Municipalities%20MCD.html>
- 10.4 Tsamaiso ya dikgokahanyo tsa Mmuso le yona e fana ka dintlha tsa boiteanyo tsa naha le tsa diprovence hammoho le tsa Dikgwebo tsa Mmuso tlasa linki ena:
<https://www.gov.za/about-government/contact-directory>. Dula o hopola hore tlhaloso ya Mohlanka wa Lesedi e thusa ho hlwaya hore ho batlwa dintlha tsa boiteanyo tsa mang bakeng sa ho tseba Mohlanka wa Lesedi.

11. MOTJHA WA HO ETSA KOPO YA LESEDI

11.1 Diforomo tsa kopo

11.1.1 Kopo ya phumantsho ya lesedi e ka etswa ho ka bobedi makala a mmuso le a poraefete.

11.1.2 **PAIA** e re haeba o batla ho etsa kopo e jwalo, o lokela ho etsa kopo foromong e batlehang (diforomo tsena di laetswe ka Melawana). Ho na le diforomo tse pedi tse ka sebediswang bakeng sa ho latela tokelo ya phumantsho ya lesedi:

Foromo 2

Foromo ena e ka sebediswa feela ha o batla ho kopa direkoto tsa lekala la mmuso kapa la poraefete.

Foromo 4

Foromo ena e ka sebediswa feela ha o batla ho etsa boipiletso ba ka hare kgahlanong le diqeto tsa Bahlanka ba Lesedi kapa tsa Batlatsi ba bona ba boemong ba Mmuso wa Naha, Provense kapa wa Lehae moo boipiletso bo lebisitsweng teng.

11.1.3 Diforomo tsena di ka fumaneha websaeteng ya Bolaodi ho <https://www.justice.gov.za/inforeg/>

11.2 Ho etsa qeto ya haeba kopo e amana le lesedi le bolokuweng ke lekala la mmuso kapa la poraefete

11.2.1 Lekala la mmuso le etsa mosebetsi wa mmuso, o kang ho fana ka motlakase kapa metsi setjhabeng. Kahoo, lekala la mmuso ha se feela Lefapha la Naha, Provense kapa la Mmuso wa Lehae– le tla kenyeletsa dikgwebo tsa mmuso Ditheo tsa Puso tse kang Bolaodi, Eskom, kapa PRASA, leha ho le jwalo, ho lokelwa ho etswa phapang mabapi le lekala la mmuso ka morero wa boipiletso ba ka hare, bo buang feela ka Mmuso wa Naha, Provense kapa wa Lehae.

11.2.2 Lekala la poraefete le etsa mosebetsi wa poraefete. Lekala le jwalo (leo e ka bang motho) le tsamaisa kgwebisano, kgwebo kapa profeshene. Ho bohlokwa haholo ho lemoha hore ha o etsa kopo ya **PAIA** lekaleng la poraefete motho o lokela ho bolela hore ke tokelo efe eo a e sireletsang kapa eo a e sebedisang ka ho kopa lesedi lena. Mabapi le lesedi leha e le lefe le bolokuweng ke motho e mong, Streicher JA o kgutsufaditse taba ena tjena, **Lekgotleng la Cape Metropolitan kgahlanong le Metro Inspection Services (Western Cape) CC le ba Bang**¹⁴,

¹⁴ 2001 (3) SA 1013 (SCA) serapa 28 ho 1026F–G

“Lesedi le ka batleha feela bakeng sa tshebediso kapa tshireletso ya tokelo haeba le ka thusa tshebedisong kapa tshireletsong ya tokelo. Ho bolela hore, bakeng sa ho kenya nyewe bakeng sa phumantsho ya lesedi ho ya ka karolo 32, moikopedi o lokela ho bolela hore ke tokelo efe eo a lakatsang ho e sebedisa kapa ho e sireletsa, ke lesedi lefe le batluwang le kamoo lesedi le tla mo thusa mabapi le ho sebedisa kapa ho sireletsa tokelo eo”.

11.2.3 Ka nako e nngwe taba ya hore haeba rekoto ke ya mmuso kapa ya poraefete e ka ba e rarahaneng mme setjhaba se eletswa ho batla keletso ya semolao. Ka mohlala, haeba lekala la mmuso le thonya lekala la poraefete ho fana ka ditshebeletso tse itseng lebitsong la ona, jwaloka ho hokela dimithara tsa metsi metseng e itseng, phumantsho ya palo ya dimithara tse hoketsweng, le ha e ka ba lesedi le jwalo le tshwerwe ke lekala la poraefete, le tla nkuwa e le lesedi la lekala la mmuso.

11.3 Motho o hlalosa jwang tokelo eo a rerileng ho e sebedisa kapa ho e sireletsa?

11.3.1 Ha o hlalosa hore ke tokelo efe eo motho a rerileng ho e sebedisa ha a etsa kopo ho lekala la poraefete, motho a keke a bua ka tokelo ya ho fumantshwa lesedi. Motho o lokela ho hlalosa kamoo rekoto eo a e kopang e batlehang ka tsela e utlwahalang bakeng sa hore motho a sireletse, kapa a sebedise, tokelo e nngwe. Sena se ka kenyetsa ditokelo tseo e seng feela ditokelo tsa molaotheo.

11.3.2 Motho ho tea ka mohlala a ka kopa melao ya sehlooho ho khamphani e nang le bokgoni ba ho hahlamela maemo a tshilafatso ka hara motse, bakeng sa ho thusa ho sireletsa tokelo ya motho ya tikoloho ka ho beha leihlo mesebetsi ya yona. Kapa motho a ka batla direkoto, tse tla thusa motho ho sheba haeba motho o na le tokelo ya ho etsa tseko ya badudi kgahlanong le setheo. Kahoo motho o lokela ho:

11.3.2.1 ka kotloloho a hlwaye tokelo eo motho a rerileng ho e sireletsa kapa ho e sebedisa, mme ebe

11.3.2.2 hlalosa ka ho hlaka hobaneng rekoto eo a e kopang e batleha bakeng sa ho mo thusa ka tokelo eno.

11.3.3 Ka nqa e nngwe, ha o etsa kopo ya **PAIA** ho lekala la mmuso, ha o a lokela ho ba le lebaka la ho kopa lesedi leo.

12. KE MANG YA KA ETSANG KOPO YA PAIA?

12.1 Motho leha e le ofe, e ka ba moAfrika Borwa kapa tjhe, o dumeletswe ho etsa kopo tlasa **PAIA**. Motho e ka ba ya tlwaelehileng kapa ya ikemetseng semolao.

12.2 Lekala la mmuso le nkuwa e le motho ya ikemetseng semolao mme le ka etsa kopo ya phumantsho ya direkoto tse tshwerweng ke makala a poraefete, empa feela haeba lekala la mmuso le -

12.2.1 sebetsa molemong wa setjhaba, mme

12.2.2 haeba direkoto di batleha bakeng sa ho phethisa kapa ho sireletsa ditokelo leha e le dife ho e na le tseo tsa lekala la mmuso.

12.3 Tlase **PAIA** mokopi a keke a fumantshwa rekoto, ya lekala la mmuso, e nang le lesedi la bo mong la mokopi ho tswa lekaleng la setjhaba¹⁵, leha ho le jwalo mokopi kapa monga lesedi a ka, ho ya ka karolo 23(1)(b) ya **POPIA**, kopa mokga o ikarabellang rekoto kapa tlhaloso ya lesedi la bo mong la monga lesedi le tshwerweng ke mokga o ikarabellang. Sena se bolela hore motho leha e le ofe jwale a ka kopa phumantsho ya lesedi la bo mong le tshwerweng ke lekala la mmuso kapa la poraefete kamora ho hlahisa bopaki bo nepahetseng ba boitsebiso. Lesedi la bo mong leo mokopi a ka le kopang ho mokgatlo o ikarabellang le ka kenyeletsa lesedi la boitsebiso ba mekga kaofela ya boraro, kapa mekgahlelo ya mekga ya boraro, ba nang, kapa ba bileng, le phumantsho ya lesedi.

12.4 Ho ya ka karolo 50(1) ya **POPIA**, motho leha e le ofe a ka kopa phumantso ya rekoto, ya lekala la poraefete, e nang le lesedi la bo mong la mokopi kapa motho eo ho etswang kopo lebitsong la hae.

13. KOPO E KA ETSWA HO MANG?

13.1 Mohlanka wa Lesedi wa lekala la mmuso o lebeletswe ho kgetha Mo/batlatsi ba Mohlanka wa Lesedi, ya lokelang ho netefatsa hore phumantsho ya direkoto tsa lekala la mmuso di fumaneha ha bonolo kamoo ho ka kgonehang. Leha sena e ne e se tlhokeho mabapi le lekala la poraefete tlasa **PAIA**, lekala la poraefete le ka kgetha Motlatsi wa Mohlanka wa Lesedi ya boletsweng ka hodimo mona, ho ya ka karolo 56 ya **POPIA**.

13.2 Kopo ya phumantsho ya lesedi, leha e ka lebiswa ho Mohlanka wa Lesedi, e ka etswa ho Motlatsi wa Mohlanka wa Lesedi. Dintlha tsa Mo/bahlanka ba lesedi di ka fumaneha bukaneng ya **PAIA** ya lekala leo kapa ho Bolaodi.

14. HO TLATSA FOROMO

14.1 Foromo 2 – kopo ya phumantsho ya rekoto ya lekala la mmuso kapa la poraefete:

14.1.1 Melawana ya **PAIA** e toba foromo e lokelang ho sebediswa, e lokelang ho romelwa ho Mohlanka wa Lesedi kapa Motlatsi wa hae wa lekala leo.

¹⁵ Karolo 11(2) ya PAIA

- 14.1.2 Melawana ya **PAIA** e toba foromo e lokelang ho sebediswa, e lokelang ho romelwa ho Mohlanka wa Lesedi kapa Motlatsi wa hae wa lekala leo.
- 14.1.3 Bakopi ba sa tsebeng ho bala kapa ho ngola ba ka etsa dikopo ka molomo ho Mohlanka wa Lesedi kapa Motlatsi wa hae wa lekala la mmuso, eo ebe o tla ikarabella bakeng sa ho tlatsa foromo 2 lebitsong la mokopi. Foromo ya hajwale e tla batla hore o tlatse dikarolo tse latelang:

Lesedi le batlwang	Tlhaloso
Dintlha tsa lekala la mmuso / la poraefete	Karolo ena e lokela ho ba le imeile le fekse tsa Mohlanka wa Lesedi le/kapa la Motlatsi wa hae.
Dintlha tsa motho ya kopang phumantsho ya direkoto	Sena se lokela ho ba le lesedi le lekaneng la mokopi ho etsa hore ho be bobebe ho hlwaya mokopi, ho kenyeletswa dintlha tsa boiteanyo tsa mokopi: aterese ya poso, aterese ya imeile, nomoro ya fekse le/kapa ya mohala ka hara Afrika Borwa. E boetse e batla nomoro ya hao ya boitsebiso ho netefatsa boitsebiso ba hao. Haeba o kopa lesedi lebitsong la motho e mong, o lokela ho fana ka boemo boo o etsang kopo ka bona (jwaloka 'motho ya dumelletsweng').
Dintlha tse rekoto e koptjwang	Fana ka dintlha ka botlalo tsa rekoto eo o batlang ho e fumantshwa, ho kenyeletswa nomoro ya tshupiso haeba o e tseba, ho etsa hore rekoto e fumanehe. (Haeba karolo ya foromo e sa lekane, ka kopo tswella leqephe le ka thoko mme o le kenyeletse foromong. Maqephe ohle a tlatsetso a lokela ho saenwa.
Mofuta wa rekoto	Sena se lokela ho ba le lesedi le lekaneng la rekoto ho etsa hore ho be bobebe ho e fumana. Haeba lesedi le batlwang le sa lekane karolong ya foromo, o ka sebedisa leqephe la tlatsetso le tlantsweng ka motjhini kapa le ngotsweng ho fana ka dintlha tse ding tsa kopo, ha feela leqephe ka leng la tlatsetso le saennwe le ho a kenyeletsa le foromo ya kopo. O ka nna, ka

Lesedi le batlwang

Tlhaloso

mohlala, kenyeletsa qotso e tswang tlalehong kapa ditabeng tsa dikoranta tse buang ka rekoto eo o e batlang. E o dumella ho kenyeletsa nomoro ya tshupiso ya rekoto, haeba e le teng.

Ditefello

Lekala, leo mokopi a ikemiseditseng ho etsa kopo ya phumantsho ya rekoto ho lona, ho kenyeletswa rekoto e nang le lesedi la bo mong ka yena, le ka o kopa ho lefa tefo ya kopo (tefo ya phumantsho) ka tjhelete ya dipositi, empa tjhelete eo ha e ya lokela ho ba ngata ho feta tekano, kaha ditefo di lokela ho ba tsa nako e utlwahalang e batlehang bakeng sa ho batlana le ho hlophisa rekoto. Letona ka tsebiso Koranteng ya Mmuso le ka thibela tefo ya ditjhelete jwaloka ha ho tekilwe ho serapa 51.1 ka tlase mona.

Ho na le karolo e fanweng bakeng sa mokopi ho bontsha hore hobaneng a dumela hore o lokela ho kotelwa tabeng ya ditefo leha e le dife. Lebaka e ka nna ya ba la hore, ka mohlala, ha a sebetse.

Foromo ya phumantsho ya rekoto

Karolo ena e o dumella ho tshwaya ka "X" dintho tseo o di batlang bakeng sa foromo ya ho fumantshwa rekoto e ka nna ya fanwa ka khopi e hatisitsweng ya rekoto le/kapa flash drive le/kapa diski.

Mokgwa wa phumantsho

Tlisa karolo ena o lebeleletse ho teka seo o se batlang mabapi le puo eo o batlang hore rekoto e be ka yona (sena se ka nna sa se kgonahale mabapi le direkoto kaofela, empa o lokela ho bua hore o e batla ka puo efe). Mokgwa wa phumantsho ya rekoto o ka nyehela tabeng ya kganyetso ya phumantsho ka lebaka la ditefo tse hodimo. Ka mohlala, haeba mokopi a batla tokomane ka

puo eo a e ratang, ditefo bakeng sa ho fetolela ditokomane puong eo o e ratang di ka batleha. Leha ho le jwalo, haeba rekoto e le siyo ka puo eo o e ratang, phumantsho e ka fanwa ka puo eo rekoto e leng teng ka yona. Mokgwa wa ho fumantshwa rekoto o ka kenyeletsa tlhahlobo ya rekoto ka bowena, kapa e romelwe ka imeile, kapa fekse kapa khorria kapa poso.

Tsebiswa ya qeto mabapi le kopo ya phumantsho

Ho na le karolo e fanweng bakeng sa mokopi ho hlalosa mokgwa oo a batlang ho tsebiswa ka qeto ya ho dumela kapa ho hanyetsa kopo. Mokopi a ka hlakisa hore mohlomong o tla batla ho tsebiswa ka imeile kapa mohala kapa karabo e ka romelwa ka poso kapa khorria.

Dintlha tsa tokelo e lokelang ho sebediswa kapa ho sireletswa

Ha a kopa lesedi lekaleng la poraefete mokopi o lebeleletse ho hlalosa "dintlha tsa tokelo e lokelang ho sebediswa kapa ho sireletswa". Mona o lokela ho bolela tokelo eo a e tshepsetseng (e kang tokelo ya hae ya tikoloho e itekanetseng) le kamoo rekoto eo a e kopang e tla thusa ho sebedisa kapa ho sireletsa tokelo eo. O lokela ho bontsha kamano pakeng tsa rekoto eo a e batlang, le tshebediso kapa tshireletso ya tokelo.

Ka bomadimabe, ho fapana le kopo ya phumantsho ya rekoto ya lekala la mmuso, a keke a fihella rekoto ya lekala la poraefete ntle le ha a ka hlakisa to/ditokelo tseo a ikemiseditseng ho di sireletsa kapa ho di sebedisa haeba phumantsho ya lesedi e ka dumellwa. Sena se ka kenyeletsa taba ya hore kamora ho fumantshwa direkoto, ebe ke moo a tla sebedisa tokelo ya hae ya tshireletso e lekalekanang le molemo wa molao¹⁶ ka ho qosa lekala leo bakeng sa ditshenyehelo tseo e ka bang di mo amme.

¹⁶ Karolo 9(1) .ya molaotheo wa Riphabliki ya Afrika Borwa, Molao bo-108 wa 1996

14.1.4 Haeba ka mabaka leha e le afe kopo ya hae ha e imatahanye le ditlhokeho tse tekilweng ka hodimo mona, Mohlanka wa Lesedi a ka nna a se hanyetse feela kopo ya hae, ntle le ha a tsebisitse mokopi hore o ikemiseditse ho hanyetsa kopo le ho fana ka mabaka. Mohlanka wa Lesedi o boetse o lokela ho tsebisa hore o tla thusa mokopi kapa a mo nehe monyetla wa ho lokisa phoso eo.

15. DITEFELLO TSE KENYELETSWANG

15.1 Ka kakaretso, ditefello di lokela ho etswa bakeng sa ka bobedi ho etsa kopo, empa hape le ho lefella ditjeo tsa ho fana ka phumantsho ya direkoto ho ya ka kopo. Ho na le, leha ho le jwalo, mekgelo e itseng. Haeba mokopi a fuwa phumantsho ya direkoto tseo a di kopileng ha a ya kotelwa tabeng ya ho lefa ditefo leha e le dife, jwaloka ha ho tekilwe serapeng 15.2 ka tlase mona, Mohlanka wa Lesedi kapa Motlatsi wa hae wa lekala la mmuso kapa la poraefete a ka lefisa ditjhelete tse laetsweng tse latelang -

TEMOSO: Sebopeho sa ditefello tse lefuwang ho Makala a Mmuso kapa a Poraefete di a fumanaha websaeteng ya Bolaodi.

Thepa Tlhaloso

1	Tjhelete ya tefello e lefuwang ke mokopi e mong le e mong
2	Fotokhopi ya leqephe la A4
3	Khopi e hatisitsweng ya leqephe la A4
4	Bakeng sa khopi e balehang ka khompyuta ka: <ul style="list-style-type: none"> (i) Flash drive (e tla fanwa ke mokopi) (ii) Diski <ul style="list-style-type: none"> • Haeba e fanwa ke mokopi • Haeba e fuwa mokopi
5	Bakeng sa rekoto e kopisitsweng ya ditshwantsho leqephe ka leng la A4
6	Khopi ya Ditshwantsho
7	Phetolo ya lentswe ya rekoto e mamelwang, leqephe ka leng la A4
8	Khopi ya rekoto e mamelwang ho: <ul style="list-style-type: none"> (i) Flash drive (e tla fanwa ke mokopi) (ii) Diski <ul style="list-style-type: none"> • Haeba e fanwa ke mokopi • Haeba e fuwa mokopi
9	Ho batlana le rekoto le ho e hlophisa bakeng sa pepeso hora ka nngwe kapa karolo ya hora, ho sa kenyeletswe hora ya pele, e batlehang bakeng sa ho batla hoo le ho e hlophisa. Ha ho a lokela ho feta ditjeo tsa
10	Diposititi: Haeba ho batla ho feta dihora tse 6
11	Tefello ya poso, imeile kapa mokgwa leha e le ofe wa tsamaiso ya elektroniki

15.2 Mokopi ha a ya lokela ho lefa tjehelete ya phumantsho¹⁷ lekaleng la mmuso haeba:-

15.2.1 Ke motho ya sa nyalang eo lekeno la hae la selemo, kamora ho hulwa ha ditjhelete tsa semmuso, tse kang **PAYE** le **UIF**, le leng ka tlase ho **R14 712.00** ka selemo, kapa

15.2.2 O nyetse mme lekeno le kopanetsweng le molekane, kamora ho hulwa ha ditjhelete tsa semmuso, tse kang **PAYE** le **UIF**, le leng ka tlase ho **R27 192.00** ka selemo.

15.3 O koptjwa ho hlokomela hore lekala la mmuso kapa la poraefete le ka kopa, ho Foromo 4 ya Melawana, dipositi ho mokopi, empa feela haeba ba kgolwa hore lesedi kapa direkoto tse kopuweng di tla nka ho feta dihora tse tsheletseng (6) ho di batla, empa dipositi e keke ya ba ka hodimo ho feta nngwe tharong ya tjehelete e laetsweng.

16. NA MOHLANKA WA LESEDI O TLA THUSA MOKOPI HO E TSA KOPO YA PAIA?

16.1 Mosebetsi wa Bahlanka ba Lesedi le/kapa Batlatsi ba bona ba ka bobedi makala a mmuso le a poraefete ke ho, ho ya kamoo o amanang le ho tswellisa dikopo tsa phumantsho ya direkoto:

16.1.1 amohela dikopo tsa **PAIA** kapa tsa **POPIA**;

16.1.2 hokahanya tswelliso ya kopo ka hara lekala;

16.1.3 etsa qeto ya haeba ho ka dumellwa kapa ho hanyetswa ha direkoto tse koptjwang;

16.1.4 hokahana le mokopi (mohl. ba ka lokela ho kopa mokopi dintlha tse batsi kapa ba ka hloka ho kopa katoloso ya nako ya ho sebetsana le kopo, jj.);

16.1.5 Eletsa mokopi ka sephetho sa kopo ya hae ya **PAIA**, e leng keletso e lokelang ho fanwa kapele kamoo ho ka kgonehang empa e be nakong ya matsatsi a 30 kamora ho fumana kopo. Nako ya maqalong ya matsatsi a 30 e ka eketswa bakeng sa nako e nngwe hang bakeng sa matsatsi a sa feteng a 30, haeba ka mohlala, mokopi a dumetse tabeng ya katoloso eo kapa ho lokelwa ho batlana le rekoto e kekeng ya fumanwa ka nako e behilweng ya sethathong;

16.1.6 fana ka mabaka ho mokopi bakeng sa kganyetso ya phumantsho ya rekoto. Ho bohlokwa haholo hore mabaka a kganyetso e ba a hlakileng le a tebileng mme a lokela ho kenyeletsa tshupiso ho dikarolo tse itseng tsa **PAIA** (sheba serapa 19.4 ka tlase mona, mabapi le mabaka a kganyetso ya ho fumantsywa direkoto¹⁸);

¹⁷ Ho ya ka Tsebisong ya Mmuso R991 ya 14 Mphalane 2005

¹⁸ Karolo 33 ho 46 ya PAIA

- 16.1.7 tsebisa mekga ya boraro e amehang ka motjha wa tsebiso wa mokga wa boraro, ho ya ka karolo 47 ya **PAIA**; mme
- 16.1.8 haeba phumantsho ya direkoto e dumellwa, neha mokopi khopi ya rekoto
- 16.2 Ha o tsebisa mokopi ka qeto eo, o lokela hape ho mo tekela mekgwa ya ho tletleba e teng le dinako tse amehang (mekgwa e teng e fapane bakeng sa makala a mmuso le a poraefete).
- 16.3 Mesebetsi ya tlatsetso le maikarabelo a Bahlanka ba Lesedi le/kapa Batlatsi ba bona e tekilweng ka botlalo ho Lengolo la Tataiso la Bahlanka ba Lesedi le Batlatsi ba bona e leng Tataiso e ka fumanehang ka ho etela <https://www.justice.gov.za/infoereg/docs.html>
- 16.4 Hobane mosebetsi wa Bahlanka ba Lesedi le/kapa Batlatsi ba bona ke ho thusa ka phumantsho ya lesedi, sena hape se bolela hore ba na le mesebetsi e fapafapaneng ho ba etsang kopo.
- 16.5 Bahlanka ba Lesedi le/kapa Batlatsi ba bona ba lokela ho fana ka thuso mahala.
- 16.6 Bahlanka ba Lesedi le/kapa Batlatsi ba bona ba lekala la mmuso ba na le mesebetsi e ikgethileng e latelang:

Mesebetsi ya Bahlanka ba Lesedi Tlhaloso

Ho thusa ka ho tlatsa foromo

Mohlanka wa Lesedi o lokela ho fana ka thuso e utlwahalang ho mokopi ho tlatsa foromo ya hae ya **PAIA**, mme a keke a amohela foromo e sa tlatswang ka nepo ntle le haeba a fane ka thuso eo, kapa thuso eo a neng a fana ka yona e hanyeditswe.

Ho fana ka lesedi le amehang

Haeba ho kgoneha, Mohlanka wa Lesedi o lokela ho neha mokopi lesedi le hae e le lefe le leng le ka bang le a ameha, le haeba e se le kopilweng ka ho toba.

Ho fetisa kopo

Ona ke mosebetsi wa bohlokwa haholo. Haeba kopo ya **PAIA** e entswe lekaleng la mmuso le fosahetseng, Mohlanka wa Lesedi o lokela ho fetisetsa kopo lekaleng la mmuso le nepahetseng nakong ya matsatsi a 14

ya ho amohela kopo le ho tsebisa mokopi ka lengolo bakeng sa ho etsa seo. Hang ha e se e fetisitswe, Mohlanka wa Lesedi ya nepahetseng o lokela ebe o arabela ka qeto nakong ya matsatsi a 30.

Kemiso ya tokollo

Mohlanka wa Lesedi a ka etsa qeto ya ho emisa ka tokollo ya rekoto ho mokopi haeba rekoto eo e tla phatlalatswa nakong ya matsatsi a 90 kapa haeba rekoto e batleha ka molao hore e phatlalatswe empa e le hona e tla phatlalatswa.

- 16.7 Mabapi le ka bobedi makala a mmuso le a poraefete, Mohlanka wa Lesedi o lokela ho, haeba ba sa kgone ho fumana direkoto tseo tse kopuweng kapa ba dumela hore ha di fumanehe, ho fana ka afidavite e tebileng kapa tiisetso¹⁹ ho mokopi a fana ka tsebiso ya hore direkoto tse batlehang ha di yo kapa ha di tholahale, empa hape a teke mehato eo ba e nkileng ho batlana le tsona.

17. THUSO E FUMANEHANG HO BOLAODI BA LESEDI HO YA KA PAIA LE POPIA

- 17.1 Mohlanka wa Lesedi wa lekala la mmuso o tshwanela ho fana ka thuso²⁰ e jwalo, mahala, kamoo ho hlokehang ho thusa mokopi eo kapa monga lesedi ho imatahanya le mokgwa wa phumantsho jwaloka ha ho lohothuwe ho karolo 18 ya **PAIA** le karolo 23 ya **POPIA**.
- 17.2 Leha ho le jwalo, ha Mohlanka wa Lesedi a hloleha ho imatahanya le mosebetsi wa hae, o boletsweng serapeng 17.1 ka hodimo mona, mokopi kapa monga lesedi a ka kenya tletlebo ho Bolaodi mme Bolaodi bo ka, kamora dipatlisiso, ntsha Tsebiso ya Qobello e laelang Mohlanka wa Lesedi ho fana ka thuso e amohelehang.
- 17.3 Bolaodi bo ka, haeba ho kgoneha, ha bo koptjwa, thusa motho leha e le ofe ya lakatsang ho sebedisa tokelo leha e le efe e lohothuwang ho **PAIA** le **POPIA**²¹, mme sena se kenyeletsa ho fana ka thuso e utlwahalang, mahala, kamoo ho hlokehang ho thusa mokopi eo kapa monga lesedi ho imatahanya le mokgwa wa phumantsho jwaloka ha ho lohothuwe ho dikarolo 18 le 53 tsa **PAIA** le karolo 23 ya **POPIA**.
- 17.4 Se ka hodimo mona se kenyeletsa phano ya tataiso ya mokgwa wa ho tlatsa foromo ya kopo ya phumantsho kapa ho tlatsa foromo lebitsong la motho ya sa tsebeng ho ngola kapa ya fougatseng.

¹⁹ Karolo 23(1) le 51(1) ya PAIA

²⁰ Karolo 19(1) ya PAIA

²¹ Karolo 83(3)(c) ya PAIA

18. NA MOHLANKA WA LESEDI A KA EKETSA DINAKO TSE AMEHANG?

- 18.1 Moralo wa motjha le dinako tsa bohlokwa tse amehang di teng ka hara setshwantsho sa motjha wa kopo ya **PAIA**, serapeng 27 ka tlase mona. Ho ba le dinako tse tobileng ke karolo ya bohlokwa ya **PAIA**, kaha e qobella botsamaisi bo hlwahlwa ba dikopo tsa phumantsho ya direkoto.
- 18.2 Ho o hopotsa, hang ha o entse kopo ka nepo Mohlanka wa Lesedi kapa Motlatsi wa hae, eo kopo e entsweng kapa e fetiseditsweng ho yena, o lokela ho arabela kapele kamoo ho kgonehang mabakeng ohle **nakong ya matsatsi²² a 30**. Leha ho le jwalo, Mohlanka wa Lesedi wa lekala la mmuso kapa la poraefete a ka kopa katoloso e le nngwe **ya matsatsi a 30²³**, empa feela haeba:
- 18.2.1 kopo ke ya direkoto tsa palo e kgolo kapa ho batleha hore ho tsomanwe le palo e kgolo ya direkoto mme, ntle le katoloso, ho batla hona ho tla sitisa mesebetsi e tlwaelehileng ya lekala le amehang;
- 18.2.2 Kopo e batla ho batlanwe le direkoto ofising ya lekala leo le seng motseng kapa toropong e le nngwe mme kahoo ho tsoma ho sa kgone ho phethelwa nakong **ya matsatsi a 30**; le/kapa
- 18.2.3 e batla boemo ba ditherisano bakeng sa ho sebetsana le kopo, e kekeng ya phethelwa nakong ya matsatsi a 30 feela.
- 18.3 Mohlanka wa Lesedi o lokela ho tsebisa mokopi ka maikemisetso a hae a ho eketsa nako, le ho bolela hore katoloso e tla ba ya nako e kae, lebaka la katoloso, le ho tsebisa mokopi ka tokelo ya hae ya ho -
- 18.3.1 ipiletsa bolaoding bo amehang;
- 18.3.2 tletleba ho Bolaodi; kapa
- 18.2.3 ritela nyewe kgahlanong le katoloso ho ya kamoo maemo a leng kateng.
- 18.4 Mohlanka wa Lesedi hape o lokela ho tsebisa mokopi ka motjha wa ditokelo ka ding tse boletsweng ka hodimo tsebisong²⁴.

19. DIKARABELO TSA KOPO YA LESEDI

- 19.1 **PAIA** e file setjhaba tokelo ya ho kopa ho fumantshwa direkoto ho lekala leha e le lefe la mmuso kapa la poraefete. Hangata e hlaloswa e le molao o etsang hore baahi ba dule ba tseba ka mmuso wa bona. Makala a mmuso a lebeletswa ho pepesa lesedi leha e le lefe le koptjwang tlasa **PAIA** ntle le haeba le wela

²² Karolo 25(1) ya PAIA

²³ Karolo 26(1) ya PAIA

²⁴ Karolo 26(3) ya PAIA - tsebiso ya katoloso e lokela ho supa hore mokopi a ka etsa boipiletso ba ka hare, tletlebo ho Bolaodi ba Lesedi kapa kopo Kgotla, ho ya kamoo maemo a leng kateng, kgahlanong le katoloso, le tsamaiso (ho kenyeletswa le nako) ya ho etsa boipiletso ba ka hare, tletlebo ho Bolaodi ba Lesedi kapa kopo, ho ya kamoo maemo a leng kateng.

tlasa e nngwe ya **dikotelo tse leshome le metso e mmedi (12)** kapa mabaka a hore hobaneng phumantsho ya direkoto tsa lekala la mmuso e sa dumellwe²⁵ le dikotelo tse supa (7) kapa mabaka a hore hobaneng phumantsho ya direkoto tsa lekala la poraefete e kekeng ya dumellwa²⁶. Dikotelo tse leshome le metso e robong (19) tse fanweng bakeng sa **PAIA** di reretswe ho sireletsa ditabatabelo tse kang sephiri sa bo mong, polokeho ya naha, le qobello ya molao.

19.2 Pehelo e tataisang tsamaiso ya **PAIA** ke mohopolo wa ponaletso. Sena se bolela hore lebaka leha e le lefe le kginang ponaletso ena le lokela ho utlwahala. Makala a mmuso le ona a lokela ho sheba haeba pepeso e sa fellang ya lesedi e ya kgoneha neng le neng ha ba tiisa hore ho pepeswa ho phethahetseng ha ho kgonehe mme ba lokela ho ngotla kapa ho thibela lesedi le kekeng la pepeswa le ho pepesa le leng kaofela.

19.3 Mefuta ya dikarabelo tsa dikopo

19.3.1 Ha kopo ya phumantsho ya rekoto e entswe, Mohlanka wa Lesedi kapa Motlatsi wa hae o lokela, haeba phumantsho ya rekoto e dumelwa kapa e hanyetswa, ho tsebisa mokopi ka -

- (a) qeto ya hae; le
- (b) ditefo tse batlehang, haeba di le teng,

foromong e tsamaelanang haholo le **Foromo 3** ya Tlatsetso A ya Melawana:

19.3.2 Leha ho le jwalo, **PAIA** e fana ka lenane la mabaka kapa dikotelo (sheba dirapa 19.4 le 19.6 ka tlase mona) tsa hore hobaneng kopo e ka hanyetswa kapa tjhe. Sena se bohlokwa, kaha kopo e ka hanyetswa feela ho itshetlehlilwe hodima mabaka ana a boletsweng a kganyetso ya phumantsho ya direkoto.

19.3.3 Ho sa natswe mabaka a boletsweng ka hodimo mona a kganyetso ya phumantso ya direkoto, Mohlanka wa Lesedi wa lekala la mmuso o lokela ho dumela ka kopo ya phumantsho ya rekoto ya lekala haeba tabatabelo ya setjhaba ya pepeso ya rekoto e le pepeneneng hore e molemo ho feta kotsi e lohothwang mabakeng a boletsweng a kganyetso²⁷. Sena se bolela hore mokopi a ka tshepela ho tabatabelo ya setjhaba neng le neng ha le leng la mabaka a kganyetso ya phumantsho ya direkoto a sebediswa.

19.3.4 Ka bokgutshwane, mabaka a hore hobaneng lesedi le keke la pepeswa a amana le haeba lesedi leo le ka baka kotsi ho feta leha le ne le sa pepeswa. Ho na le mefuta e mmedi ya mabaka a boletsweng a kganyetso ya phumantsho ya direkoto tsa lekala:

²⁵ Kgaolo 4 ya PAIA - mabaka a kganyetso ya phumantsho ya direkoto (karolo 34-45 ya PAIA)

²⁶ Kgaolo 4 ya PAIA - mabaka kganyetso ya phumantsho ya direkoto (karolo 63-69 ya PAIA)

²⁷ karolo 46 ya PAIA

19.4 Mabaka a tlamang a kganyetso (mabaka a kotelo)

19.4.1 Mabapi le mabaka a tlamang, Mohlanka wa Lesedi kapa Motlatsi wa hae o lokela ho hanyetsa kopo hobane a ama rekoto eo.

19.4.2 Ho na le mabaka a mangata a tlamang ho feta a boikgethelo. A latelang ke mabaka a tlamang a kganyetso, mme Mohlanka wa Lesedi kapa Motlatsi wa hae o lokela ho hanyetsa kopo hobane a ama rekoto -

19.4.2.1 **Tshireletso e tlamang ya sephiri ya mokga wa boraro oo e leng motho ya tlwaelehileng;**

Mohlanka wa Lesedi wa lekala la mmuso kapa la poraefete ha a ya lokela ho dumella mokopi phumantsho ya lesedi la bo mong la motho e mong haeba seo se bolela 'pepeso e hlokanang boikarabelo'. Dikarolo ka bo tsona di bontsha mabaka a mmalwa a ha sena se sa sebetse, mohlomong haeba direkoto di se di tsejwa ke setjhaba, ka moo motho a fanneng ka tumello. Taba ya tumello e bohlokwa ka ho qolleha kaha e amana le karolo e nngwe ya motjha oo mokopi a lokelang ho o lemoha, o amanang le ditsebiso tsa mokga wa boraro, ho ya ka kgaolo 5 ya **PAIA**.

19.4.2.2 **Tshireletso e tlamang ya direkoto tse itseng tsa Tshebeletso ya Lekgetho ya Afrika Borwa;**

Mohlanka wa Lesedi wa **SARS** ha a lokela ho dumella mokopi ho fumantshwa direkoto tse fumanweng, kapa tse tshwerweng, ke **SARS** bakeng sa merero ya pokeletso ya lekeno. Leha ho le jwalo, direkoto tse fumanweng kapa tse tshwerweng ke **SARS** di ka nna tsa se hanyetswe haeba kopo e etswa ke mokopi ya amehang ka boyena kapa motho eo ho etswang kopo lebitsong la hae.

19.4.2.3 **Tshireletso e tlamang ya lesedi la kgwebo la mokga wa boraro;**

Mohlanka wa Lesedi wa lekala ha a lokela ho dumella mokopi ho fumantshwa lesedi la kgwebo la motho e mong (ka mantswa a mang, eo e seng mokopi kapa mokopuwa). Sena se tla kenyeletsa lesedi le kang makunutu a kgwebo, kapa a ka tshosetsang ditabatabelo tsa kgwebo tsa motho eo wa boraro. Ka mohlala, KFC e sebedisa diresepe tse itseng, ho kenyeletswa le metswako e itseng e entsweng ke mokga wa boraro, e leng makunutu a kgwebo a mokga oo wa boraro mme ho pepeswa ha ona ho ka tshosetsa ditabatabelo tsa kgwebo tsa mokga oo wa boraro.

19.4.2.4 **Tshireletso e tlamang ya lesedi le itseng la sephiri, le tshireletso ya lesedi le leng le itseng la sephiri, la mokga wa boraro;**

Bahlanka ba Lesedi ba ka bobedi lekala la mmuso le la poraefete ha ba a lokela ho dumella mokopi phumantsho ya rekoto haeba ho lokollwa ha yona ho tla thunthetsa mosebetsi wa sephiri o tshwanelang mokga wa boraro ho ya ka tumellano kapa konteraka.

19.4.2.5 **Tshireletso e tlamang ya poloheho ya batho ka bo mong, le tshireletso ya thepa;**

Mohlanka wa Lesedi wa ka bobedi lekala la mmuso kapa la poraefete ha a lokela ho dumella mokopi ho fumantshwa rekoto haeba ho lokollwa ha yona ho ka baka ho beha poloheho ya motho kotsing. Dikarolong tsona tseo, e bolela hape hore Mohlanka wa Lesedi wa lekala a ka hanyetsa phumantsho haeba e tla sitisa tshireletso ya moaho kapa thepa.

19.4.2.6 **Tshireletso e tlamang ya didokete tsa sepolesa ditsamaisong tsa beile, le tshireletso ya ditsamaiso tsa qobello ya molao le tsa semolao;**

Mohlanka wa Lesedi wa lekala la mmuso ha a lokela ho dumella mokopi ho fumantshwa direkoto tse kang tsa ditsamaiso tsa beile tse seng di sireleditswe ke karolo 60 ya Molao wa Tsamaiso ya Ditlolo tsa Molao. Karolong yona eo, e boetse e bolela hore Mohlanka wa Lesedi wa lekala la mmuso a ka hanyetsa phumantsho ya direkoto tsa qobello ya molao tse utullang mekgwa ya ona ya tshebetso, ditekginiki, ditsamaiso tsa thibelo ya botlokotsebe, kapa botjhutjhisi ba botlokotsebe, hammoho le direkoto tse ding tse itseng tse amanang le ditsamaiso tsa semolao tse etsahalang.

19.4.2.7 **Tshireletso e tlamang ya direkoto tse nang le monyetla wa ho se hlahiswe ditsamaisong tsa semolao;**

Mohlanka wa Lesedi wa lekala la poraefete ha a lokela ho dumella mokopi ho fumantshwa rekoto haeba rekoto e na le monyetla wa ho se hlahiswe ditsamaisong tsa semolao, ntle le ha motho ya nang le tshwanelo ya monyetla a nyahladitse monyetla oo.

19.4.2.8 **Tshireletso e tlamang ya lesedi la diphuputso la mokga wa boraro, le tshireletso ya lesedi la diphuputso la lekala la mmuso kapa la poraefete.**

Mohlanka wa Lesedi wa lekala ha a lokela ho dumella mokopi ho fumantshwa rekoto haeba e amana le diphuputso tse, kapa tse tla, etswa ke lekala le amehang mme ho lokollwa ha tsona ho ka nna ha pepesa mofuputsi, mokga wa boraro kapa taba e tlasa diphuputso boemong bo bobele.

19.4.3 O koptjwa ho lemoha hore mabaka a ka hodimo mona a tlamang bakeng sa kganyetso ya phumantsho ya direkoto a batla a tshwana le a makala a mmuso kapa a poraefete, ntle le bakeng sa tshireletso e tlamang ya direkoto tse itseng tsa Tshebeletso ya Lekgetho ya Afrika Borwa, didokete tsa sepolesa ditsamaisong tsa beile, tsa qobello ya molao le tsa ditsamaiso tsa semolao, tse sebetsang feela makaleng a mmuso.

19.4.4 Haeba ke karolo feela ya rekoto e amanang le lebaka la ho kotelwa, Mohlanka wa Lesedi kapa Motlatsi wa hae wa ka bobedi lekala la mmuso kapa la poraefete o ka tlasa tshwanelo ya ho sekaseka haeba pepeso e sa fellang ya lesedi e ya kgoneha neng le neng ha ba tiisa hore pepeso ka botlalo ha e kgonehe mme ba lokela ho nka mehato e utlwahalang ya ho ngotla kapa ho thibela karolo eo e kekeng ya lokollelwa mokopi le ho dumella phumantsho ya rekoto e nngwe kaofela.

19.5 Se nkuwang e le kganyetso ya kopo²⁸

19.5.1 Ho hloleha ho arabela kopo ka nepo nakong ya nako e nepahetseng ho tla 'nkuwa e le kganyetso'. Sena se bohlokwa, hobane **PAIA** e dumella mokopi ho phephetsa qeto ha ho se na qeto e entsweng mme le kopo e iphapantswe. Mokopi o tla teka feela boipiletso ba ka hare ba hore ha ho karabo eo a ileng a e fumana.

19.5.2 Kopo ya phumantsho ya direkoto e nkuwa e le kganyetso kamora ho feta ha matsatsi a 30 kapa nako leha e le efe e atolositsweng mme lekala la poraefete le hloleha ho arabela.

19.6 Mabaka a boikgethelo a kganyetso

19.6.1 Mabapi le mabaka a boikgethelo, Mohlanka wa Lesedi kapa Motlatsi wa hae a ka sheba haeba a ka hanyetsa kopo kapa tjhe hobane ho na le mabaka a amang rekoto e koptjwang. Hobane ke boikgethelo, Mohlanka wa Lesedi o lokela ho sebedisa monahano wa hae ka boikarabelo ha a sekaseka mabaka a fapaneng, e leng:

19.6.1.1 **Tshireletso ya Afrika Borwa, polokeho le dikamano tsa matjhaba:** Mohlanka wa Lesedi a ka hanyetsa phumantsho haeba ho lokollwa ha lesedi ho ka lebellwa hore ho tshosetse tshireletso le polokeho ya naha. Sena se ka boela sa sebetsa moo ho lokollwa ha lesedi ho ka lematsang dikamano tsa Afrika Borwa le naha e nngwe, jwaloka ho utulla direkoto tse fannweng ka lekunutu.

19.6.1.2 **Ditabatabelo tsa Moruo, ditjhelete le kgwebo:** Mohlanka wa Lesedi a ka hanyetsa ho lokollwa ha lona haeba ho lokollwa ha lona ho tla ba kotsi boemong ba moruo le ditjhelete tsa Riphabliki;

²⁸ Karolo 27 le 58 ya PAIA

19.6.1.3 **Ditshebetso tsa makala a mmuso:** Mohlanka wa Lesedi wa lekala la mmuso a ka hanyetsa phumantsho haeba ho lokollwa ha lesedi ho ka sitisa ditshebetso, ka mohlala, haeba e leka ho bopa leano, kapa ho tshohla taba e itseng;

19.6.1.4 **Dikopo tse sa hlokahaleng kapa tse tenang:** Bahlanka ba Lesedi ba ka hanyetsa kopo ya lesedi haeba ba na le mohopolo wa hore ho tswellisa dikopo ho tla senya nako ho sa hlokahale le ho bapala ka mehlodi. Hodima moo, ba ka hanyetsa phumantsho haeba kopo e bonahala eka e entswe ke mokopi ho halefisa kapa ho qala leqhoko ho sa hlokahale.

20. PEPESO E TLAMANG YA DIREKOTO MOLEMONG WA SETJHABA

20.1 Leha e ba lebaka la boikgethelo kapa le tlamang la kganyetso le le teng mabapi le kopo ya phumantsho ya direkoto tsa makala a mmuso kapa a poraefete, ho dula ho na le kgonahalo ya hore tabatabelo ya setjhaba mabapi le pepeso ya rekoto e molemo ho feta tshenyo e entsweng ke ho pepeswa ha rekoto.

20.2 Moo bohlokwa ba tabatabelo ya setjhaba bo leng teng jwaloka ha ho boletswe ka hodimo mona le ho pepeswa ha rekoto ho ka utullang bopaki ba tlolo e mpe ya, kapa ho hloleha ha ho imatahanya le molao; kapa kotsi e matla ya polokeho ya setjhaba kapa ya tikoloho e ka bonahalang, ebe ke moo Mohlanka wa Lesedi a lokelang ho dumella phumantsho ya rekoto ho sa natswe boteng ba mabaka a kotelo a boletsweng ka hodimo mona.

21. MOTJHA²⁹ WA TSEBISO YA MOKGA WA BORARO

21.1 Mohlanka wa Lesedi kapa Motlatsi wa hae wa lekala o lebeletswe, ho ya ka dikarolo 47 le 71 tsa **PAIA**, ho nka mehato e utlwahalang ho tsebisa mokga wa boraro ka kopo ya rekoto kapa direkoto tsa hae tse nang le lesedi la bo mong le kang,

21.1.1 rekoto ya **SARS**;

21.1.2 makunutu a kgwebo;

21.1.3 lesedi leo e leng hore ha le ka lokollwa le ka hlahisa mabaka bakeng sa thunthetso ya mosebetsi wa lekunutu; kapa lesedi la diphuputso le ka pepesang motho e mong kapa le fupere taba e ka bakang tshenyo e kgolo.

21.2 Tsebiso ho mokga wa boraro eo direkoto kapa lesedi la hae le amanang le ditaba tsa hae o lokela ho mema mokga wa boraro ho -

²⁹ Karolo 47 le 71 ya PAIA

- 21.2.1 etsa kopo ka lengolo kapa ka molomo ho Mohlanka wa Lesedi hore hobaneng kopo ya phumantsho e lokela ho hanyetswa; kapa
- 21.2.2 fana ka tumello e ngotsweng bakeng sa pepeso ya rekoto ho mokopi.
- 21.3 Se bohlokwa bakeng sa mokopi, **PAIA** e re ditsebiso tse ngotsweng ho mokga wa boraro di lokela ho romelwa ho mokga wa boraro nakong ya matsatsi a 21 a ho amohelwa ha kopo, le hore Mohlanka wa Lesedi kapa Motlatsi wa hae o lokela ho tsebisa mokopi hore tsebiso e rometswe ho mokga wa boraro.
- 21.4 Hang ha tsebiso eo e se e rometswe, Mohlanka wa Lesedi kapa Motlatsi wa hae o lokela hore ebe o etsa qeto ya ho qetela ya haeba o tla lokolla direkoto kapa tjhe **nakong ya matsatsi a 30** kamora hoba tsebiso e romelwe.
- 21.5 Mokga wa boraro o lokela ho tsebiswa ka qeto e nkuweng le mabaka a utlwahalang bakeng sa ho dumella kopo le ona a lokela ho fanwa. Mokga wa boraro o boetse o lokela ho tsebiswa ka tokelo le motjha wa ho phephetsa qeto jwaloka ha ho boletswe serapeng 22 ka tlase mona.

22. DITOKISO TSA SEMOLAO TSE TENG KG AHLANONG LE DIQETO KAPA HO HLOLEHA HO NKA QETO KE MOHLANKA WA LESEDI KAPA MOTLATSI WA HAE

22.1 Mohato o lokelang ho nkuwa hang ha qeto e se e entswe mabapi le kopo

- 22.1.1 Mokopi a ka nka mohato wa tshalomorao ka lengolo, mabapi le qeto e salletseng morao ya Mohlanka wa Lesedi kapa Motlatsi wa hae. Ho kgothaletswa hore ngollano yohle pakeng tsa mokopi le Mohlanka wa Lesedi kapa Motlatsi wa hae e lokela ho ba ka lengolo bakeng sa merero ya tshupiso ya kamoso.
- 22.1.2 Ho na le metjha e fapaneng bakeng sa makala a mmuso le a poraefete, ka ho qolleha mabapi le maipiletso a ka hare. Ka mohlala, mabapi le kopo ya phumantsho ya rekoto ya lekala la mmuso, mokopi o lokela ho qala ka ho kenya boipiletso ba ka hare pele a leba ho Bolaodi kapa Kgotla. Leha ho le jwalo, ha ho boipiletso ba ka hare kgahlanong le qeto (e ka ba ya ho dumela kapa ho hanyetsa phumantsho ya direkoto) kapa phumantsho e nkuwang e hanyeditswe ya direkoto tsa lekala la poraefete.
- 22.1.3 Karolo ena e tla hlalosa ditokiso tsa semolao tse teng bakeng sa bakopi ba lakatsang ho phephetsa diqeto tse jwalo, tse kenyeletsang maipiletso a ka hare, ho kenya tletlebo ho Bolaodi kapa Kgotla. Sheba hape daekeramo ya motjha wa kopo ya **PAIA**, serapeng 27 ka tlase mona.

22.1.4 Mokopi a ka, hara tse ding, phephetsa qeto e latelang ya lekala la poraefete le/kapa la mmuso -

22.1.4.1 thendara kapa tefo ya tjhelete ya kopo;

22.1.4.2 thendara kapa tefo ya dipositi;

22.1.4.3 tefo ya phumantsho e lokelang ho lefuwa e le hodimo ho feta tekano;

22.1.4.4 ho fanwe ka foromo ya phumantsho;

22.1.4.5 kganyetso ya kopo;

22.1.4.6 motjha (ho kenyeletswa le nako) ya ho kenya boipiletso ba ka hare;

22.1.4.7 nako e sa nepahalang e nkuweng bakeng sa ho arabela kopo ya phumantsho;

22.1.4.8 ho hloleha ho pepesa direkoto;

22.1.4.9 ho dumellwa ho fumantshwa rekoto;

22.1.4.10 kganyetso ya ho dumella kopo bakeng sa ho nyahlatsa ditefo;

22.2 Ditokiso tsa ka hare

22.2.1 Mokopi o etsa boipiletso ba ka hare ka mokgwa ofe kgahlanong le qeto ya lekala la mmuso?

22.2.1.1 Boipiletso ba ka hare bo ka etswa feela, ho ya ka karolo 74 ya **PAIA**, le bolaodi bo amehang ba lefapha la naha kapa la mmuso wa provense kapa masepala leha e le ofe ho ya kamoo maemo a leng kateng.³⁰

22.2.1.2 Kahoo ka mohlala, Motsemoholo wa Johannesburg ke mohlala wa lefapha la lehae la mmuso leo ho etswang kopo ya boipiletso ba ka hare ho lona. Letlole la Dikotsi tsa Mebileng kapa Bolaodi ke mohlala wa lekala la mmuso leo e seng karolo ya lefapha la mmuso wa naha, provense kapa wa lehae kaha le theilwe ka ketsamolao, mme kahoo ho keke ha etswa boipiletso ba ka hare kgahlanong le lona.

³⁰ Karolo 74(1) ya PAIA

22.2.1.3 Ha mokopi kapa mokga wa boraro o sa thabela qeto e nkuweng ke Mohlanka wa Lesedi kapa Motlatsi wa hae wa lefapha la mmuso la naha, provense kapa wa lehae, mokopi kapa mokga wa boraro o na le tokelo ya ho kenya boipiletso ba ka hare, ho ya ka karolo 74(1) kapa (2) ya **PAIA**. Motjha wa ho kenya boipiletso o laetswe bukaneng ya **PAIA** ya lekala leo le mokgwa wa ho kenya boipiletso ba ka hara le ona o hlakisitswe ka tlase mona.

22.2.1.4 Haeba karabelo ya lefapha la mmuso la naha, provense kapa la masepala e nkuwa e le kganyetso, ka mantswe a mang, le hlolehile ho arabela kopo nakong ya matsatsi a 30 kapa nako leha e le efe atolositsweng, mokopi a ka kenya boipiletso ba ka hare, ho ya ka ditsamaiso tse tekilweng mona, pele mokopi a ka leba ho Bolaodi kapa Kgotla.

22.3 Paballo ya direkoto ho fihlela qeto ya ho qetela mabapi le kopo e phethetswe qetellong

22.3.1 Mohlanka wa Lesedi wa lefapha la mmuso la Naha, Provense kapa la Lehae moo boipiletso bo kentsweng ho lona o lebeletswe, ho ya ka karolo 21 ya **PAIA**, ho nka mehato e loketseng e hlokehang bakeng sa ho baballa rekoto mme a keke a hlakola kapa ho senya rekoto leha e le efe e kopuweng, ho fihlela nakong eo ditsamaiso kaofela tsa boipiletso ba ka hare kapa tletlebo ho Bolaodi kapa kopo ho Kgotla, ho ya kamoo maemo a leng kateng, di phethetswe qetellong.

22.3.2 Sena se bolela hore mohlanka wa lesedi a keke a hlakola kapa ho senya lesedi leha e le lefe le kopuweng, ha ho sa emetswe motjha o laetsweng serapeng 22.3.1.1 ka hodimo mona.

22.4 Boipiletso ba ka hare bo lokela ho lebiswa ho mang?

22.4.1 Leha boipiletso bo tla sekasekwa ke bolaodi bo amehang, boipiletso ba ka hare bo lokela ho romelwa kapa ho lebiswa ho Mohlanka wa Lesedi wa Lefapha la Mmuso la Naha, Provense kapa la Lehae, ho ya kamoo maemo a leng kateng, atereseng ya hae, nomorong ya fekse kapa atereseng ya imeile³¹, dintlha tsa boiteanyo di ka fumaneha bukaneng ya **PAIA** kapa leha di ka fumaneha ho Bolaodi.

22.4.2 Mohlanka wa Lesedi wa lefapha la mmuso la naha, provense kapa la lehae, ho ya kamoo maemo a leng kateng, o na le tshwanelo e tobileng, ho ya ka karolo 75(4) ya **PAIA**, ho kenya boipiletso ho bolaodi ba maipiletso,

³¹ Karolo 75(1)(b) ya PAIA

hammoho le mabaka a hae bakeng sa qeto eo ho ipiletswang ka yona. Ho kenngwa ha boipiletso bolaoding bo amehang bo lokela ho etswa nakong ya matsatsi a 10 a tshebetso kamora ho amohela boipiletso.

22.5 Molaodi ya amehang ke ofe?

22.5.1 Bolaodi bo amehang, boo mona bo bitswang “bolaodi ba boipiletso” ka kakaretso e leng hlooho ya sepolotiki ya lekala le ikarabellang (leha mosebetsi ona o ka fuwa moemedi ba semmuso) mme ka ho toba e bolelang motho ya latelang -

Lekala la Mmuso ("Mmuso")	Bolaodi bo Amehang ("Bolaodi ba Maipiletso")
Ofisi ya Boporesidente	Motho ya thontsweng ka lengolo ke Moporesidente, haeba a le teng, ho seng jwalo Moporesidente ke bolaodi ba maipiletso
Lefapha la Naha	Letona le ikarabellang ho lefapha leo kapa motho ya thontsweng ka lengolo ke Letona leo
Ofisi ya Tonakgolo	Motho ya thontsweng ka lengolo ke Tonakgolo.
Lefapha la Provense	Setho sa Lekgotla la Phethahatso (MEC) se ikarabellang ho Lefapha leo la Provense kapa motho ya thontsweng ka lengolo ke MEC;
Masepala	Meyara, Sepikara kapa motho leha e le ofe ya thontsweng ka lengolo ke Lekgotla la Masepala la masepala oo;

22.5.2 Nyewe e nngwe leha e le efe, moo e seng ofisi ya tonakgolo: setho sa phethahatso se ikarabellang sa lekala leo la mmuso kapa motho ya thontsweng ka lengolo ke setho seo.

22.5.3 Haeba bolaodi ba maipiletso bo tjhaella monwana qeto ya Mohlanka wa Lesedi, ebe ke moo boipiletso ba ka hare bo hanyetswang mme qeto ya sethathong ya Mohlanka wa Lesedi ha e fetohe.

22.5.4 Leha ho le jwalo, haeba bolaodi ba maipiletso bo sa dumellane le qeto ya Mohlanka wa Lesedi, ebe ke moo ho dumellwang boipiletso mme qeto ya sethathong e ya qhalwa.

22.6 Ke mang ya ka kenyang boipiletso ba ka hare?

22.6.1 Mokopi leha e le ofe eo kopo ya hae ya **PAIA** ya phumantsho ya direkoto tsa lefapha la mmuso la Naha, Provense kapa la Lehae, ho ya kamoo maemo a leng kateng, e hanyeditsweng, mme a dumela hore le leng la mabaka a boipiletso serapeng sa 22.2.4 ka hodimo mona le a sebetsa kopong ya hae, o na le tokelo ya kenya boipiletso ba ka hare.

22.6.2 Mekga ya boraro le yona e ka kenya maipiletso a ka hare kgahlanong le qeto e entsweng ke Mohlanka wa Lesedi ya ho dumela ka phumantsho ya rekoto e ba amang. Haeba boipiletso ba ka hare bo kenyeletsa mokga wa boraro, bolaodi ba maipiletso bo amohetseng boipiletso ba ka hare bo lokela ho tsebisa mekga eo ya boraro (kaha boikarabelo bo se bo tloha ho Mohlanka wa Lesedi ho leba ho bolaodi ba maipiletso).

22.7 Nako e o ho lokelwang ho kenya boipiletso ka yona

22.7.1 Boipiletso ba ka hare bo lokela ho etswa -

22.7.1.1 nakong ya **matsatsi a 60**³² kamora ho nkuwa ha qeto;

22.7.1.2 nakong ya **matsatsi a 30**³³ kamora hoba ho fanwe ka tsebiso ya qeto eo ho ipiletswang kgahlanong le yona ho mokga wa boraro

22.7.2 Ho kenngwa ha boipiletso ba ka hare kamora nako e boletsweng ka hodimo mona ho keke ha dumellwa , ntle le ho fana ka lebaka le utlwahalang la ho ba morao ho nako ho bolaodi ba maipiletso. Mohlala, jwaloka ho ba sepetlele bakeng sa matsatsi a fetang a 60 le ka amohelwa e le lebaka le utlwahalang la ho ba morao ho nako.

22.7.3 Haeba bolaodi ba maipiletso bo sa amohele ho kenngwa morao ho nako ha boipiletso ba ka hare, bo lokela ho o neha mabaka a ho qhelela boipiletso ka thoko le ho fana ka tataiso ya lesedi leha e le efe la tlatsetso, haeba le le teng, le batlehang bakeng sa ho amohela boipiletso. Bolaodi ba boipiletso bo lokela hape ho o eletska ka motjha wa ho kenya tletlebo kgahlanong le qeto ya bona ho Bolaodi kapa Kgotla.

³² Karolo 75(1)(a)(i) ya PAIA

³³ Karolo 75(1)(a)(ii) ya PAIA

22.7.4 Jwaloka ha ho boletswe ka hodimo mona, boipiletso ba hao bo lokela ho kenngwa ke Mohlanka wa Lesedi bolaoding ba maipiletso nakong ya matsatsi a 10 a tshebetso kamora ho amohela boipiletso ba ka hare³⁴.

22.8 Tsebiso ya boipiletso ka bolaodi ba maipiletso ho mokopi kapa mokga wa boraro

22.8.1 Bolaodi ba maipiletso bo lokela, kapele kamoo ho ka kgonehang feela leha ho le jwang **nakong ya matsatsi a 30** kamora ho amohela boipiletso ba ka hare³⁵, ho tsebisa -

22.8.1.1 Mokga wa boraro oo rekoto e ka tlasa boipiletso e leng ya ona, kapa

22.8.1.2 mokopi ka boipiletso ba ka hare kgahlanong le ho dumellwa ha kopo ya phumantsho.

22.8.2 Mokopi kapa mokga wa boraro o fuweng tsebiso, **nakong ya matsatsi a 21** kamora ho fumana tsebiso, o ka etsa ditsebiso tse ngotsweng ho bolaodi ba maipiletso ba hore hobaneng kopo ya phumantsho e lokela ho dumellwa kapa tjhe.

22.9 Qeto mabapi le boipiletso ba ka hare le tsebiso ya teng³⁶

22.9.1 Bolaodi ba maipiletso bo lokela ho etsa qeto ka boipiletso ba ka hare kapele kamoo ho ka kgonehang feela leha ho le jwang nakong ya matsatsi a 30:

22.9.1.1 kamora hoba boipiletso ba ka hare bo amohelwe ke Mohlanka wa Lesedi wa lekala;

22.9.1.2 kamora ho ba mokga wa boraro o tsebiswe, jwaloka ha ho boletswe serapeng 22.3.6.1 ka hodimo mona.

22.9.2 Qeto ya bolaodi ba maipiletso e lokela ho tsebiswa moipiletsi, mokga wa boraro le mokopi. Qeto ya bolaodi ba maipiletso e lokela ho tsamaya le mabaka a utlwahalang a qeto, ho kenyeletswa le pehelo ya **PAIA** kapa **POPIA** eo ho itshetlehilweng hodima yona.

22.9.3 Haeba bolaodi ba boipiletso bo hloleha ho fana ka tsebiso ya qeto mabapi le boipiletso ba ka hare ho moipiletsi nakong ya matsatsi a 30, boipiletso bo nkuwa bo qhaduwe mme mokopi a ka nna a tswella ho kenya tletlebo ho Bolaodi kapa a lebe Kgotla bakeng sa thuso³⁷ e nepahetseng.

³⁴ Karolo 75(4) ya PAIA

³⁵ Karolo 76(2)(a) ya PAIA

³⁶ Karolo 77 ya PAIA

³⁷ Karolo 77(7) ya PAIA

22.10 Ho tlatsa boipiletso ba ka hare- Foromo 4

- 22.10.1 Hore motho a ipiletse kgahlanong le qeto leha e le efe ya Lefapha la Mmuso la Naha, Provense kapa la Lehae, mokopi o lokela ho kenya kopo ya boipiletso ba ka hare ka ho tlatsa Foromo 4. Foromo 4 e lokela ho kenngwa ho Mohlanka wa Lesedi wa lefapha la mmuso le amehang, eo ebe o lebeletswe ho bo fetisetsa ho bolaodi ba maipiletso, jwaloka ha ho boletswe ka hodimo mona.
- 22.10.2 Foromo 4 e a fumaneha websaeteng ya Bolaodi, <https://www.justice.gov.za/inforg/>, hammoho le websaeteng ya lefapha la Mmuso le amehang.
- 22.10.3 Mohlanka wa Lesedi kapa Motlatsi wa hae wa lefapha la Mmuso le amehang ha a ka tlatsa kgatelo e kaalo ya ho thusa mokopi ho tlatsa foromo ya boipiletso ba ka hare; leha ho le jwalo, mokopi a ka nna a kopa Mohlanka wa Lesedi ho thusa tabeng ena.
- 22.10.4 Ka tlase mona ke motjha wa mohato-ka-mohato wa ho tlatsa foromo ya boipiletso ba ka hare -

Lesedi le batlwang

Tlhaloso

Dintlha tsa lekala la mmuso

Karolo ena e lokela ho ba lebitso la lefapha la Mmuso la Naha, Provense kapa la Lehae le amehang, le lebitso le sefane tsa Mohlanka wa Lesedi.

Dintlha tsa moipiletsi wa boipiletso ba ka hare

Karolo ena e lokela ho tlatswa ke moipiletsi, e ke ba boemong ba boemedi kapa tjhe. Mabitso ka botlalo le sefane, nomoro ya boitsebiso le boemo, moo boipiletso ba ka hare bo etswang lebitsong la motho e mong, haeba e tsamaelana, bo lokela ho fanwa. Haeba boipiletso bo etswa boemong ba motho ka boyena, boemo boo bo lokela ho rekotwa. Lesedi la tlatsetso le batlehang le kenyeletsa dintlha tsa boiteanyo tsa mokopi:

Lesedi le batlwang

Tlhaloso

aterese ya poso, aterese ya imeile, nomoro ya fekse le/kapa ya mohala. Lesedi lena le lokela ho tshwana le le kopong ya sethathong. Haeba motho ya tlatsang foromo e le moemedi wa mokopi, bopaki ba boemo boo boipiletso bo etswang ka bona bo lokela ho tsamaiswa le foromo eo.

Dintlha tsa motho eo ho etswang kopo lebitsong la hae (haeba e kentswe ke mokga wa boraro)

Karolo ena feela e lokela ho tlatswa ke motho ya kopang lesedi bakeng sa motho e mong. Haeba motho ya kenyang boipiletso ba ka hare ha se motho ya kopileng lesedi sethathong, dintlha tsa mokopi di lokela ho fanwa mona. Haeba kopo e le boemong ba motho ka boyena karolo ena ha e a lokela ho tlatswa.

Qeto eo boipiletso ba ka hare bo kentsweng kgahlanong le yona

Foromo ena e fana ka karolo ya hore mokopi a bontshe ka "x", dintlha tse fanweng tsa mabaka a sebetsang boipiletsong boo.

Mabaka a boipiletso

Tlisa karolo ena, mokopi o lebeletswe ho hlalosa ka botlalo hore hobaneng a nahana hore mabaka a boipiletso a ya sebetsa. O lebeletswe ho fana ka le/mabaka a hore hobaneng ha a nahana hore qeto ya Mohlanka wa Lesedi e fosahetse. O loketse hape ho kenyelelsa ditokomane leha e le dife tse tshehetsang boipiletso. Lenane la mabaka a fannweng mabapi le ho tshehetsa boipiletso a ka tekwa ka botlalo leqepheng le ka thoko, haeba karolo e fanweng foromong e sa lekane. Maqephe a tlatsetso a lokela ho saenwa. Ho lokela hore ho be le mabaka a lekaneng le lesedi le

tshehetsang ho kgontsha bolaodi ba boipiletso ho etsa qeto e amohelehang. Ha ho le jwalo motho o lokela hape ho kenyeletsa ho teka tsohle tse etsahetseng tseleng e lebisang ho boipiletso ba ka hare. Leqepheng le ka thoko, motho a ka supa dikarolo tse tobileng tsa **PAIA** jwaloka motheo wa boipiletso.

Tsebiso ya qeto mabapi le boipiletso

Ho na le sebaka se fanweng bakeng sa tlhaloso ya tsela eo qeto e lokelang ho romelwa ka yona, mohlala ka poso, khoria kapa fekse kapa imeile. O koptjwa ho kgetha tsela eo o e ratang ya ho tsebiswa.

22.10.5 Leha ho se na thibelo kgahlanong le ho batla leqwetha mohatong leha e le ofe wa kopo ya lesedi, metjha e fapafapaneng ya **PAIA** e reretswe ho ba e bobebe e tlosang tlhokeho ya leqwetha le ho tlosa ditjeo tsa semolao.

23. TLELEBO HO BOLAODI BA LESEDI

- 23.1 Mokopi kapa mokga wa boraro o ka kenya tlelebo feela ho Bolaodi haeba mokopi kapa mokga wa boraro o lekile tsohle mabapi le boipiletso ba ka hare ntle le katleho ditsamaisong tse kgahlanong le qeto ya Mohlanka wa Lesedi wa lefapha la mmuso la naha, provense kapa mmuso wa lehae. Sena se bolela hore motho a ka kenya tlelebo ya hae feela, kgahlanong le lekala le itseng la mmuso ho Bolaodi haeba motho a sa thabela qeto ya bolaodi ba maipiletso. Bolaodi bo tla qhala tlelebo haeba motjha wa boipiletso lefapheng le amehang la mmuso o sa phethahatswa.
- 23.2 Leha ho le jwalo, mabapi le lekala la mmuso (moo boipiletso ba ka hare bo sa sebetseng) le lekala la poraefete, mokopi kapa mokga wa boraro o ka kenya tlelebo ho Bolaodi, haeba ba sa kgotsofala ke qeto ya lekala le amehang.
- 23.3 Tlelebo ho Bolaodi ka mokopi kapa mokga wa boraro e lokela ho etswa nakong ya matsatsi a 180 a ho amohela qeto ya lekala.

23.4 Mokopi a ka kenya tletlebo ho Bolaodi, haeba a sa thabela -

23.4.1 sephetho sa boipiletso ba ka hare ho bolaodi ba maipiletso ba lefapha leha e le lefe la mmuso;

23.4.2 qeto ya bolaodi ba maipiletso ba ho hanyetsa ho etswa ha boipiletso ba ka hare morao ho nako;

23.4.3 qeto ya Mohlanka wa Lesedi wa lekala la mmuso leo e seng karolo ya lefapha leha e le lefe la mmuso ya ho -

23.4.3.1 hanyetsa kopo ya phumantsho; kapa

23.4.3.2 atolosa nako ya ho sebetsana le kopo; kapa

23.4.3.3 ho dumella phumantsho ka sebopeho se itseng.

23.4.4 qeto ya hlooho ya lekala la poraefete ya ho -

23.4.4.1 hanyetsa kopo ya phumantsho; kapa

23.4.4.2 ho tseka tefo ya tjhelete ya kopo, kapa dipositi ya tjhelete ya kopo; kapa

23.4.4.3 ho atolosa nako ya ho sebetsana le kopo; kapa

23.4.4.4 ho dumella phumantsho ka sebopeho se itseng.

23.5 Mokga wa boraro o ka kenya tletlebo ho Bolaodi, haeba o sa thabela -

23.5.1 sephetho sa boipiletso ba ka hare ho bolaodi ba maipiletso ba lefapha le amehang la mmuso;

23.5.2 qeto ya Mohlanka wa Lesedi wa lekala la mmuso leo e seng karolo ya lefapha leha e le lefe la mmuso ya ho dumella kopo ya phumantsho; kapa

23.5.3 qeto ya hlooho ya lekala la poraefete ho dumella phumantsho ya rekoto ya lekala leo,

23.6 Motho o tletleba jwang ho Bolaodi?

- 23.6.1 Tletlebo ho Bolaodi e lokela ho etswa ka lengolo mme ho tlatswe foromo ya tletlebo, ka ho ikisetsa kapa ka inthanete. Foromo ya tletlebo, Foromo 5, e ka hulwa websaeteng ya Bolaodi, <https://www.justice.gov.za/inforeg/>
- 23.6.2 Sena se bolela hore Bolaodi bo keke ba amohela tletlebo ka mohala; leha ho le jwalo, Bolaodi bo lebeletswe ho fana ka thuso e utlwahalang ho motho leha e le ofe ya batlang ho kenya tletlebo mme sena se kenyeletsa thuso mabapi le ho tlatsa foromo ya tletlebo.
- 23.6.3 Haeba motho a phephetsa qeto ya Mohlanka wa Lesedi wa lekala la poraefete, motho o lokela ho fana ka bopaki bo lekaneng ho bontsha hore rekoto e koptjwang e batleha bakeng sa tshebediso kapa tshireletso ya to/ditokelo leha e le dife. Phumantsho ya direkoto tsa lekala la poraefete e ka dumellwa feela haeba motho a ka bontsha hore o ikemiseditse ho sebedisa kapa ho sireletsa to/ditokelo leha e le dife ka rekoto e koptjwang.

23.7 Ho etsahalang kamora ho amohelwa ha tletlebo?

23.7.1 Kamora ho amohela tletlebo, Bolaodi bo lokela -

23.7.1.1 ho batlisisa tletlebo le ho fetisetsa sephetho sa bona ho Komiti ya Qobello bakeng sa ho nka qeto; kapa

23.7.1.2 ho se nke mohato mabapi le tletlebo ka lebaka la hore -

23.7.1.2.1 tletlebo ha e ya kenngwa nakong ya matsatsi a 180 le hore ha ho na mabaka a utlwahalang a ho amohela ho kenngwa morao ho nako ha tletlebo;

23.7.1.2.2 tletlebo ha e hlokahale le ho tena kapa ha e ya etswa ka moya o motle; kapa

23.7.1.2.3 ha ho shejwa maemo kaofela a nyewe, ketso leha e le efe ho ya pele ha e hlokahale kapa ha e a loka. Ka mohlala, lesedi le koptjwang le se le tsebahala setjhabeng.

23.7.1.3 moo ho hlokahalang bo namole kapa bo sebedise maiteko a bona ho fihlella tumellano e jwalo kapa ho thusa mahlakore ho rarolla kgang kapa dikgang tsa bona; le

23.7.1.4 ho eletsa motletlebi le Mohlanka wa Lesedi, eo tletlebo e mo amang, le mohato o lokelang ho nkuwa.

23.8 **Puisano ya Bolaodi le motletlebi le Mohlanka wa Lesedi mabapi le tletlebo e kentsweng**

23.8.1 Haeba Bolaodi bo etsa qeto ya ho se nke bohato ho ya pele ka tletlebo, Bolaodi bo tla tsebisa mokopi ka qeto le mabaka a ho se nke bohato ho ya pele ka tletlebo.

23.8.2 Haeba Bolaodi bo etsa qeto ya ho batlisisa tletlebo, mokopi o tla thola lengolo le mo tsebisang hore Bolaodi bo entse qeto ya ho etsa dipatlisiso.

23.8.3 Kamora ho fumana tletlebo, Bolaodi bo tla fetisetsa dintlha tsa tletlebo ho Mohlanka wa Lesedi wa lekala le amehang, le ho mo kopa ho e lebisa ho Bolaodi, ka karabo e ngotsweng ho motletlebi.

23.9 **Matla a dipatlisiso a Bolaodi**

23.9.1 Bolaodi bo na le matla, ho ya ka karolo 77G(2) ya **PAIA**, ho -

23.9.1.1 sebedisa maiteko a hlwahlwa ka ho fetisisa a ho etsa tokiso e jwalo;

23.9.1.2 ho bitsa le ho qobella ho hlahella ha batho ka pela Bolaodi;

23.9.1.3 ho ba qobella ho fana ka bopaki bo ngotsweng tlasa kano le ho hlahisa direkoto leha e le dife;

23.9.1.4 ho amohela bopaki leha e le bofe le lesedi le leng, e ka ba tlasa kano, ka afidavite;

23.9.1.5 ho kena le ho phenyekolla meaho leha e le efe moo ho dulang lehlakore le ikarabellang;

23.9.1.6 ho hlophisa puisano ya sephiri le motho leha e le ofe meahong leha e le efe eo ho kenweng ho yona; le

23.9.1.7 ho etsa dipatlisiso leha e le dife meahong eno le dipatlisiso leha e le dife tseo bolaodi bo bonang di hlokeha.

23.10 Tekolo ya boimatahanyo le dipehelo tsa PAIA

- 23.10.1 Bolaodi bo ka hlophisa tekolo ya haeba lekala la mmuso kapa la poraefete ka kakaretso le imatahanya le dipehelo tsa **PAIA** ena.
- 23.10.2 Bolaodi bo ka etsa tekolo ya boimatahanyo neng le neng feela lekaleng, ka boikgethelo ba bona, leha ho le jwalo, Bolaodi hape bo ka etsa diteko tsa boimatahanyo ha bo koptjwa ke kapa lebitsong la Mohlanka wa Lesedi wa lekala kapa motho leha e le ofe e mong. Sena se bolela hore mang le mang a ka kopa Bolaodi ho etsa tekolo ya boimatahanyo lekaleng. Motho hape a ka nna a kenya kopo ya pinyane ya ho etsa tekolo ya boimatahanyo, ka ho bontsha hore o batla kopo e dule e le pinyane.
- 23.10.3 Bolaodi bo tla neha motho ya kopileng tekolo tlaleho ya tekolo le mohato o lokelang ho nkuwa, haeba o le teng.

23.11 Tsebisiso ya Lesedi

Bolaodi bo ka kata Mohlanka wa Lesedi ka Tsebisiso ya Lesedi e batlang hore lehlakore le amehang le nehe Bolaodi lesedi le tekilweng tsebisong. Ka mohlala, haeba tletlebo e kentsweng ho Bolaodi e amana le kganyetso ya phumantsho ho itshetlehilwe hodima leha e le afe a mabaka a kotetsweng, Bolaodi bo ka kopa, ho Tsebisiso ya Lesedi, dikhopi tsa direkoto tseo ho hanyeditsweng phumantsho ya tsona bakeng sa ho sheba haeba mabaka a kganyetso a ya utlwahala kapa tjhe.

23.12 Ho thehwa ha Komiti ya Qobello

- 23.12.1 Bolaodi bo lebeletswe ho theha Komiti ya Qobello³⁸, e nang le matla a ho -
- 23.12.1.1 sekaseka ditaba kaofela tse fetiseditsweng ho yona ke Bolaodi ho ya ka **PAIA** le ho etsa dipatlisiso mabapi le tsona; le
- 23.12.1.1 ho etsa kgothaletso leha e le efe ho Bolaodi mabapi le mohato leha e le ofe o lokelang ho nkuwa kgahlanong le Mohlanka wa Lesedi wa lekala.

23.13 Tsebisiso ya Qobello

- 23.13.1 Bolaodi bo ka, kamora ho sekaseka dikgothaletso tsa Komiti ya Qobello, kata Mohlanka wa Lesedi wa lekala ka Tsebisiso ya Qobello -

³⁸ Karolo 50 ya POPIA

23.13.1.1 ho netefatsa, ho fetola kapa ho qhala qeto eo e leng motso wa tletlebo; kapa

23.13.1.2 e batlang hore Mohlanka wa Lesedi ho nka mohato o jwalo kapa ho emisa ho nka mohato o jwalo oo Bolaodi ba Lesedi bo bo tekileng tsebisong.

23.14 **Ditlamorao tsa ho se imatahanye le Ditsebisong tsa Qobello ke dife?**

23.14.1 Mohlanka wa Lesedi wa lekala ya hanang ho imatahanya le tsebisong ya qobello o molato wa tlolo ya molao mme a ka tshwanelwa ke kahlolo ya faene kapa ho kena tjhankaneng bakeng sa nako e sa feteng dilemo tse tharo kapa dikotlo ka bobedi e leng faene le ho kena tjhankaneng.

23.14.2 Karolo 77K ya **PAIA** e supa bohlokwa ba tokelo ya phumantsho ya lesedi kapa direkoto. Karolo ena e boetse e matlafatsa bohlokwa ba Bolaodi ho ya kamoo tokelo ya phumantsho ya lesedi e tsamayang kateng.

24. KOPO LEKGOTLENG LA DINYEWE

24.1 **Ke mang ya ka kenyang kopo lekgotleng kgahlanong le qeto?**

24.1.1 Mokopi kapa mokga wa boraro o ka etsa kopo feela bakeng sa ditokiso ho ya ka karolo 82 maemong a latelang

24.1.1.1 kamora hore mokopi kapa mokga wa boraro o entse tsohle tsa motjha wa boipiletso ba ka hare o boletsweng serapeng 22.3 ka hodimo mona; kapa

24.1.1.2 kamora hore mokopi kapa mokga wa boraro o etse tsohle tsa ditsamaiso tsa ditletlebo tse boletsweng ho karolo 77A.

24.1.2 Ho ya ka karolo 78(1) ya **PAIA**, mokopi kapa mokga wa boraro o na le dikgetho tse pedi, ho ka fetisetsa qeto, e boletsweng dirapeng 22.2.4, 23.4 le 23.5 ka hodimo mona, ho Bolaodi kapa Kgotla. Leha motho a sa qobellwa ho leba ho Bolaodi pele a leba Kgotla, ho molemo hore motho a sekaseke ho leba ho Bolaodi, kaha Bolaodi bo na le mekgwa e tebileng le ya kapele ya ho rarolla dikgang, ho feta Lekgotla.

24.1.3 Leha ho le jwalo, hore Lekgotla le be le matla a ho ahlolela taba, mokopi kapa mokga wa boraro o lokela ho -

24.1.3.1 thefulwa maikutlo ke diqeto ka bobedi, tse boletsweng serapeng 22.2.4, 23.4 kapa 23.5 ka hodimo mona; kapa

24.1.3.2 o entse tsohle tsa ditsamaiso tsa ditletlebo ho Bolaodi kapa ho hula tletlebo ho Bolaodi. Sena se bolela hore motho a keke a leba Kgotla haeba tletlebo ya hae e ntse e salletse morao ho Bolaodi.

24.1.4 Haeba motho a phephetsa qeto ya Mohlanka wa Lesedi wa lekala la poraefete, o lokela ho fana ka bopaki bo lekaneng ba ho bontsha hore rekoto e koptjwang e batleha bakeng sa ho sebedisa kapa ho sireletsa to/ditokelo tse ding leha e le dife.

24.2 Ke neng moo motho a ka etsang kopo Kgotla kgahlanong le qeto ya lekala kapa Bolaodi?

24.2.1 Kopo ya Kgotla ya mokopi kapa mokga wa boraro, o sa atlehang boipiletsong ba ka hare ho bolaodi ba maipiletso ba lefapha le amehang la mmuso kapa a thefutsweng maikutlo ke qeto ya Mohlanka wa Lesedi wa lekala (le boletsweng ho 22.2.4, 23.4 kapa 23.5 ka hodimo mona) kapa ya Bolaodi e lokela ho kenngwa nakong ya matsatsi a 180 ho tloha ka letsatsi la nyewe e amehang.

24.2.2 Mohlanka wa Lesedi kapa bolaodi ba maipiletso ba Mmuso, ho ya kamoo maemo a leng kateng, ya thefutsweng maikutlo ke qeto ya Bolaodi a ka etsa kopo kgotla bakeng sa ditokiso ho ya ka karolo 82, nakong ya matsatsi a 180³⁹.

24.2.3 Mokopi, mokga wa boraro, kapa lekala, le ka etsa kopo kgotla hore diqeto leha e le dife tse sa ba thabisang di shejwe botjha ke Lekgotla.

24.2.4 Kopo Kgotla ka tlasa PAIA e etswa ka ditsamaiso tsa setjhaba ka kakaretso, mme e ka sebediswa e le motjha wa ho qetela.

24.2.5 Dinyewe tsa phumantsho ya lesedi di ka mamelwa ka pela Makgotla a Bomastrata, kaha lekgotla tabeng ya pele⁴⁰, le Lekgotla le Phahameng a na le matla.

24.2.6 Ho hloleha ho tlisa kopo nakong ya matsatsi a 180 ho ka nna ha dumellwa ke Lekgotla haeba motho a bontsha hore ditabatabelo tsa toka di batla jwalo. Sena se bolela hore lekgotla le ka amohela kopo ya kamorao ho nako haeba taba e lokelang ho ahlolelwa e

³⁹ Karolo 78(4) ya PAIA

⁴⁰ Karolo 91A y PAIA le Melawana ya Kgothaletso ya Phumantsho ya Lesedi, 2019

molemong wa toka. Haeba direkoto tseo ho koptjwang phumantsho ya tsona di tla thusa motho ho etsa kopo ya boipiletso kgahlanong le ho kwallwa tjhankaneng kapa ho o thusa ho tswella ho thola tlhokomelo ya kalafo, ka mohlala, lekgotla le ka nna la dumela tabeng ena.

24.2.7 Kopo e ka nna ya tlišwa ho ya ka tsamaiso e tekilweng ho molawana 53 wa Melawana ya Lekgotla le Phahameng kapa ho ya ka molawana 55 wa Melawana ya Makgotla a Bomastrata haeba ha ho direkoto tse fanweng ke motsamaisi kapa direkoto ha di a fella.

24.2.8 Haeba rekoto e se e fanwe, kopo e tla tlišwa Lekgotleng la Masetrata ho ya ka molawana 55 wa Melawana ya Makgotla a Bomasetrata, haeba moo ho na le lebaka la moikopedi la ho dumela hore rekoto e felletseng ya ditsamaiso e ka nna ya ba ha e a fanwa ke motsamaisi, moikopedi a ka nna a tswella ho ya ka tsamaiso e tekilweng ho Molawana 53 wa Melawana ya Lekgotla le Phahameng, ka boikgethelo ba lona, empa le tla bontsha afidavite ya lona ya mantlha ya hore hobaneng ho na le lebaka la ho dumela hore ha ho a fanwa ka rekoto e felletseng⁴¹.

24.3 **Boemo ba semolao ba qeto ya Bolaodi ha ho ntse ho emetswe qeto ya Lekgotla ke Bofe?**

Matla a Bolaodi a nkuwa haholo ho tswa ho Molaotheo, **POPIA** le **PAIA**. Ka lebaka leo, tsebiso ya qobello e ntshitsweng ke Bolaodi e na le ditlamorao tsa semolao mme kahoo e ya tlama ho fihlela ka nako eo lekgotla la molao le tla beng le qetile ka mokgwa o mong. Kahoo diqeto tsa Bolaodi di hlwahlwa le ho qobellwa ntle le ha ho ka laelwa ka mokgwa o fapaneng ke Lekgotla le amehang.

24.4 **Ke ditaelo dife tseo Lekgotla le mametseng kopo le ka fanang ka tsona?**

24.4.1 Lekgotla (la Masterata kapa le Phahameng) le mametseng kopo le ka tla ka ditaelo tse latelang -

24.4.1.1 ho netefata, fetola kapa ho qhala qeto ya Mohlanka wa Lesedi, kapa Bolaodi ba Maipiletso kapa Bolaodi ba Lesedi;

24.4.1.2 ho lebeletswa Mohlanka wa Lesedi kapa Bolaodi ba Maipiletso ho nka mohato o jwalo kapa ho emisa ho nka mohato o jwaloka ha Lekgotla le nka ho hlokeha ka hara nako e boletsweng taelong eo;

24.4.1.3 ho fana ka thibelo, kimollo ya nakwana kapa e tobileng, taelo ya tsebahatso kapa taelo ya ditlhapiso;

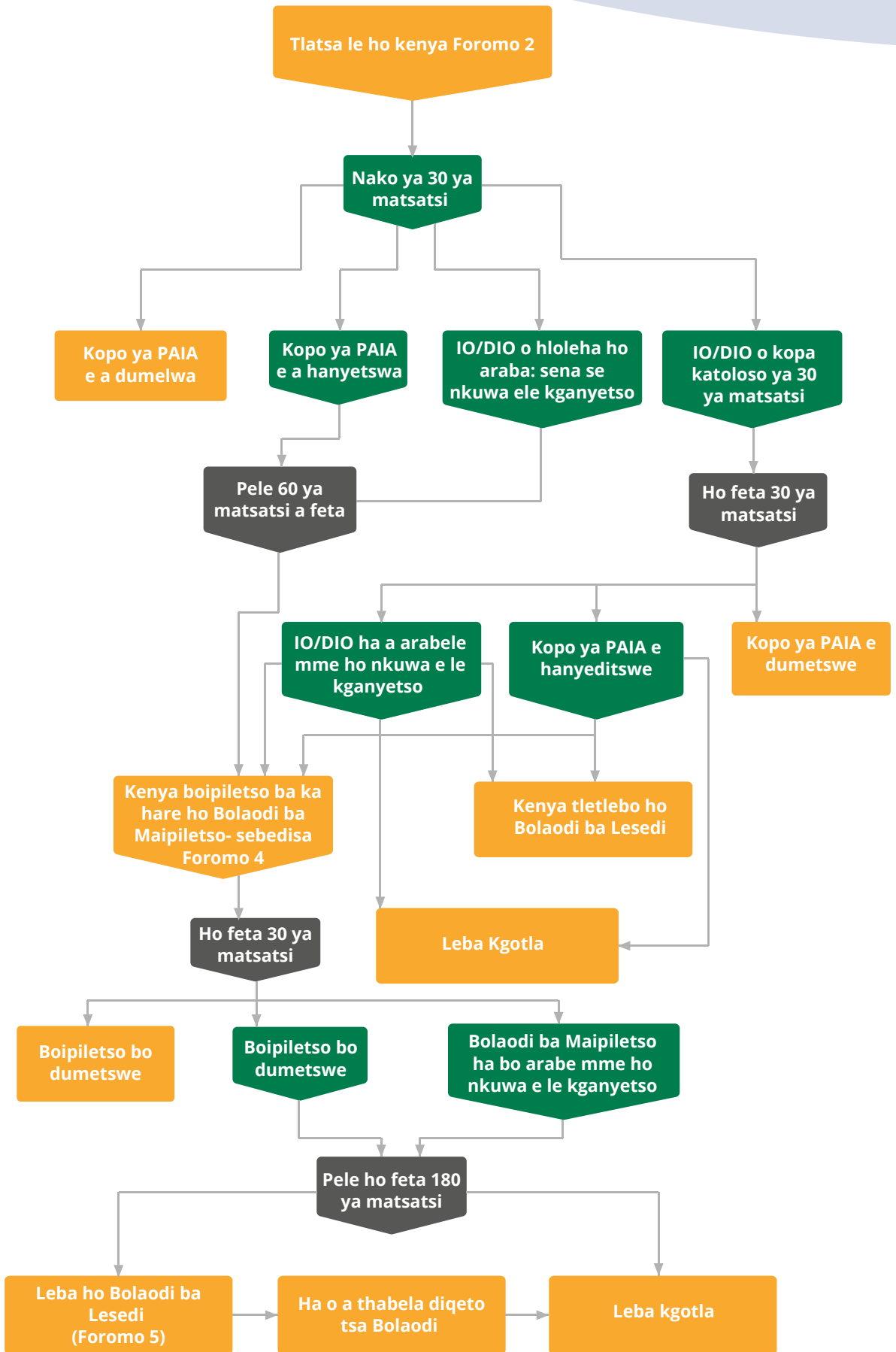
⁴¹ Molawana 4 Melawana ya Kgothaletso ya Phumantsho ya Lesedi, 2019

24.4.1.4 ho etsa taelo ya ditjeo kgahlanong le lehlakole leha e le lefe;

24.4.1.5 molemong wa toka, ho amohela ho se ikamahanye le nako ya matsatsi a 180 ya ho kenya kopo. Jwaloka ha ho boletswe ka hodimo mona, mabaka a lekaneng bakeng sa ho hloleha ho ikobela nako e laetsweng a lokela ho hlaloswa ka botlalo kopong e kenyeleditsweng ya kamohelo.

25. DAEKERAMO YA MOTJHA WA KOPO YA PAIA

O koptjwa ho sheba motjha wa mohato-ka-mohato, o mabapi le ditsamaiso tse lokelang ho latelwa ha o sebedisa tokelo ya phumantsho ya lesedi.



26. MELAWANA E ENTSWENG HO YA KA KAROLO 92 YA PAIA

- 26.1 Ho ya ka karolo 92(1) le 92(4) ya **PAIA**, Letona le entse Melawana e amanang le Kgothaletso ya Phumantsho ya Lesedi, o akaretsang dintlha tse latelang
 - 26.1.1 Ditshwanelo tsa Bolaodi ba Lesedi (**molawana 2**)
 - 26.1.2 Ditshwanelo tsa Mohlanka wa Lesedi (**molawana 3**)
 - 26.1.3 Boteng ka ho iketsahalla feela ha direkoto tse itseng tsa makala a mmuso (**molawana 4**)
 - 26.1.4 Pepeso ya boithaopo le boteng ka ho iketsahalla feela ya direkoto tse itseng tsa makala a poraefete (**molawana 5**)
 - 26.1.5 Boteng ba direkoto tsa mekga ya dipolotiki (**molawana 6**)
 - 26.1.6 Kopo ya phumantsho ya lesedi (**molawana 7**)
 - 26.1.7 Sephetho sa kopo le tjhelete e lefuwang (**molawana 8**)
 - 26.1.8 Boipiletso ba ka hare kgahlanong le qeto ya mohlanka wa lesedi wa lekala la mmuso (**molawana 9**)
 - 26.1.9 Ho kenngwa ha ditletlebo (**molawana 10**)
 - 26.1.10 Tsamaiso mabapi le dipatlisiso tsa ditletlebo (**molawana 11**)
 - 26.1.11 Ho phethelwa ha nyewe (**molawana 12**)
 - 26.1.12 Bonamodi ba nyewe (**molawana 13**)
 - 26.1.13 Tekolo (**molawana 14**)
 - 26.1.14 Dikgokahanyo tsa Elektroniki (**molawana 15**)
 - 26.1.15 Ditlolo tsa molao le dikotlo (**molawana 16**)
- 26.2 Ho ya ka karolo 79(1) ya **PAIA**, Boto ya Melawana ya Makgotla a Molao, ka ho tjhaellwa monwana ke Letona, e entse ditsamaiso tsa melawana bakeng sa -
 - 26.2.1 lekgotla mabapi le dikopo ho ya ka karolo 78 ya **PAIA**; le
 - 26.2.2 hore lekgotla le thole dintlha ka ntle le lehlakore le boletsweng ho karolo 80(3)(a)

27. MELAO, MELAWANA, DITSEBISO LE KANANELO TSE KA SEHLOOHONG

Melao, jwaloka ha e ka hlomathiswa nako le nako

Molao wa Kgothaletso ya Phumantsho ya Lesedi, Molao wa bo-2 wa 2000

Molao wa Kgothaletso ya Toka ya Tsamaiso, Molao 3 wa 2000

Sehlomathiso sa Molao wa Kgothaletso ya Phumantsho ya Lesedi, Molao wa bo-54 wa 2002

Molao wa Lesedi la Bo Mong, Molao wa bo-4 wa 2013

Sehlomathiso sa Molao wa Kgothaletso ya Phumantsho ya Lesedi, Molao wa bo-31 wa 2019

Molao wa Dithuso tsa Ditjhelete tsa Mekgatlo ya Dipolotiki, Molao wa bo-6 wa 2018

Melawana le Ditsebiso

Tsebiso ya Mmuso	Letsatsi la diphatlalatso	Sehlooho le tlhaloso
Tsebiso ya Mmuso R. 757 ho GG No 45057	27 Phato 2021	Melawana e amanang le Kgothaletso ya Phumantsho ya Lesedi, 2021
Tsebiso ya Mmuso R.991 ho GG 28107	14 Mphalane 2005	Melawana e laelang mabaka ao ka ona motho a ka kotelwang bakeng sa ho lefa ditefo.
Tsebiso ya Mmuso Notice 397 ho GG No. 44785	30 Phuptjane 2021	Kotelo ya makala a mang a poraefete mabapi le ho hlophisa Bukana ya PAIA .
Tsebiso ya Mmuso 1217 ho GG 42717	19 Lwetse 2019	Thonyo ya Makgotla a Bomasetrata a nkuwang a na le bokgoni ba ho mamela dinyewe tsa PAIA .
Tsebiso ya Mmuso R. 1284 ho GG 42740	4 Mphalane 2019	Melawana ya tsamaiso bakeng sa dikopo tse tla etswa ho ya ka PAIA ka pela Lekgotla le Phahameng la Dinyewe kapa Lekgotla la Masetrata.

KANANELO

Tataiso ena e behilweng sehlohlolong ho ya ka maemo a jwale mabapi le mokgwa wa ho sebedisa **PAIA** sethathong e ne e hlophisitswe ke Khomishene ya Ditokelo tsa Botho ya Afrika Borwa (**SAHRC**) mme Bolaodi ka sena bo ananela mosebetsi wa sethathong wa **SAHRC**, ho kenyeletswa mehlodi ya yona kaofela.

E ntshitswe ke

BOLAODI BA LESEDI



**INFORMATION
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GIDS

**VIR DIE GEBRUIK VAN
DIE WET OP BEVORDERING VAN TOEGANG
TOT INLIGTING, WET 2 VAN 2000, SOOS GEWYSIG**

AFRIKAANS

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PAIA GID

VOORWOORD DEUR DIE VOORSITTER

Die Grondwet van die Republiek van Suid-Afrika, 1996¹ (“Grondwet”) bepaal dat Suid-Afrika 'n soewereine demokratiese staat is, wat gegrond is op die bevordering van menseregte en 'n verantwoordelike, responsiewe en deursigtige stelsel van bestuur as deel van sy waardes. Voordat Suid-Afrika 'n grondwetlike demokrasie met 'n afdwingbare Handves van Regte geword het, het die regeringstelsel in Suid-Afrika, onder andere, ontaard in 'n geheimsinnige en onresponsiewe kultuur in beide die openbare en private liggame, wat dikwels tot die misbruik van mag en die skendings van menseregte gelei het. Dit is in hierdie verband dat artikel 32(1) van die Handves van Regte in die Grondwet voorsiening maak vir die reg van toegang tot inligting wat deur die staat gehou word; en enige inligting wat deur 'n ander persoon gehou word wat nodig is vir die uitoefening of beskerming van enige regte. Artikel 32(2) van die Grondwet maak op sy beurt voorsiening vir die verordening van nasionale wetgewing om gevolg aan hierdie reg te gee, deur die respektering, beskerming, bevordering en vervulling van hierdie reg.

Die Wet op Bevordering van Toegang tot Inligting, no. 2 van 2000 (Hierna na verwys as “die **PAIA**”, of “die Wet” afgewissel), soos gewysig, is die nasionale wetgewing wat verorden is in ooreenstemming met bogenoemde artikel 32(2) van die Grondwet.

Die doel van die **PAIA**-wet, is om 'n kultuur van deursigtigheid en verantwoordbaarheid in openbare en private liggame te vestig. Dit word gedoen deur magtiging te verleen aan die reg van toegang tot inligting en bevorder aktief 'n samelewing waarin die mense van Suid-Afrika effektiewe toegang tot inligting geniet om hul in staat te stel om hul regte meer omvattend uit te oefen en beskerm en ook om Suid-Afrika se doelwitte van 'n oop en deelnemende demokrasie te verweselik.

Hierdie **PAIA**-gids is ontwikkel ter vervulling van die Inligtingsreguleerder (“Reguleerder”) se verpligting ingevolge artikel 10 van die **PAIA**-wet, wat vereis dat die Reguleerder die bestaande gids, wat opgestel is deur die Suid-Afrikaanse Menseregtekommissie, opdateer en beskikbaar maak.

Hierdie Gids is ontwerp om 'n leidende, gebruikersvriendelike en toeganklike meganisme te wees vir enige persoon wie beoog om enige reg wat in die **PAIA** en die Wet op Beskerming van Persoonlike Inligting, 2000, 2013, vervat word, uit te oefen.



Adv Pansy Tlakula

DIE VOORSITTER VAN DIE INLIGTINGSRE GULEERDER

¹ Grondwet van die Republiek van Suid-Afrika, Wet No.

VRYWARINGSKENNISGEWING

Hierdie Gids verlos nie die gebruiker van die verantwoordelikheid om hul eie vaardigheid en sorg met betrekking tot die vereistes of verpligtinge opgelê deur enige wetgewing nie. Bowendien, voorsien hierdie Gids nie regsadvies nie en is nie bedoel om die **PAIA** of Regulasies wat kragtens die **PAIA** uitgereik is, te vervang nie. Die Reguleerder aanvaar geen verantwoordelikheid vir enige verlies wat gely mag word as gevolg van staat wat gemaak is op hierdie Gids nie.

1. LYS VAN AKRONIEME EN AFKORTINGS

HUB	Hoof-Uitvoerende Beampte
HFB	Hoof-Finansiële Beampte
Grondwet	Grondwet van die Republiek van Suid-Afrika, Wet No. 108 of 1996
AIB	Adjunk-inligtingsbeampte
Doj & CD	Departement van Justisie en Grondwetlike Ontwikkeling
IB	Inligtingsbeampte
Lede	Lede van die Inligtingsreguleerder
Minister	Minister van Justisie en Korrektiewe Dienste
PAIA	Die Wet op Bevordering van Toegang tot Inligting, Wet 2 van 2000, soos gewysig
PAJA	Wet op Bevordering van Administratiewe Geregtheid, 2000
WOFB	Wet op Bestuur van Openbare Finansies, No. 1 van 1999, soos gewysig
POPI-WET	Beskerming van Persoonlike Inligting, Wet No.4 van 2013
Reguleerder	Inligtingsreguleerder
SAMRK	Die Suid-Afrikaanse Menseregte Kommissie

2. NUTTIGE TERME OP 'N MAKLIK VERSTAANBARE VORM EN WYSE VERDUIDELIK

Term	Beskrywing
Toegangsfooi	Hierdie toegangsfooi word deur die aansoeker aan die liggaam vanwaar U die inligting aanvra, betaal. Dit is om die kostes verbonde aan die opsporing en kopiëring van die rekords wat U benodig te dek. Wat gedebiteer kan word, word deur die regulasie voorgeskryf.
Administrateur	Is 'n staatsorgaan of enige natuurlike of regspersoon wat administratiewe aksie neem.

Term	Beskrywing
Administratiewe aksie	<p>Is enige besluit wat geneem is, of enige versuim om 'n besluit te neem, deur</p> <p>(a) 'n staatsorgaan wanneer:</p> <p>(i) 'n mag uitgeoefen word kragtens die Grondwet of 'n provinsiale grondwet; of</p> <p>(ii) wanneer 'n openbare mag uitgeoefen word of 'n openbare funksie uitgevoer word kragtens enige wetgewing; of</p> <p>(b) deur 'n natuurlike- of regspersoon, anders as 'n staatsorgaan, wanneer 'n openbare mag uitoefen of 'n openbare funksie uitgevoer word ingevolge 'n bemaagtigende bepaling.</p> <p>wat die regte van enige persoon nadelig beïnvloed en wat 'n direkte, eksterne regsgevolg het.</p>
Gemagtigde Persoon	<p>Die gemagtigde persoon is die persoon wat 'n versoek namens iemand anders rig, en wie skriftelik behoorlik gemagtig is om dit te doen.</p>
Outomaties Beskikbare Rekords	<p>Dit is die rekords wat 'n openbare of privaat liggaam aan 'n versoeker beskikbaar sal maak sonder dat hulle 'n versoek hoef te rig. Hierdie rekords word in 'n 'vrywillige openbaarmakingskennisgewing' gelys, wat openbaar gemaak moet word.</p>
Betrokkene	<p>Is die persoon tot wie persoonlike inligting betrekking het.</p>
Dae	<p>Tensy aangedui as 'n 'werksdag' in 'n artikel in die PAIA-wet, word 'n dag as 'n kalender dag geag. Om die tydperk te bereken, word die dag waarop die versoek ontvang is, uitgesluit, en elke dag daarna word ingesluit, insluitende naweke en openbare vakansiedae totdat die finale dag getel word. Indien die laaste dag om 'n versoek te reageer op 'n Sondag of 'n openbare vakansiedag val, word die volgende dag as die laaste dag getel.</p>
Vermeende Weiering	<p>Indien geen respons ontvang is op 'n versoek binne die voorgeskrewe tyd, word dit as vermeende weiering geag.</p>
Vorm 2	<p>Hierdie vorm word volgens regulasie voorgeskryf en moet gebruik word om toegang tot inligting wat deur 'n openbare of privaat liggaam gehou word, aan te vra.</p>
Vorm 4	<p>Hierdie vorm word volgens regulasie voorgeskryf en moet gebruik word wanneer appèl aangeteken word teen 'n besluit wat deur 'n openbare liggaam geneem is met betrekking tot 'n versoek om toegang tot inligting.</p>

Term**Beskrywing****GIDS**

Hierdie gids, gemaak ter nastrewing van Artikel 10 van die **PAIA**-wet, soos gewysig, het ten doel om 'n persoon te help wat beoog om enige reg uit te oefen wat in die **PAIA**-wet en die Beskerming van Persoonlike Inligting Wet, 2013 oorweeg is.

Inligtingsbeampte

Die Inligtingsbeampte is die persoon wat gemagtig is om **PAIA**-versoeke te hanteer. Die volgende is kategorieë van inligtingsbeamptes per spesifieke liggaam -

Openbare liggaam of staatsorgaan (soos omskryf in artikel 239 van die Grondwet)	Nasionale Departement	Direkteur-generaal of die persoon wat sodanig optree
	Provinsiale Administrasie	Die Hoof van die Departement of die persoon wat sodanig optree.
	Munisipaliteit	Munisipale bestuurder of die persoon sodanig optree
	Openbare instellings gelys in WOFB Bylae 1, 2, 3A en 3B, 3C en 3D	Hoof-uitvoerende beampte of die persoon wat sodanig optree
Privaat liggaam	Natuurlike persoon	Alleeneienaar wat enige bedryf, beroep of profesie beoefen, maar slegs in sodanige hoedanigheid en nie in sy persoonlike hoedanigheid nie
	Vennootskap	Enige vennoot van die vennootskap of enige persoon wat behoorlik gemagtig is deur die vennootskap.
	Politieke party	Die leier van die politieke party of enige persoon wat behoorlik gemagtig is deur daardie leier.

Term	Beskrywing	
Inligtingsbeampte		<p>Regspersoon</p> <p>Hoof- uitvoerende beampte of die besturende direkteur of ekwivalente beampte van die regspersoon of enige persoon wat behoorlik gemagtig is deur daardie beampte.</p> <p>NB: Die Hoof- uitvoerende beampte of ekwivalente beampte mag enige natuurlike persoon as inligtingsbeampte van 'n privaatliggaam magtig.</p>
Adjunk-inligtingsbeampte	<p>Die Adjunk-Inligtingsbeampte is die aangewese persoon of gedelegeer deur die Inligtingsbeampte van 'n openbare liggaam om die versoeker met hul inligtingsversoek te help, en aan wie die inligtingsbeampte PAIA-magte kan deleger.</p> <p>NB: Terwyl slegs 'n openbare liggaam 'n Adjunk-Inligtingsbeampte(s), kragtens artikel 17(1) van die PAIA-wet mag aanstel of deleger, verleen die wet op Beskerming van Persoonlike Inligting, 2013 ("POPI-wet") magtiging aan die privaat liggaam om 'n Adjunk-inligtingsbeampte aan te wys kragtens Artikel 56(1) daarvan.</p>	
Inligtings-reguleerder	<p>Die kantoor van die Inligtingsreguleerder is gevestig, ingevolge artikel 39 van die POPI-wet om voldoening aan beide die POPI- en PAIA-wet af te dwing en te monitor. In hierdie Gids word die Kantoor van die Inligtingsreguleerder of die Inligtingsreguleerder na verwys as die Reguleerder.</p>	
Interne Appèl	<p>'n Interne appèl is die proses om 'n beslissing wat ingevolge 'n PAIA-versoek aan 'n openbare liggaam uit te daag, dit moet voltooi wees voordat 'n wraking aan die Reguleerder of 'n hof met jurisdiksie gerig kan word.</p>	
Privaat Liggaam	<p>'n Privaat liggaam is 'n persoon, maatskappy of ander soort regspersoon wat 'n ambag, besigheid of beroep bestuur, insluitend 'n politieke party.</p>	

Term	Beskrywing
Openbare Liggaam	Desnieteenstaande, met betrekking tot interne appèl, is enige verwysing na 'n "openbare liggaam" verander na "Regering", ten einde enige verwarring te vermy ten opsigte openbare liggame waarop die appèl nie van toepassing is nie.
Rekord	'n Rekord is enige opgetekende inligting, ongeag die vorm, met inbegrip van, byvoorbeeld, geskrewe dokumente, oudio-, digitale- en video opnames. 'n Rekord wat versoek word van 'n openbare of privaat liggaam verwys na 'n rekord wat in daardie liggaam se besit is, ongeag of daardie liggaam die rekord geskep het.
Regulasies	Die PAIA -wet maak voorsiening vir die Minister om regulasies wat die Wet aanvul uit te reik, dit moet in die Staatskoerant gepubliseer word, en kwessies soos die vorms moet gebruik moet word en foie wat hef kan word vir sekere prosesse, dek.
Relevante Owerheid	Die PAIA -wet gebruik die term 'betrokke owerheid' om die persoon binne 'n Nasionale, Provinsiale en Plaaslike Regering te definieer, aan wie 'n interne appèl gerig moet word, wat algemeen die politieke hoof van die betrokke liggaam is (hierdie funksie kan amptelik gedelegeer word).

3. KONTAKBESONDERHEDE VAN DIE REGULEERDER

Inligtingsbeampte

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E-pos:

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4. DOEL VAN HIERDE PAIA-GIDS

- 4.1 Die doel van hierdie gids is om inligting te verskaf wat benodig word deur enige persoon wat beoog om enige reg uit te oefen wat in die Wet op Bevordering van Toegang tot inligting van 2000 (**PAIA-wet**) en Die Beskerming van Persoonlike Inligting, 2013 ("**POPI-wet**") vervat word. Enige persoon ongeag van burgerskap, kan aansoek doen om toegang tot inligting ingevolge die **PAIA-wet**.
- 4.2 Hierdie gids sal 'n persoon, wat ook na verwys word as 'n betrokkene, help oor hoe om toegang tot sy / haar persoonlike inligting kragtens artikel 23 van die **POPIA-wet** te verkry. Onder die **POPI-wet**, het 'n persoon of betrokkene die reg om -
- 4.2.1 'n verantwoordelike party te versoek om gratis, te bevestig of die verantwoordelike party persoonlike inligting oor hulle besit of nie, en
- 4.2.2 om van 'n verantwoordelike party die rekord of 'n beskrywing van die persoonlike inligting oor die betrokkene wat deur die verantwoordelike party gehou word aan te vra, waaronder inligting oor die identiteit van alle derde partye, of kategorieë van derde partye, wat toegang tot die inligting het of reeds gehad het;
- 4.2.3 'n verantwoordelike party versoek om -
- (a) persoonlike inligting oor die betrokkene in sy besit of onder sy beheer wat verkeerd, irrelevant, oormatig, verouderd, onvolledig, misleidend of onwettig verkry is te korrigeer of uit te wis; of
- (b) om 'n rekord wat persoonlike inligting oor die betrokkene bevat wat die verantwoordelike party nie meer gemagtig is om te behou nie, te vernietig of uit te wis.
- 4.3 Hierdie Gids sal ook enige persoon help oor hoe om aansoek te doen om toegang tot rekords ingevolge die **PAIA-wet** te verkry. Die gids sal Versoekers ook help om:
- 4.3.1 die **PAIA-wet**, sy voordele en agtergrond te verstaan;
- 4.3.2 die stapsgewyse proses waardeur 'n versoek gerig word en bykomende wenke wat die proses vergemaklik te leer;
- 4.3.3 die soorte inligting wat deur die gebruik van die **PAIA-wet** bekom kan word, te leer;
- 4.3.4 begrip te hê van die proses waardeur 'n versoeker 'n beslissing wat in verband met hul versoek gemaak is, te daag;

4.3.5 vergewissing van die veranderinge wat in die **PAIA**-wet sal plaasvind sodra die **POPIA**-wet ten volle in werking tree.

4.4 Hierdie gids sal ook mense help om te verstaan hoe om die verlening van toegang tot hul rekords te daag of hoe om deel te neem aan die proses om toegang tot hul rekords te verkry.

5. OOR PAIA

5.1 Die reg op toegang tot inligting is "een van die mees effektiewe wyses waarop die grondwetlike waardes van deursigtigheid en openheid, deelname en aanspreeklikheid gehandhaaf word".² Die bogenoemde grondwetlike waardes kan nie bereik word indien die regering 'n monopolie het op die inligting wat sy aksies en besluite dryf, het nie. Dus, is toegang tot inligting nie net fundamenteel tot 'n behoorlik funksionerende, deelnemende demokrasie nie, maar dit verhoog ook die openbare vertroue in die regering en verskerp die regmatigheid daarvan. Ander voordele van die reg op toegang tot inligting is byvoorbeeld dat dit bedrog en korrupsie, onsekerheid en ander onbehoorlike regeringsoptredes ontmoedig.

5.2 Toe die Suid-Afrikaanse Grondwet in die tydperk na die val van Apartheid in die 1990's opgestel is, het verskillende organisasies en individue veldtogte geloods vir die insluiting vir 'n reg van toegang tot inligting. Daar is gehoop dat die insluiting van hierdie reg in die Handves van Regte sou verseker dat gruweldade soos Apartheid nooit weer sou kon plaasvind nie, aangesien die staat en privaat maatskappye verplig sou wees om op 'n verantwoordbare en deursigtige wyse op te tree deur die voorsiening van toegang tot inligting, en sou dus nie kon wegkruip agter die dekmantel van geheimhouding nie. Dit was beskou as 'n noodsaaklike stap om te help om 'n kultuur van regverdiging te skep, wat sou lei tot regverdiger verhoudings tussen mense, en diegene in gesagsposisies. In een van die vroegste sake wat handel oor hoe om die vraag te hanteer of 'n beskuldigde geregtig is op toegang tot al die inligting vervat in die polisie akte, het³ Jones J die belangrikheid daarvan in hierdie terme erken:

“Die doel ... is om die ewigdurendheid van die ou administrasiesetel uit te sluit, 'n stelsel waarin dit moontlik was vir die regering aanspreeklikheid te ontsnap deur te weier om inligting te openbaar, selfs al het dit betrekking gehad op die uitoefening of beskerming van die regte van die individu. Dit is die misstand wat dit ontwerp is om te verhoed [...] Aantoonbare eerlikheid en openheid bevorder openbare vertroue in die administrasie van openbare sake oor die algemeen. Hierdie vertroue is een van die kenmerke van die demokraties regerende samelewing waarvoor die Grondwet hom beywer”.

² Hoexter Administratiewe Wet 94

³ 1994 (1) SACR 635 (E)

- 5.3 Artikel 32 van die Grondwet verskans die reg van toegang tot inligting wat gehou word deur beide openbare en private liggame. Artikel 32 bepaal ook dat wetgewing verorden moet word om uitvoering te gee aan die reg van toegang tot inligting deur oor die maniere waarop inligting verkry van openbare en privaat liggame kan verkry word, en deur die verskaffing van gronde waarop 'n openbare en private liggaam kan weier om toegang tot inligting.
- 5.4 Die **PAIA**-wet is uitgevaardig in reaksie op die bogenoemde grondwetlike mandaat, en groot deel daarvan is in Maart 2001 in werking gestel. Die aanhef erken die "geheimsinnige en onresponsiewe kultuur" van die pre-demokratiese era, en beweer dat een van die oogmerke van die **PAIA**-wet is om "'n kultuur van deursigtigheid en verantwoordbaarheid in openbare en privaat liggame te kweek."
- 5.5 Die **PAIA**-wet het ten doel uitvoering te verleen aan 'n persoon se regte op toegang tot inligting en aanspreeklikheid. Dit is ontwerp om mense te bemagtig om die wet te gebruik, en op die wyse help dit om toegang tot inligting op verskillende wyses te versoek. 'n Mens hoef nie 'n prokureur aan te stel om 'n versoek om toegang tot inligting ingevolge die **PAIA**-wet te rig nie.

6. DIE OOGMERKE VAN DIE PAIA-WET

- 6.1 Die oogmerke van die **PAIA**-wet is nie om die grondwetlike reg te vervang nie, maar is om die regte in artikel 32 ten uitvoering te bring, onderhewig aan verdedigbare verjaringstermyne, en op so 'n wyse al die ander regte vervat in die Grondwet te help balanseer. Dit beoog om 'n kultuur van menseregte en maatskaplike geregtigheid vir die mense, die openbare sektor en die private sektor te bevorder. Die **PAIA**-wet beoog om deursigtigheid, verantwoordingspligtigheid en doeltreffende bestuur van alle instansies (beide openbaar en privaat) te bevorder deur die bemagtiging van mense hul regte tot toegang tot inligting te verstaan, daarvolgens op te tree en om besluite wat hulle raak te ondersoek en oorweeg.
- 6.2 Die reg van toegang tot inligting is 'n baie kragtige grondwetlike reg, omdat dit mense help om hul ander regte te verwesenlik. 'n Persoon kan dit gebruik om die lewering van regeringsdienste te help monitor en assesseeer, of om toegang te verkry tot historiese rekords wat van belang kan wees.
- 6.3 Die oogmerke van die **PAIA**-wet is -
- 6.3.1 om grondwetlike regte ten uitvoering te bring om
 - 6.3.1.1 enige inligting wat deur die staat gehou word; en
 - 6.3.1.2 enige inligting wat deur 'n ander persoon gehou word en wat nodig is vir die uitoefening of beskerming van enige regte.

- Die vereiste met betrekking tot die beskerming van regte is beperk tot inligting wat in private hande geberg word. Private liggame is dus onderhewig aan 'n lakser deursigtigheidstandaard as openbare liggame. Met ander woorde, die privaat sektor is daarop geregtig om die inligting vir homself te hou, tensy daardie inligting benodig word vir die beskerming van die regte.
- Die **PAIA**-wet erken, kragtens artikel 8(1) daarvan dat 'n liggaam "openbaar" of "privaat" mag wees vir die doeleindes van die Wet, afhangend van of die rekord ter sprake "verband hou met die uitoefening van 'n mag of die verrigting van 'n funksie as 'n openbare liggaam of privaatliggaam."

6.3.2 om uitvoering te gee aan daardie reg -

6.3.2.1 onderhewig aan verdedigbare verjaringstermyne, met inbegrip van, maar nie beperk tot, die verjaringstermyne wat gemik is op die regverdige beskerming van privaatheid, kommersiële vertroulikheid en doeltreffende, effektiewe en goeie regering; en

6.3.2.2 op 'n wyse wat daardie reg met enige ander regte, insluitend die regte vervat in die Handves van Regte in Hoofstuk 2 van die Grondwet balanseer;

6.3.3 uitvoering te gee aan die grondwetlike verpligtinge van die staat om 'n menseregtekultuur en sosiale geregtigheid te bevorder, deur openbare liggame by die omskrywing van 'aansoeker' in te sluit, en hulle onder meer toe te laat om toegang tot inligting van privaatliggame te verkry na voldoening aan die vier vereistes in hierdie Wet, insluitend 'n bykomende verpligting vir sekere openbare liggame in sekere gevalle om in die openbare belang op te tree;

6.3.4 om vrywillige en verpligte meganismes of prosedures in te stel om daardie reg uit te voer op 'n wyse wat persone in staat stel om so vinnig, goedkoop en moeiteeloos as redelikerwys toegang tot rekords van openbare en private liggame te verkry; en

6.3.5 om oor die algemeen deursigtigheid, aanspreeklikheid en effektiewe bestuur van alle openbare en private liggame te bevorder deur, insluitend maar nie beperk nie tot, die bemagtiging en opvoeding van almal -

6.3.5.1 om hul regte met betrekking tot hierdie Wet te verstaan ten einde hul regte met betrekking tot openbare en private liggame uit te oefen;

6.3.5.2 om die funksies en werking van openbare liggame te verstaan; en

6.3.5.3 om besluitneming deur openbare liggame wat hul regte beïnvloed, effektief te ondersoek en daaraan deel te neem.

6.4 Die Bevordering van Toegang tot Inligting Wysigingswet, 2019

- 6.4.1 In die saak van ***My Vote Counts NPC v Minister of Justice and Correctional Services and Another [2018] ZACC 17***, het die Konstitusionele Hof voorgehou dat die Staat 'n verpligting het wat voortspruit uit lees van artikels 32, 19 en 7(2) van die Grondwet en is onderhewig daaraan om als redelik moontlik te doen om die reg om toegang tot inligting en die reg om te stem verwesenlikbaar te maak. Die meerderheid het verder voorgehou dat dit so is omdat die reg om te stem 'n ingeligte keuse moet wees, en daar 'n kern verband is tussen die behoorlike uitoefening van die reg om te stem en die reg om toegang tot inligting is. En "sonder toegang tot inligting, word die vermoë van burgers om verantwoordelike politieke besluite te neem en op 'n betekenisvolle wyse in die samelewing deel te neem, ondermyn. Die Konstitusionele Hof het die bevel van grondwetlike ongeldigheid bevestig en die Parlement beveel om die **PAIA**-wet te wysig en enige ander stappe wat dit nodig ag te neem om te voorsien vir die beskerming van rekords en om redelikerwyse toegang tot inligting oor die private befondsing van politieke party en onafhanklike kandidate binne 'n periode van 18 maande te fasiliteer.
- 6.4.2 In ooreenstemming met die bogenoemde beslissing van die Konstitusionele Hof, het die President op 3 Junie 2019, die Wet op Bevordering van Toegang tot Inligting, 2019, (**PAIA**-wysigingswet 2019), bekragtig.⁴ Die **PAIA**-wysigingswet 2019, sluit 'n politieke party in die definisie van 'n privaat liggaam in, wat uiteindelik beteken dat die leier van 'n politieke party of enige persoon wat behoorlik gemagtig is deur daardie leier, 'n Inligtingsbeampte of hoof is. Die **PAIA**-wysigingswet 2019 verleen nou ook die reg om toegang tot enige rekords van die politieke party.
- 6.4.3 Die gewysigde Wet maak voorsiening vir inligting oor die privaat befondsing van politieke partye en onafhanklike kandidate om genotuleer, bewaar en beskikbaar gemaak te word.
- 6.4.4 Kragtens Artikel 52A van die **PAIA**-wysigingswet 2013, moet die hoof van 'n politieke party rekords skep en hou van enige skenkings wat die voorgeskrewe drempel van **R100 000.00** oorskry, wat aan die politieke party in enige gegewe finansiële jaar gemaak is asook die identiteite van die persone of entiteite wat sulke skenkings gemaak het. Die hoof van 'n politieke party word ook verplig om dié rekords op 'n kwartaallikse basis beskikbaar te maak, soos voorgeskryf; en die rekords vir 'n periode van minstens vyf jaar nadat die betrokke rekords geskep is, te hou.

⁴ *Bevordering van Toegang tot Inligting Wysigingswet, No. 31 van 2019*

6.4.5 Dit beteken dat terwyl die Politieke Partye Befondsingswet voorsiening maak vir die verpligte bekendmaking aan die Verkiesingskommissie, verleen die **PAIA**-wysigingswet die reg van toegang tot rekords, tot die rekords van enige skenking aan die politieke party wat **R100 000.00** oorskry, aan enige persoon.

6.5 Ander wetgewing wat die reg van toegang tot inligting beskerm

Die **PAIA**-wet bestaan binne 'n hele regsomgewing, waar dit ontwikkel is om 'n "kultuur van verantwoording" te skep. Ter herkenning hiervan, stel die **PAIA**-wet dat enige ander wet wat dit moontlik maak om die inligting om 'n makliker wyse te bekom, eerder gebruik mag word.⁵

6.5.1 Maatskappyewet 71 van 2008

6.5.1.1 Artikel 26(1) van die Maatskappyewet bied aan 'n persoon wat 'n voordelige belang het in of sekuriteite wat deur 'n winsmaatskappy uitgereik word, of wat 'n lid is van 'n maatskappy sonder winsoogmerk, en het die reg om dit te inspekteer en te kopieer, sonder enige heffing vir sodanige inspeksie of teen betaling van nie meer as die voorgeskrewe maksimum koste vir sodanige eksemplaar nie, die inligting vervat in die rekords van die maatskappy.

6.5.1.2 Kragtens Artikel 26(7)(b) van die Maatskappyewet, is "die regte om toegang tot inligting wat in hierdie artikel uiteengesit is, ter aanvulling en nie as vervanging van enige regte wat 'n persoon mag hê tot toegang tot inligting nie, kragtens die Bevordering van Toegang tot Inligting Wet, 2000 (Wet No. 2 van 2000)".

6.5.2 Die Wet op die Befondsing van Politieke Partye, 2018 (Wet No.6 van die 2018)

6.5.2.1 Die Wet op die Befondsing van Politieke Partye stel 'n streng reguleringsraamwerk in vir die privaat befondsing van alle geregistreerde politieke partye, hetsy in die nasionale en provinsiale wetgewers verteenwoordig word of nie. Dit sluit in die stel van perke vir die bron, grootte en gebruik van geskenkte fondse deur politieke partye.

6.5.2.2 Om deursigtigheid en aanspreeklikheid te verseker, moet politieke partye elke drie maande (sowel as voor die algemene verkiesing) alle donasies wat bo die openbaarmakingsdrempel van **R100 000.00** ontvang word, bekend maak.

⁵ Artikel 2 (1) van die PAIA-wet

- 6.5.2.3 Enige persoon of organisasie wat 'n skenking maak aan 'n politieke party wat **R100 000.00** per jaar afsonderlik of kumulatief oorskry, moet die skenking binne 30 dae na die skenking aan die verkiesingskommissie rapporteer, of binne 30 dae nadat die kumulatiewe skenkings meer as **R100 000.00** was.
- 6.5.2.4 Laastens lê die Wet op die Befondsing van Politieke Party 'n verpligting op die Verkiesingskommissie om elke drie maande die donasies wat deur politieke partye gerapporteer is, bekend te maak en jaarliks aan die Parlement verslag te doen oor alle donasies wat gedurende die jaar aan politieke partye gemaak is.
- 6.5.3 Wet op Beskerming van Persoonlike Inligting, 2013(Wet No.4 van 2013)
- 6.5.3.1 Artikel 23 van **POPI**-wet bied aan die betrokke die reg op toegang tot persoonlike inligting wat deur die verantwoordelike party gehou word, insluitend inligting oor die identiteit van alle derde partye, of kategorieë van derde partye, wat toegang tot die inligting het, of gehad het.
- 6.5.3.2 Dit beteken dat hoewel toegang tot 'n rekord wat persoonlike inligting oor 'n aansoeker bevat, uitgesluit is van **PAIA**-wet ingevolge Artikel 11 (2) daarvan, kan die betrokke versoek om -
- 6.5.3.2.1 toegang tot sy/haar persoonlike inligting te verkry; en/of
- 6.5.3.2.2 die identiteit van alle derde partye, en / of kategorieë van derde partye, toegang tot die inligting het of gehad het.
- 6.5.3.2.3 regstelling of verwydering van persoonlike inligting oor die betrokke in sy besit of onder sy beheer wat onakkuraat, irrelevant, buitensporig, verouderd, onvolledig, misleidend of onwettig verkry is;
- 6.5.3.2.4 die rekord van sy/haar persoonlike inligting wat die verantwoordbare party nie meer gemagtig is om te hou nie, vernietig of uitgewis moet word.
- 6.5.3.3 'n Verantwoordelike party kan weier om enige persoonlike inligting bekend te maak, in ooreenstemming met die gronde vir die weiering van toegang tot rekords, soos uiteengesit in paragraaf 19.4 hieronder.

6.5.4 Wet op Bevordering van Administratiewe Geregtigheid 3 van 2000

- 6.5.4.1 'n Ander belangrike wet wat u moet onthou wanneer u toegang tot inligting oorweeg, is die Wet op die Bevordering van Administratiewe Geregtigheid (**PAJA**). Die **PAJA**-wet gee uitvoering aan die reg tot administratiewe optrede wat wettig, redelik en prosedureel billik is en aan die reg tot skriftelike redes vir administratiewe optrede soos oorweeg in artikel 33 (2) van die Grondwet.⁶
- 6.5.4.2 Ingevolge artikel 5 (1) van die **PAJA**-wet kan enigiemand wie se regte wesenlik en nadelig beïnvloed is deur administratiewe optrede en wat nie redes vir die aksie gegee is nie, binne 90 dae na die datum waarop daardie persoon van die optrede of redelikerwys sou verwag word dat hy van die optrede bewus geword het, die betrokke administrateur versoek om skriftelike redes vir die aksie te verskaf. Die administrateur aan wie die versoek gerig is, moet daardie persoon binne 90 dae na ontvangs van die versoek voldoende **skriftelike rede gee vir die administratiewe optrede.**

7. VESTIGING VAN DIE INLIGTINGSREGULEERDER

- 7.1 Om die bevordering en verbetering van die **PAIA**-doelstellings te verseker, wat die reg op toegang tot inligting moet bewerkstellig op so 'n wyse dat dit mense in staat stel om so vinnig en goedkoop as redelikerwys toegang tot rekords van openbare en private liggame te verkry, is die Inligtingsreguleerder (“Die Reguleerder”) ingestel ingevolge artikel 39 van **POPI**-wet.
- 7.2 Om te verseker dat ongekompliseerde en goedkoop administratiewe prosedures volg wanneer 'n versoek om toegang tot inligting gerig word, moet klagtes by die Reguleerder en hofaansoeke die uitsondering eerder as die reël wees.
- 7.3 Die **POPI**-wet wysig die rol van die SAMRK in verband met die **PAIA**-mandaat. Met ingang van 30 Junie 2021 sal al die funksies van die SAMRK, soos uiteengesit in **PAIA**-wet, hanteer word deur die Reguleerder, wat ook addisionele handhawingsbevoegdhede het. Die **POPI**-wet wysig die rol van die SAMRK met betrekking tot die **PAIA**-wet se mandaat.
- 7.4 Terwyl die SAMRK steeds sy breër grondwetlike verpligtinge sal handhaaf om die regte soos vervat in die Handves van Menseregte te bevorder, te beskerm en te monitor, sal die SAMRK en die Reguleerder nou saamwerk.

⁶ Elkeen wie se regte nadelig geraak is deur administratiewe optrede het die reg tot die verskaffing van skriftelike redes.

8. DIE ROL VAN DIE INLIGTINGSREGULEERDER

- 8.1 Die Reguleerder het 'n baie belangrike rol ten opsigte van die **PAIA**-wet. Die Reguleerder het 'n mandaat van die **PAIA**-wet in Deel 4, Hoofstuk 1A en deel 5 en ander afdelings om:
- 8.1.1 Die reg van toegang tot inligting te bevorder en om die publiek te help met die gebruik van die **PAIA**-wet waar redelikerwys moontlik is om dit te doen.
 - 8.1.2 Die **PAIA**-wet te monitor en die implementering daarvan te bevorder in openbare en privaat liggame (wat ook die bevordering van doeltreffende wyses om inligting tydig beskikbaar te maak, insluit)
 - 8.1.3 Aanbevelings te maak om die **PAIA**-wet te versterk, en
 - 8.1.4 jaarliks aan die Parlement verslag te doen.
- 8.2 Artikel 77C (1) en (2) van die **PAIA**-wet maak voorsiening vir die volgende magte, pligte en funksies van die reguleerder, om -
- 8.2.1 'n klagte wat op die voorgeskrewe wyse aan die Reguleerder gerig is, te ondersoek;
 - 8.2.2 die klag na die Afdwingingskomitee, ingestel ingevolge artikel 50 van die **POPI**-wet, te verwys; of
 - 8.2.3 in ooreenstemming met artikel 77D te beslis om geen aksie op die klagte of te neem nie, of na gelang van die geval, geen verdere optrede verlang ten opsigte van die klagte; en
 - 8.2.4 waar toepaslik, as bemiddelaar op te tree met betrekking tot sodanige klagte op die voorgeskrewe wyse.
- 8.3 Die Reguleerder kan, ingevolge artikel 77H (1) van die **PAIA**-wet, en op eie inisiatief, of op versoek van of namens 'n inligtingsbeampte of hoof van 'n private liggaam of enige ander persoon, 'n beoordeling doen, hetsy 'n openbare of private liggaam voldoen gewoonlik aan die bepalings van **PAIA**, vir sover dit sy beleid en implementeringsprosedures betref.
- 8.4 Die Reguleerder is gemagtig om, ingevolge artikel 77F van **PAIA**, sy beste poging aan te wend om 'n klag te besleg, indien dit blyk uit die klag, of enige skriftelike antwoord wat daarop gerig is dat dit moontlik is om die klag te besleg. Dit beteken dat die Reguleerder slegs kan probeer om partye te help om hul geskille te besleg, indien daar 'n klag by die Reguleerder ingedien word, tensy hy op eie inisiatief besluit het om 'n beoordeling uit te voer, soos uiteengesit in paragraaf 8.3 hierbo.

9. VERSOEK OM 'N REKORD RIG

Verwys asseblief na die stapsgewyse prosesvloeddiagram in Paragraaf 27 hieronder oor hoe om aansoek te doen om toegang tot die rekords te verkry.

9.1 Om mee te begin: **Die PAIA-handleiding**

9.1.1 Alhoewel hierdie gids gepubliseer is om die publiek uit alle vlakke van die samelewing te help om hul grondwetlike reg op toegang tot inligting te handhaaf, is daar ander bronne van inligting wat 'n persoon ook kan help om 'n versoek tot toegang tot rekords te rig. **PAIA** vereis dat alle openbare liggame en private liggame 'n **PAIA**-handleiding opstel en beskikbaar stel.⁷

9.1.2 Voordat iemand stappe doen om toegang te verkry tot die inligting of rekords van 'n bepaalde liggaam, is die **PAIA**-gids die eerste instrument om te lees.

9.1.3 Die **PAIA**-gids is op sy mees basiese manier nuttig vir iemand om:

9.1.3.1 die aard van die rekords wat reeds beskikbaar is, na te gaan sonder om 'n formele **PAIA**-versoek in te dien;

9.1.3.2 'n begrip hê van hoe u 'n versoek kan rig om toegang tot inligting wat deur 'n bepaalde liggaam bewaar word;

9.1.3.3 toegang te verkry tot alle relevante kontakbesonderhede van die persoon wat die publiek sal help met die rekords waarvoor iemand toegang wil verkry;

9.1.3.4 te weet wat al die beskikbare middele by die instansie waartoe toegang tot die rekords gevra word is, voordat u die Reguleerder of die Howe nader;

9.1.3.5 die beskrywing van die dienste vanaf die liggaam wat aan lede van die publiek beskikbaar is, te ken en hoe om toegang tot daardie dienste te verkry;

9.1.3.6 weet of die liggaam persoonlike inligting sal verwerk, die doel van die verwerking van persoonlike inligting en die beskrywing van die kategorieë van die betrokke en van die inligting of kategorieë van inligting wat daarmee verband hou;

9.1.3.7 weet of die liggaam beplan het om 'n persoon se persoonlike inligting oor te dra of te verwerk buite die Republiek van Suid-Afrika; en

⁷ Artikel 14 en artikel 51 van die PAIA-wet

- 9.1.3.8 weet of die liggaam toepaslike veiligheidsmaatreëls het om die vertroulikheid, integriteit en beskikbaarheid van die inligting wat verwerk gaan word, te verseker.

9.2 Waar om PAIA-Gids te vind?

9.2.1 PAIA-GIDS van openbare liggame

- 9.2.1.1 Alle openbare liggame moet die **PAIA**-gids gereedlik beskikbaar maak in ten minste drie amptelike tale.⁸

- 9.2.1.2 Op die aller minste word hulle genoop om 'n kopie van 'n **PAIA**-gids vrylik beskikbaar te stel, tensy 'n gedrukte kopie aangevra word -

9.2.1.2.1 op die webtuiste van die openbare liggaam;

9.2.1.2.2 by die hoof kantoor van die openbare liggaam vir openbare besigtiging gedurende normale besigheidsure;

9.2.1.2.3 indien 'n persoon 'n harde kopie wil hê, moet die openbare liggaam 'n afskrif maak, maar dit mag 'n fooi hef vir die lewering van gegewe afskrif; en

9.2.1.3.4 op versoek aan die Reguleerder.

9.2.2 PAIA-gids van privaatliggame

- 9.2.2.1 Privaat liggame word ook verplig om 'n **PAIA**-gids saam te stel, maar daar is geen vereiste om dit in meer as een taal of in 'n spesifieke taal saam te stel nie, hoewel dit aanbeveel word dat die **PAIA**-gids van privaat liggame ten minste in Engels moet wees.⁹ Indien 'n spesifieke liggaam dienste lewer aan 'n meerderheid mense wat nie formele onderrig het nie, beveel die Reguleerder aand dat die gids van daardie liggaam ook in enige ander amptelike taal beskikbaar moet wees.

- 9.2.2.2 Op die aller minste word privaat liggame verplig om 'n kopie van 'n **PAIA**-gids vrylik beskikbaar te stel, tensy 'n gedrukte kopie aangevra word -¹⁰

9.2.2.2.1 op die webtuiste van die privaat liggaam;

9.2.2.2.2 by die hoof sakeperseel van die privaat liggaam vir openbare besigtiging gedurende normale werksure;

⁸ Artikel 14 (1) van die PAIA-wet

⁹ Kragtens artikel 51 van die PAIA-wet

¹⁰ Artikel 51(3) van die PAIA-wet

9.2.2.2.3 indien 'n persoon 'n harde kopie verlang, moet die privaat liggaam 'n afskrif maak, maar mag aandrang op betaling van 'n billike fooi vir die voorsiening van die harde kopie en

9.2.2.2.4 op versoek aan die Reguleerder.

9.2.3 Die Minister van Justisie en Korrektiewe Dienste het die magte om sekere privaat liggame of kategorieë van privaat liggame vry te stel van die verpligting om 'n gids saam te stel.¹¹ Tans, en tot en met **31 Desember 2021**, het die Minister alle privaat liggame vrygestel, met die uitsondering van enige maatskappy wat¹² -

- (a) nie 'n privaat maatskappy, soos omskryf in Artikel 1 van die Maatskappywet, 2008 (Wet No 71 van 2008) is nie; en
- (b) 'n privaat maatskappy is soos omskryf in Artikel 1 van die Maatskappywet, 2008 (Wet No 71 van 2008) wat handel in enige van die sektore genoem in kolom 1 van die skedule tot hierdie kennisgewing en -
 - (i) 50 of meer werknemers in diens het; of
 - (ii) 'n totale jaarlikse omset het wat gelykstaande of oorskrydend is aan die toepaslike bedrag genoem in kolom 2 van die onderstaande tabel.

van die samestelling van die gids oorweeg in Artikel 51(1) van die eersgenoemde Wet vir 'n periode van ses (6) maande vanaf **1 Julie 2021** tot **31 Desember 2021**: -

Sektor	Jaarlikse omset
Landbou	R6 miljoen
Mynbou en Steengroefwerk	R22.5 miljoen
Nywerheid	R30 miljoen
Elektrisiteit, gas en water	R30 miljoen
Konstruksie	R15 miljoen
Handel en Motorhandel en hersteldienste	R45 miljoen
Groothandel, kommersiële agente en verwante dienste	R75 miljoen
Spyseniering, Akkommodasie en ander handel	R15 miljoen
Vervoer, opberging en kommunikasie	R30 miljoen
Finansiële- en Skakeldienste	R30 miljoen
Gemeenskaps-, spesiale en persoonlike dienste	R15 miljoen

¹¹ Artikel 51(4) van die PAIA-wet

¹² Staatskoerant No: 39504, 11 Desember 2015

9.2.4 Vanweë die belangrikheid van die wetlike vereiste vir die samestelling van die **PAIA**-handleiding, veral die wysiging van artikel 51 van die **PAIA**-wet (wat op 30 Junie 2021 in werking tree), ingevolge waarvan die omvang van die inligting wat die gids moet dek, verbreed is om aangeleenthede rakende die **POPI**-wet in te sluit, sal privaat liggame nie meer vrygestel word van die verpligting om die **PAIA**-gids saam te stel nie¹³. Daarom word elke privaat en openbare liggaam verplig om vanaf **1 Januarie 2022** hul **PAIA**-handleiding beskikbaar te hê, soos voorgeskryf in paragraaf 9.2.2.2 hierbo.

9.2.5 Die vrystelling van privaat maatskappye van die verpligting om die **PAIA**-handleiding saam te stel, stel die privaat ondernemings nie vry van nakoming van die **PAIA**-wet nie. Dit beteken dat enige persoon steeds 'n versoek om toegang tot inligting aan die vrygestelde privaat liggaam kan indien. Die vrystelling beteken net dat daardie private ondernemings nie 'n **PAIA**-gids hoef op te stel nie.

9.2.6 Onthou ook dat nie alle privaat liggame maatskappye is nie, want die omskrywing van privaat liggaam sluit natuurlike persoon, eenmansaak en vennootskap in. Dit kan egter steeds die moeite werd wees om hul webtuiste na te gaan, aangesien sommige maatskappye 'n **PAIA**-handleiding opstel ongeag die aantal werknemers of hul jaarlikse omset.

9.3 Vrywillige openbaarmaking en outomatiese beskikbaarheid van sekere rekords

9.3.1 Outomaties beskikbare rekords is rekords wat 'n openbare of privaat liggaam sal verskaf sonder dat die versoeker 'n **PAIA**-versoek hoef in te dien (met ander woorde, iemand kan dit net aanvra sonder om die **PAIA**-vorm 2 in te vul).

9.3.2 Die inligtingsbeampte van 'n openbare liggaam moet ingevolge artikel 15 (1) van **PAIA** 'n lys of kategorieë rekords beskikbaar stel wat outomaties beskikbaar is, soos voorgeskryf in paragraaf 9.3.4 hieronder.

9.3.3 Outomaties beskikbare rekords van 'n privaat liggaam kan ook beskikbaar gestel word ingevolge artikel 52 (1) van die **PAIA**-wet, maar op 'n vrywillige basis, ooreenkomstig met paragraaf 9.3.4 hieronder.

9.3.4 'n Beskrywing van die kategorieë van rekords wat outomaties beskikbaar gestel moet word -

- (a) aan die Inligtingsreguleerder;
- (b) op die webwerf van die liggaam; en
- (c) vir inspeksie by die kantore van die betrokke liggaam gedurende normale kantoorure.

¹³ Artikel 110 van die POPI-wet

- 9.3.5 Let asseblief daarop dat die reguleerder die beskrywing van outomaties beskikbare rekords van 'n openbare liggaam op sy webtuiste sal laai.
- 9.3.6 Hierdie lys sluit die rekords in wat nodig mag wees om beskikbaar gestel te word deur ander wette, en enige ander rekords wat daardie liggaam kies om in te sluit. Om die formaliteit van die nakoming van die **PAIA**-versoekproses te vermy, word 'n versoeker aangeraai om die **PAIA**-handleiding van die betrokke openbare of privaat liggaam na te gaan. Indien 'n persoon toegang wil verkry tot rekords wat binne die liggaam se lys van outomaties beskikbare rekords val, kan die persoon bloot toegang daartoe versoek sonder om **PAIA**-vorm 2 in te vul.
- 9.3.7 Die Wet op die Befondsing van Politieke Partye 6 van 2018 stel 'n paar veranderinge bekend deur middel van die **PAIA**-wet, waarvolgens die hoofde van politieke partye rekords van private skenkings moet opneem en bewaar, wat openbaar moet word sonder dat iemand 'n **PAIA**-versoek hoef in te dien.

10. KONTAKBESONDERHEDE VAN INLIGTINGSBEAMPTES

- 10.1 Hoewel dit vereis word dat die kontakbesonderhede van die inligtingsbeamptes van elke openbare liggaam in elke telefoongids gepubliseer moet word, kragtens artikel 16 van die **PAIA**-wet, het die Reguleerder spesifieke kontakbesonderhede van alle Inligtingsbeamptes (insluitend adjunkinligtingsbeamptes, wat ingevolge artikel 17 en 56 van die **PAIA**- en **POPI**-wet onderskeidelik, aangestel is) ingevolge artikel 55 (2) van die **POPI**-wet by hom geregistreer is.
- 10.2 Hoewel die verkryging van die regte kontakbesonderhede dikwels 'n baie uitdagende deel kan wees van die rig van 'n **PAIA**-versoek, aangesien rolle in die openbare sektor gereeld verander en die **PAIA**-handleiding nie noodwendig op datum is nie, moet die eerste plek om kontakbesonderhede te vind die **PAIA**-handleiding van die liggaam wees. As 'n aanvrager egter nie die gids kan vind nie, kan dit ook help om die skakelbord van die liggaam te skakel om die tersaaklike besonderhede aan te vra.
- 10.3 Vir munisipaliteite, plaas die Suid-Afrikaanse Vereniging vir Plaaslike Regering (**SALGA**) die kontakbesonderhede vir alle munisipaliteite by hierdie skakel:
<http://www.salga.org.za/Municipalities%20MCD.html>
- 10.4 Regeringskommunikasie voorsien nasionale en provinsiale kontakte sowel as die besonderhede van ondernemings wat in staatsbesit is onder in hierdie skakel:
<https://www.gov.za/about-government/contact-directory>. Onthou altyd dat die definisie van die Inligtingsbeampte help om te identifiseer wie se kontakbesonderhede nodig is om die inligtingsbeampte te identifiseer.

11. PROSES OM 'N VERSOEK OM INLIGTING TE RIG

11.1 Die versoekvorms

- 11.1.1 'n versoek om toegang tot inligting kan aan beide openbare en private liggame gerig word.
- 11.1.2 Die **PAIA**-wet vereis dat indien u so 'n versoek wil rig, moet u so 'n versoek op die voorgeskrewe vorm rig (hierdie vorms word voorgeskryf deur Regulasies). Daar is twee vorms wat gebruik kan word in die uitvoering tot reg op toegang tot inligting:

Vorm 2	Vorm 4
Hierdie vorm kan slegs gebruik word indien u 'n versoek om toegang tot die rekords van 'n openbare of privaat liggaam wil rig.	Hierdie vorm kan slegs gebruik word indien u 'n interne appèl wil aanteken teen die beslissings van die Inligtingsbeamptes of die Adjunk-inligtingsbeamptes of die van 'n nasionale, provinsiale of plaaslike sfeer van regering tot wie 'n interne appèl van toepassing is.

- 11.1.3 Hierdie vorms kan verkry word op die reguleerder se webtuiste by <https://www.justice.gov.za/infoereg/>

11.2 Die bepaling om vas te stel of 'n versoek betrekking het tot inligting wat gehou word deur 'n private of openbare liggaam

- 11.2.1 'n Openbare liggaam verrig 'n openbare funksie, soos die voorsiening van elektrisiteit of water aan die publiek. Dus, is 'n openbare liggaam nie net 'n nasionale, provinsiale of plaaslike regeringsdepartement nie – dit sou ook ondernemings in staatsbesit of staatsinstellings soos die Reguleerder, Eskom, of PRASA insluit. Daar moet egter 'n onderskeid gemaak word ten opsigte van 'n openbare liggaam vir die doel van interne appèl, wat slegs verwys na die nasionale, provinsiale of plaaslike regering.

- 11.2.2 'n private liggaam verrig 'n private funksie. So 'n liggaam (wat 'n persoon kan wees) handel 'n bedryf, beroep of professie. Dit is baie belangrik om daarop te let dat wanneer 'n **PAIA**-versoek by 'n privaat liggaam ingedien word, moet 'n persoon staaf watter reg hy beskerm of uitoefen deur om hierdie inligting aan te vra. Met betrekking tot enige inligting wat deur 'n ander persoon gehou word, het Streicher JA die posisie soos volg opgesom, in die **Kaapse Metropolitaanse Raad v Metro Inspection Services (Western Cape) CC en Andere**¹⁴

¹⁴ 2001 (3) SA 1013 (SCA) par 28 by 1026f – G.

“Inligting kan slegs vereis word vir die uitoefening of beskerming van 'n reg as dit van hulp sal wees in die uitoefening of beskerming van 'n reg. Dit volg dat, ten einde 'n saak om toegang tot inligting ingevolge artikel 32 te stel, moet 'n aansoeker staaf wat die reg is wat hy wil uit te oefen of beskerm, wat die inligting wat vereis word is en hoe daardie inligting hom sal ondersteun in die uitoefening of beskerming van daardie reg”.

11.2.3 Soms kan die vraag of 'n rekord 'n openbare of private rekord is ingewikkeld wees en die publiek word aangeraai om regsadvies te soek. Byvoorbeeld, indien 'n openbare liggaam 'n privaat liggaam aanstel om sekere dienste aan sy ontwil te lewer, soos die installasie van watermeters in sekere gemeenskappe, toegang tot die nommers van geïnstalleerde meters, selfs indien sodanige inligting deur 'n privaat liggaam gehou word, word dit as die inligting van 'n openbare liggaam hanteer.

11.3 Hoe verduidelik 'n persoon die reg wat hy beoog om uit te oefen of te beskerm?

11.3.1 Wanneer 'n reg gestaaf moet word wat 'n mens beoog om te beskerm of uit te oefen in die versoek om inligting van 'n privaat liggaam, kan mens nie die reg om toegang tot inligting staaf nie. 'n Mens moet verduidelik hoe die rekord wat aangevra word redelikerwys nodig is vir die persoon om 'n ander reg te beskerm of uit te voer. Dit kan regte wat nie net grondwetlike regte is nie, insluit.

11.3.2 'n Mens kan byvoorbeeld die meester planne van 'n maatskappy aanvra wat die potensiaal het om 'n besoedelingsimpak in 'n gemeenskap te hê, ten einde te help om 'n mens se reg tot die omgewing te beskerm deur die monitering van sy werksaamhede. Of 'n mens kan rekords aanvra, wat sal help om te bepaal of 'n mens die reg het om 'n Siviele eis teen 'n entiteit in te stel. Dis is dus nodig dat mens:

11.3.2.1 Die reg wat hy wil uitoefen of beskerm identifiseer en dan

11.3.2.2 Duidelik verduidelik waarom die rekord wat hy aanvra redelikerwys benodig word om te help met daardie reg.

11.3.3 In kontras hiermee, wanneer 'n **PAIA**-versoek aan 'n openbare liggaam gerig word, hoef mens nie 'n rede vir die versoek om inligting te hê nie.

12. WIE KAN 'N PAIA-VERSOEK RIG?

12.1 Enige persoon, hetsy dit 'n Suid-Afrikaner of nie-Suid-Afrikaner, word toegelaat om 'n versoek kragtens die **PAIA**-wet te rig. Die versoeker kan 'n natuurlike persoon of 'n regspersoon wees.

- 12.2 'n openbare liggaam word as 'n regspersoon geag en mag 'n versoek om toegang tot rekords gehou deur privaatliggame rig, maar slegs indien die openbare liggaam -
- 12.2.1 in die belange van die publiek optree, en
 - 12.2.2 Indien die rekords nodig is vir die vervulling of beskerming van enige regte anders as dié van die openbare liggaam.
- 12.3 Kragtens die **PAIA**-wet, mag 'n versoeker nie 'n versoek om toegang tot 'n rekord van die openbare liggaam, wat persoonlike inligting oor die versoeker bevat, rig nie, maar die versoeker of betrokke kan, in ingevolge Artikel 23(1)(b) van die **POPI**-wet, die rekord van 'n verantwoordelike party aanvra of 'n beskrywing van die persoonlike inligting oor die betrokke wat deur die verantwoordelike party gehou word.¹⁵ Dit beteken dat enige persoon nou kan toegang versoek tot hulle persoonlike inligting wat deur die openbare of privaat liggaam gehou word, ten tyde van vertoning van genoegsame bewys van identiteit. Die persoonlike inligting wat 'n aansoeker kan versoek van die verantwoordelike liggaam kan inligting oor die identiteit van alle derde partye, of kategorieë van derde partye insluit wat toegang tot die inligting het of gehad het.
- 12.4 Ingevolge Artikel 50(1) van **POPI**-wet, kan enige persoon toegang versoek tot 'n rekord van 'n privaat liggaam, wat persoonlike inligting oor die versoeker bevat of die persoon namens wie die versoek gerig word.

13. AAN WIE KAN 'N VERSOEK GERIG WORD?

- 13.1 Die inligtingsbeampte van 'n openbare liggaam is verplig om 'n Adjunk-inligtingsbeampte(s) aan te wys, wat moet verseker dat toegang tot die rekords van die openbare liggaam redelikerwys toeganklik as moontlik gemaak word. Hoewel dit nie 'n vereiste was met betrekking tot die privaat liggaam kragtens die **PAIA**-wet nie, mag 'n privaat liggaam die bogenoemde Adjunk-inligtingsbeampte aanwys, kragtens Artikel 56 van **POPI**-wet.
- 13.2 Die versoek om toegang tot inligting, hoewel dit aan die inligtingsbeampte gerig mag word, kan ingedien word by die adjunk-inligtingsbeampte. Besonderhede van adjunk-inligtingsbeampte(s) kan verkry word in die **PAIA**-gids van daardie spesifieke liggaam of van die Reguleerder.

14. HOE OM DIE VORM TE VOLTOOI

- 14.1 Vorm 2 - versoek om toegang tot 'n rekord vanaf 'n openbare of privaat liggaam:
- 14.1.1 Ten einde die **PAIA**-vorm te voltooi, moet 'n persoon genoegsame besonderhede verskaf om sodoende die Inligtingsbeampte en Adjunk-inligtingsbeamptes in staat te stel om die verlangde rekords op te spoor.

¹⁵ Artikel 11(2) van die PAIA-wet

- 14.1.2 Die **PAIA**-regulasies spesifiseer die vorm wat gebruik moet word, wat aan die Inligtingsbeampte of Adjunk-inligtingsbeampte van die liggaam gestuur moet word.
- 14.1.3 Versoekers wat nie kan lees of skryf nie, kan mondelinge versoeke aan die Inligtingsbeampte of die Adjunk-Inligtingsbeampte van 'n openbare liggaam rig, wie dan verantwoordelik is vir die voltooiing van vorm 2 namens die versoeker. Die huidige vorm vereis dat u die volgende afdelings voltooi:

Inligting wat vereis word	Beskrywing
Besonderhede van openbare / private liggaam	Hierdie afdeling moet e-posadres en faksnommer van die Inligtingsbeampte en / of Adjunk-inligtingsbeampte bevat.
Besonderhede van persoon wat toegang tot rekords versoek	Dit behoort genoeg inligting oor die versoeker te bevat om die versoeker redelik maklik te identifiseer, met inbegrip van die besonderhede van die aansoeker: posadres, e-pos, faks en / of telefoonnommer in Suid-Afrika. Dit vra ook vir u identiteitsnommer om u identiteit te waarmerk. Indien u 'n versoek om inligting namens iemand anders rig, moet bewys van die hoedanigheid waarin u die versoek rig, voorsien word (soos die 'gemagtigde persoon').
Besonderhede van die rekord wat versoek word	Voorsien volle besonderhede van die rekord waarop toegang versoek word, met inbegrip van die verwysingsnommer indien dit bekend is, ten doel die rekord op te spoor. (Indien die gegewe spasie onvoldoende is, gaan asseblief op 'n aparte bladsy voort en heg dit aan die vorm. Alle addisionele bladsye moet geteken word.
Tipe rekord	Dit behoort genoeg inligting te bevat oor die rekord om dit redelik maklik om te identifiseer. Indien die inligting wat vereis word, nie in die gegewe ruimte in die vorm pas nie, mag 'n addisionele handgeskrewe of getikte bladsy gebruik word om meer besonderhede oor die versoek te verskaf, solank elke addisionele bladsy onderteken word en aan die

Inligting wat vereis word	Beskrywing
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	aansoekvorm geheg word. U kan byvoorbeeld, 'n uittreksel uit 'n verslag of nuusberig insluit wat betrekking het tot die rekord waarna u soek. Dit maak voorsiening om 'n verwysingsnommer vir die rekord in te sluit, indien dit van toepassing is.
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Foie	<p>Die liggaam aan wie 'n versoeker van plan is om 'n versoek om toegang tot 'n rekord te rig, met inbegrip van 'n rekord wat persoonlike inligting bevat oor hom- of haarself, kan versoek dat u 'n versoekfooi (toegangsfooi) of 'n deposito betaal, maar daardie bedrag mag nie buitensporig wees nie, omdat die foie gehef word vir die redelike tyd nodig om te soek vir die rekord en dit voor te berei. Die Minister kan deur middel van 'n kennisgewing in die Staatskoerant, die betaling van foie soos gelys in paragraaf 51.1 hieronder, vrystel.</p> <p>'n Ruimte is beskikbaar vir die versoeker om aan te dui waarom hy glo hy of sy moet vrygestel word om enige foie te betaal. Die rede kan insluit, byvoorbeeld, dat hy of sy werkloos is.</p>
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Vorm van toegang tot 'n rekord	Hierdie afdeling laat u toe om met 'n " x " u voorkeure aan te dui vir die vorm van toegang tot die rekord wat voorsien word, hetsy 'n gedrukte afskrif van 'n rekord en/of op 'n flitsaandrywer en/of op 'n kompakskyf.
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Wyse van toegang	<p>In hierdie afdeling word daar van u vereis om u voorkeure te merk met betrekking tot watter taal die rekord moet wees (dit mag dalk nie moontlik wees met betrekking tot alle rekords nie, maar u moet steeds u voorkeur aandui).</p> <p>Die wyse van toegang tot die rekord kan bydra tot 'n weiering van toegang as gevolg van hoër tariewe.</p>
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Inligting wat vereis word

Beskrywing

Byvoorbeeld, indien 'n versoeker 'n dokument in u voorkeurtaal wil hê, mag fooie vir die verandering van die dokumente na jou voorkeurtaal betaalbaar word. Indien die rekord nie beskikbaar is in die taal wat u verkies nie, mag toegang verleen word in die taal waarin die rekord beskikbaar is. Die wyse van toegang tot 'n rekord mag die volgende insluit: persoonlike besigtiging van 'n rekord, 'n rekord per e-pos of faks of koerier of per pos.

Kennisgewing van 'n besluit met betrekking tot 'n versoek om toegang

'n Spasie word gebied vir die versoeker om die wyse waarop hy verlang om ingelig te word oor die besluit om die versoek toestaan of weier. Die versoeker kan byvoorbeeld aandui dat hy eerder deur e-pos of per telefoon ingelig wil word, of die respons kan na hom gepos word of per koerier gestuur word.

Besonderhede van die reg wat uitgeoefen of beskerm word

Wanneer inligting van 'n privaat liggaam versoek word, is 'n versoeker verplig om die "besonderhede van die reg wat uitgeoefen of beskerm word" te beskryf. Hier moet hy die reg waarop hy staat maak stel (soos sy reg op 'n gesonde omgewing) en hoe die rekord wat hy aanvra sal help om die reg uit te oefen of te beskerm. Hy moet 'n verband tussen die rekord wat hy aanvra en die uitoefening of beskerming van die reg staaf.

Ongelukkig, in teenstelling met die versoek om toegang tot 'n rekord van 'n openbare liggaam, kan hy nie toegang tot 'n rekord van die privaat liggaam bekom nie, tensy hy die reg(te) wat hy wil beskerm of uitoefen staaf, sou toegang tot inligting verleen word. Dit kan die feit insluit dat, nadat hy toegang tot rekords verleen is, hy dan sy reg op gelyke beskerming en voordeel van die reg sal uitoefen deur die liggaam te dagvaar vir skade wat hy moontlik kon gely het.¹⁶

¹⁶ Artikel 9(1) van die Grondwet van die Republiek van Suid-Afrika, Wet No. 108 van 1996

14.1.4 Indien sy versoek om enige rede nie voldoen aan die vereistes wat hierbo gelys is nie, mag die inligtingsbeampte nie die versoek weier nie, tensy hy die versoeker in kennis stel dat hy van voornemens is om die versoek te weier, en die redes vir weiering verskaf word. Die Inligtingsbeampte moet ook die versoeker in kennis stel dat hy hom sal help of aan hom 'n geleentheid sal bied om die fout te wysig.

15. DIE KOSTES BETROKKE

15.1 Oor die algemeen, moet die fooie betaal word vir beide vir die rig van 'n versoek en ook om die koste van die voorsiening van toegang tot rekords in ten opsigte van 'n versoek te dek. Daar is egter 'n paar uitsonderings. Indien die versoeker toegang tot die rekords wat hy of sy versoek het toegestaan is en hy of sy nie van die betaling van enige fooie, soos aangedui in paragraaf 15.2 hieronder, vrygestel is nie, mag die Inligtingsbeampte of Adjunk-inligtingsbeampte die voorgeskrewe fooie hef, soos volg-

NB: Die fooi-struktuur ten opsigte van betaalbare fooie aan die Openbare en Private liggame kan op die Reguleerder se webtuiste gevind word.

Item	Beskrywing
1	Die versoekfooi, betaalbaar deur elke versoeker
2	Fotostaat van A4-grootte bladsy
3	Gedrukte afskrif van A4-grootte bladsy
4	Vir 'n kopie in 'n rekenaar-leesbare formaat op: (i) Flitsaandrywer (voorsien deur die versoeker) (ii) Kompakskyf <ul style="list-style-type: none">• Indien voorsien deur die versoeker• Indien voorsien aan die versoeker
5	Vir 'n transkripsie van visuele beelde per A4-grootte bladsy
6	Afskrif van visuele beelde
7	Transkripsie van 'n oudiorekord, per A4-grootte bladsy
8	Kopie van 'n oudiorekord: (i) Flitsaandrywer (voorsien deur die versoeker) (ii) Kompakskyf <ul style="list-style-type: none">• Indien voorsien deur die versoeker• Indien voorsien aan die versoeker
9	Om 'n rekord op te spoor en voor te berei vir bekendmaking, vir elke uur of deel van 'n uur, uitsluitend die eerste uur, rederlikerwys nodig vir welke soektog en voorbereiding. Om nie oorskrydend te wees aan 'n totale koste van
10	Deposito: Indien soektog 6 ure oorskry
11	Posgeld, e-pos of enige ander elektroniese oordrag

15.2 Die versoeker hoef nie 'n toegangsfooi¹⁷ aan 'n openbare liggaam te betaal nie, indien:-

15.2.1 Hy 'n enkel persoon is wie se jaarlikse inkomste, na die toelaatbare aftrekkings soos **LBS** en **WVF**, minder as **R14 712.00** 'n jaar is, of

15.2.2 Hy getroud is en die gesamentlike inkomste met sy gade, na toelaatbare aftrekkings soos **LBS** en **WVF**, minder as **R27 192.00** per jaar beloop.

15.3 Let asseblief daarop dat die openbare of privaat liggaam, in Vorm 4 tot die regulasies, 'n deposito van die versoeker mag eis, maar slegs indien hulle glo dat die inligting of rekords wat versoek word meer as ses (6) ure sal neem om te soek, maar die deposito bedrag mag nie meer as een-derde van die voorgeskrewe fooi wees nie.

16. SAL DIE INLIGTINGSBEAMPTTE DIE VERSOEKER HELP OM 'N PAIA-VERSOEK TE RIG?

16.1 Die rol van die Inligtingsbeamptes en/of Adjunk-Inligtingsbeamptes van beide openbare en private liggame is om, in soverre dit betrekking het tot die verwerking van versoeke om toegang tot rekords is om:

16.1.1 die **PAIA**- of **POPI**-versoek te ontvang;

16.1.2 die verwerking van die versoek binne die liggaam te koördineer;

16.1.3 'n beslissing maak om toegang toe te staan of te weier tot die rekords wat aangevra word;

16.1.4 te skakel met die aansoeker (bv. hulle mag dalk die versoeker vir meer besonderhede vra, of hulle mag dalk nodig hê om te vra vir 'n verlenging van die tydperk om die versoek te af te handel, ens.)

16.1.5 die versoeker in kennis te stel van die uitkoms van hul **PAIA**-versoek, waarvan die kennisgewing so spoedig redelik moontlik gegee moet word, maar **binne 30 dae** na ontvangs van die versoek. Die aanvanklike tydperk van 30 dae mag eenmaal verleng word vir 'n verdere tydperk van nie meer as 30 dae, indien die versoeker instem op die verlenging of indien die versoek 'n soeke na rekords vereis wat nie redelik afgehandel kan word binne die oorspronklike tydperk nie;

16.1.6 verstrek redes aan die versoeker vir die beslissing om toegang te weier. Dit is baie belangrik dat die redes wat verstrek word vir 'n weiering duidelik en volledig en omvattend is, en moet verwys na die spesifieke artikels van die **PAIA**-wet (sien paragraaf 19.4 hieronder met betrekking tot die gronde vir weiering van toegang tot rekords)¹⁸

¹⁷ volgens Goewermentskennisgewing R991 van 14 Oktober 2005

¹⁸ Artikel 33 tot 46 van die PAIA-wet

- 16.1.7 lig relevant derde party in deur die derde party-kennisgewingsproses ingevolge artikel 47 van **PAIA**; en
- 16.1.8 indien toegang tot die rekord toegestaan word, verskaf 'n kopie van die rekord aan die versoeker.
- 16.2 Wanneer die versoeker ingelig word van die besluit, lig hul ook in van die moontlike verhaal beskikbaar asook die relevante tydlyne daarvan .
- 16.3 Die bykomende rolle en verantwoordelikhede van die Inligtingsbeamptes en/ of die Adjunk-inligtingsbeamptes word omvat in die Riglyn vir Inligtingsbeamptes en Adjunk-inligtingsbeamptes en dié Riglyn kan bekom word by <https://www.justice.gov.za/inforeg/docs.html>
- 16.4 Die rol van die Inligtingsbeampte en/ of die Adjunk-inligtingsbeampte is om die versoek na inligting te fasiliteer, en dus beteken dit hul het 'n verskeidenheid van pligte teenoor diegene wat 'n versoek rig.
- 16.5 Die Inligtingsbeamptes en/ of Adjunk-inligtingsbeamptes moet hierdie hulp gratis verskaf.
- 16.6 Die Inligtingsbeamptes en/ of Adjunk-inligtingsbeamptes van 'n openbare liggaam het die volgende spesiale take:

Pligte van Inligtingsbeamptes	Beskrywing
Help om die vorm te voltooi	Die Inligtingsbeampte moet redelike hulp verleen aan die versoeker om hul PAIA -vorm te voltooi, en mag ook nie weier om 'n vorm te aanvaar wat nie behoorlik voltooi is behalwe as hul reeds die hulp verleen het, of hulp aangebied het en die hulp is van die hand gewys.
Verskaf relevante inligting	Die Inligtingsbeampte moet, waar redelik moontlik, relevante inligting aan die versoeker verskaf, al word dit nie spesifiek versoek nie.
Oordrag van die versoek	Hierdie is 'n baie belangrike plig. Wanneer 'n PAIA -versoek aan die verkeerde openbare liggaam gerig word, moet die Inligtingsbeampte die versoek aan die korrekte openbare liggaam oordra binne 14 dae vanaf

Pligte van Inligtingsbeamptes

Beskrywing

die versoek ontvang is, en die versoeker moet op skrif daarvan ingelig word. Die Inligtingsbeamptes moet, sodra dit oorgedra is, binne 30 dae met 'n besluit na vore kom.

Uitstel van vrystelling

Die Inligtingsbeampte mag besluit om die vrystelling van 'n rekord aan 'n versoeker uit te stel as die rekord binne 90 dae gepubliseer gaan word of as dit deur die wet bepaal word om gepubliseer te word maar dit is nog nie.

- 16.7 Die Inligtingsbeampte moet, vir albei private en openbare liggame, as hul nie die spesifieke rekords kan opspoor wat versoek is nie of as hul glo die rekords bestaan nie, 'n omvattende beëdigde verklaring of bevestiging¹⁹ aan die versoeker bied waarmee hul kennis gee dat dié rekords nie bestaan of nie gevind kan word nie, maar waarby die stappe wat hul kan neem om dit op te spoor aangedui word.

17. BYSTAND VERLEEN DEUR DIE INLIGTINGSREGULEERDER KRAGTENS DIE PAIA- EN POPIA-WET

- 17.1 Dit is die Inligtingsbeampte van 'n openbare liggaam se plig om redelike, gratis hulp te verleen waar nodig²⁰, om te verseker dat die versoeker of betrokkene voldoen aan die wyse van toegang soos bepaal in artikels 18 van die **PAIA**-wet en artikel 23 van die **POPIA**-wet.
- 17.2 Maar, as die Inligtingsbeampte faal om sy pligte uit te voer, soos na verwys in paragraaf 17.1 hier bo, mag 'n versoeker of betrokkene 'n klagte by die Reguleerder loods en die Reguleerder mag, na verdere ondersoek, 'n afdwingingsbevel uitreik wat die Inligtingsbeampte aanspreek om die redelike bystand te lewer.
- 17.3 Waar dit redelik moontlik is, mag die Reguleerder per versoek enige persoon bystaan om hul regte uit te oefen, soos bepaal in **PAIA** en **POPIA**²¹, en dit sluit redelike hulp, gratis, soos benodig deur die versoeker of betrokkene om te voldoen aan die wyse van toegang soos bepaal in artikels 18 en 53 van die **PAIA**-wet en artikel 23 van die **POPIA**-wet.
- 17.4 Die bogenoemde sluit in bystand oor hoe om 'n versoek ter rig vir toegang of oor hoe om 'n vorm te voltooi namens 'n ongeletterde of blinde persoon.

¹⁹ Artikel 23(1) en 51(1) van PAIA

²⁰ Artikel 19(1) van PAIA

²¹ Artikel 83(3)(c) van PAIA

18. KAN DIE INLIGTINGSBEAMPTTE DIE BETROKKE TYDLYNE VERLENG?

- 18.1 'n Oorsig van die proses en die sleutel tydlyne betrokke word in die diagram van die PAIA-versoekproses in paragraaf 27 hieronder omskryf. Die gebruik van spesifieke tydlyne is 'n belangrike deel van **PAIA**, dit kweek die effektiewe bestuur van versoeke vir toegang tot rekords.
- 18.2 Ter herinnering, sodra u korrekte versoek ingedien word by die Inligtingsbeampte of die Adjunk-inligtingsbeampte, aan wie die versoek gerig is of oorgedra is, moet hul binne 'n redelike tydperk of **binne 30 dae**²² beantwoord. Nietemin, die Inligtingsbeampte van 'n openbare of private liggaam mag aansoek doen om 'n enkele **30 dae verlenging**²³, maar net as:
- 18.2.1 die versoek is vir 'n groot aantal rekords of vereis 'n groot aantal rekords wat deursoek moet word en, sonder die verlenging, sal die soektog inmeng met die normale aktiwiteite van die liggaam;
- 18.2.2 die versoek vereis 'n soektog deur rekords in 'n kantoor van die liggaam wat nie in dieselfde stad of dorp is nie en kon dus nie **binne die 30 dae** voltooi word nie; en/of
- 18.2.3 dit verg 'n vlak van konsultasie om op te tree teenoor die versoek, wat nie redelik **binne net 30 dae** voltooi kon word nie.
- 18.3 Die Inligtingsbeampte moet die versoeker inlig van haar of sy voorneme om die aanvangsperiode te verleng, en om ook die periode van die verlenging aan te dui, die rede vir die verlenging, en om die versoeker in te lig van haar of sy reg om te -
- 18.3.1 Appelleer by die aangewese owerheid;
- 18.3.2 klagte te rig aan die Reguleerder; of
- 18.3.3 regstappe te volg in die hof teen die verlenging.
- 18.4 Die Inligtingsbeampte moet ook die versoeker in die kennis stel van elk van die prosesse van die bogenoemde regte²⁴.

19. ANTWOORDE TOT 'N VERSOEK OM INLIGTING

- 19.1 **PAIA** gee die publiek die reg om toegang tot rekords vanaf enige openbare of private liggaam te versoek. Dit word gereeld beskryf as die wet wat die burgers ingelig hou oor hul regering. Openbare liggame moet inligting wat versoek word onder **PAIA** beskikbaar maak behalwe as dit onder een van die **twaalf (12) vrystelling**

²² Artikel 25(1) van PAIA

²³ Artikel 26(1) van PAIA

²⁴ artikel 26(3) van PAIA - die verlengingskennisgewing moet meld dat die versoeker 'n interne appèl mag aanteken, 'n klag by die Inligtingsreguleerder of 'n aansoek by 'n hof kan indien, soos die geval mag wees, teen die verlenging, en die prosedure (insluitende die tydperk) vir die indiening van die interne appèl, klag aan die Inligtingsreguleerder of aansoek, na gelang van die geval.

val of redes hoekom toegang tot rekords van 'n openbare liggaam toegestaan moet word of nie²⁵ en **sewe (7) vrystellings** of redes hoekom toegang tot rekords van 'n private liggaam toegestaan moet word of nie.²⁶ Die negentien (19) vrystellings wat in **PAIA** voorkom, is in die belang van die beskerming van persoonlike privaatheid, nasionale sekuriteit, en wetstoepassing.

19.2 Die onderliggende rigsnoer van die administrasie van **PAIA** is die oopheid vermoede. Dit beteken dat enige rede vir die beperking van hierdie oopheid moet geregverdig wees. Openbare liggame moet ook oorweeg of die gedeeltelike openbaring van inligting moontlik sal wees en waar daar bepaal word dat volle openbaring nie moontlik is nie, moet die inligting wat nie openbaar kan word nie gesny of geredigeer word en die res moet geopenbaar word.

19.3 Tipes antwoorde op versoeke

19.3.1 Wanneer 'n versoek om toegang tot 'n rekord gemaak word, moet die Inligtingsbeampte of Adjunk-inligtingsbeampte die versoeker in kennis stel, of die versoek om toegang toegestaan of geweier is, van -

- (a) sy of haar besluit; en
- (b) die betaalbare fooie, soos van toepassing is,

op 'n vorm wat wesenlik aansluit by **Vorm 3** van Aanhangsel A van die Regulasies:

19.3.2 Nietemin, **PAIA** verskaf 'n lys van redes of gronde (vrystellings) (sien paragrawe 19.4 en 19.6 hieronder) hoekom die versoek kan of moet geweier word. Dit is belangrik, want die versoek kan alleenlik geweier word op gronde van een van die gelyste gronde vir weiering van toegang tot rekords.

19.3.3 Ten spyte van die bogenoemde redes vir die weiering van toegang tot rekords, moet die Inligtingsbeampte die versoek vir toegang tot 'n rekord van die liggaam toestaan as die openbare belang van die vrystelling van die rekord die skade wat oorweeg word in die lys van redes vir weiering oorskry²⁷. Dit beteken die versoeker kan staat maak op openbare belang wanneer enige van die gronde vir weiering van toegang tot rekords beroep word.

19.3.4 Kortliks, die redes hoekom inligting nie vrygestel kan word nie het te make met of die openbaring van inligting meer skade sal doen as wat die nie-openbaring sal. Daar is twee verskillende tipes gronde wat gelys word vir die weiering van toegang tot rekords van 'n liggaam:

²⁵ Hoofstuk 4 van PAIA - gronde vir weiering van toegang tot rekords (artikel 34-45 van PAIA)

²⁶ Hoofstuk 4 van PAIA - gronde vir weiering van toegang tot rekords (artikel 63-69 van PAIA)

²⁷ Artikel 46 van PAIA

19.4 Lasgewende gronde van weiering (gronde van vrystelling)

19.4.1 Die Inligtingsbeampte of die Adjunk-inligtingsbeampte moet wanneer dit te make het met lasgewende gronde, die versoek weier want dit het te doen met die rekord.

19.4.2 Daar is meer lasgewende gronde as diskresionêre gronde. Die volgende is die lasgewende gronde van weiering, en die inligtingsbeampte of die Adjunk-inligtingsbeamptes moet die aansoek weier want dit het te make met die rekord -

19.4.2.1 **Lasgewende beskerming van die privaatheid van 'n derde party wie 'n natuurlike persoon is;**

Die Inligtingsbeampte van 'n openbare of private liggaam mag nie toelaat dat 'n versoeker toegang kry tot die persoonlike inligting van 'n ander persoon as dit geag kan word as "'n onredelike openbaring" nie. Die afdelings dui self 'n paar redes aan wanneer dit nie van toepassing is nie, soos wanneer die rekords reeds algemeen bekend is, of as 'n persoon toestemming gegee het. Die toestemming kwessie is veral belangrik want dit sluit aan by 'n ander deel van die proses waarvan die versoeker bewus moet wees, dit hou verband met derde party kennisgewings, kragtens hoofstuk 5 van **PAIA**.

19.4.2.2 **Lasgewende beskerming van sekere rekords van die Suid-Afrikaans Inkomstediens;**

Die Inligtingsbeampte van SAID mag nie toelaat dat 'n versoeker toegang kry tot rekords wat verkry of behou word deur SAID vir die invordering van inkomste nie. Nietemin, rekords wat verkry of behou word deur SAID mag nie geweier word as 'n versoek gerig word deur 'n persoonlike versoeker of die persoon namens wie die versoek gemaak word nie.

19.4.2.3 **Lasgewende beskerming van kommersiële inligting van 'n derde party;**

Die Inligtingsbeampte van 'n liggaam mag nie toelaat dat 'n versoeker toegang kry tot die kommersiële inligting van 'n ander persoon nie (in ander woorde, wie nie die versoeker is nie). Dit sluit inligting soos bedryfsgeheime, of wat die derde party se kommersiële belange in gevaar stel. Byvoorbeeld, KFC maak gebruik van sekere resepte, insluitend bestanddele vervaardig deur 'n derde party, wat bedryfsgeheime is van die derde party en die openbaring daarvan kan die kommersiële belange van die derde party in gevaar stel.

19.4.2.4 **Lasgewende beskerming van sekere konfidensiële inligting, en die beskerming van sekere ander konfidensiële inligting, van 'n derde party;**

Die Inligtingsbeamptes van albei openbare en private liggame mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die vrystelling daarvan sal veroorsaak dat daar 'n verbreking van 'n vertrouensplig wat geskuld word aan 'n derde party kragtens 'n ooreenkoms of kontrak.

19.4.2.5 **Lasgewende beskerming van die veiligheid van individue, en die beskerming van eiendom;**

Die Inligtingsbeampte van albei 'n openbare of private liggaam mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die vrystelling daarvan die veiligheid van 'n individu in gevaar kan stel nie. In dieselfde afdelings meld dit ook dat die Inligtingsbeampte van 'n liggaam mag toegang weier as dit moontlik die veiligheid van 'n gebou of eiendom kan benadeel.

19.4.2.6 **Lasgewende beskerming van polisie dossiere in borgtog verrigtinge, en die beskerming van wetstoepassende- en regsverrigtinge;**

Die Inligtingsbeampte van 'n openbare liggaam mag nie toelaat dat 'n versoeker toegang kry tot rekords soos borgtog verrigtinge wat reeds deur artikel 60 van die Strafproseswet beskerm word nie. In dieselfde afdeling word daar ook gemeld dat die Inligtingsbeampte van 'n openbare liggaam mag toegang tot rekords van wetstoepassing weier as dit die metodes, tegnieke, prosedures vir die voorkoming van misdaad, of die vervolging van misdade, as ook sekere ander rekords relevant tot regsgeding wat plaasvind bevat.

19.4.2.7 **Lasgewende beskerming van geprevalieerde rekords van regsgeding;**

Die Inligtingsbeampte van 'n private liggaam mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die rekord geprivilegeerd is in regsgeding nie, behalwe as die persoon wie die privilegie van toepassing op is afstand daarvan gedoen het.

19.4.2.8 **Lasgewende beskerming van navorsingsinligting van 'n derde party, en die beskerming van navorsingsinligting van 'n openbare of private liggaam.**

Die Inligtingsbeampte van 'n liggaam mag nie toelaat dat 'n versoeker toegang kry tot 'n rekord as die rekord verband hou met navorsing wat reeds, of sal onderneem word deur die liggaam en die vrystelling daarvan kan die navorser, die derde party of die kwessie wat nagevors word ernstige benadeel nie.

19.4.3 Dra asseblief kennis dat die bogenoemde lasgewende gronde vir weiering van toegang tot rekords is redelik dieselfde vir openbare en private liggame, behalwe vir die lasgewende beskerming van sekere rekords van die Suid-Afrikaanse Inkomstediens, polisie dossiere in borgtog verrigtinge, van wetstoepassing en van regsgeding, wat net van toepassing is op openbare liggame.

19.4.4 As net 'n deel van die rekord gekoppel is aan 'n vrystellingsgrond, is die Inligtingsbeampte of Adjunk-inligtingsbeampte van albei openbare en private liggame verplig om te oorweeg of die gedeeltelike openbaring van inligting moontlik is wanneer hulle bepaal dat die volle openbaring nie moontlik is nie en hul moet redelike stappe neem om die deel wat nie aan die versoeker verskaf kan word nie te sny of te redigeer en om toegang aan die res van die rekord te bied.

19.5 Vermeende weiering van versoek²⁸

19.5.1 'n Mislukking om die versoek behoorlik te beantwoord binne die korrekte tydslyn word geag as 'n 'vermeende weiering'. Dit is belangrik, want **PAIA** laat toe dat die versoeker 'n besluit kan uitdaag wanneer geen besluit geneem is nie en die versoek geïgnoreer is. Die versoeker kan net by die interne appel stel dat geen antwoord ontvang is nie.

19.5.2 Die versoek na toegang tot rekords word geag as geweier na die verval van 30 dae of enige verlengde periode waarby die openbare of private liggaam versuim om te beantwoord.

19.6 Diskresionêre gronde van weiering

19.6.1 Met diskresionêre gronde, mag 'n inligtingsbeampte of adjunk-inligtingsbeampte dit oorweeg om 'n versoek te weier of nie, omdat die gronde vir die aangevraagde rekord geldig is. Aangesien dit 'n diskresie is, moet die Inligtingsbeampte hom/haar objektief in die besluit verdiep wanneer die verskillende gronde oorweeg word, naamlik:

19.6.1.1 **Suid-Afrika se verdediging, veiligheid en internasionale betrekkinge:** Die Inligtingsbeampte kan toegang weier as redelikerwys verwag kan word dat die bekendmaking van die inligting die verdediging of veiligheid van die land sal bedreig. Dit kan ook van toepassing wees indien die bekendmaking van die inligting Suid-Afrika se betrekkinge met 'n ander land kan benadeel, soos die openbaarmaking van rekords wat vertroulik verskaf word.

19.6.1.2 **Ekonomiese, finansiële en kommersiële belange:** Die Inligtingsbeampte kan toegang weier as die vrylating daarvan nadelig sal wees vir die ekonomiese en finansiële status van die Republiek;

²⁸ Artikel 27 en 58 van PAIA

19.6.1.3 **Bedrywighede van openbare liggame:** Die inligtingsbeampte van 'n openbare liggaam kan toegang weier as die bekendmaking van die inligting redelikerwys die bedrywighede kan belemmer, byvoorbeeld as dit probeer om beleide te formuleer, of oor 'n kwessie te beraadslaag;

19.6.1.4 **Klaarblyklik ligsinnige of lastige versoeke:** Die Inligtingsbeamptes kan 'n versoek om inligting weier as hulle van mening is dat die verwerking van versoeke onredelik tydrowend sal wees en tot 'n vermorsing van hulpbronne sal lei. Daarbenewens kan hulle toegang tot 'n rekord weier as hulle glo die versoeker dit aanvra om onnodig te irriteer of uit te lok.

20. MANDATORY DISCLOSURE OF RECORDS IN THE PUBLIC INTEREST

20.1 Al bestaan 'n diskresionêre of verpligte weieringsgrond in verband met 'n versoek om toegang tot rekords van openbare of privaat liggame, is daar altyd die moontlikheid dat die openbare belang in die openbaarmaking van die rekord belangriker is as die skade wat die vrystelling van die rekord sal hê.

20.2 Waar die belangrikheid van openbare belang bestaan soos hierbo uiteengesit, en die bekendmaking van die rekord bewys sou kon lewer van 'n wesenlike oortreding van, of versuim om die wet na te kom; of 'n dreigende en ernstige openbare veiligheids- of omgewingsrisiko, moet die Inligtingsbeampte van 'n liggaam 'n versoek toestaan vir toegang tot 'n rekord, ondanks die bestaan van die bogenoemde vrystellingsgronde.

21. DERDE PARTY KENNISGEWINGSPROSES²⁹

21.1 'n Inligtingsbeampte of adjunk-inligtingsbeampte van 'n liggaam word ingevolge artikels 47 en 71 van **PAIA** verplig om alle redelike stappe te neem om 'n derde party in kennis te stel oor 'n versoek om sy of haar inligting wat 'n rekord kan wees wat persoonlike inligting bevat,

21.1.1 'n SAID rekord;

21.1.2 handelsgeheime;

21.1.3 inligting waarvan die vrylating gronde kan vorm vir 'n aksie vir die verbreking van 'n vertrouenspilig; of navorsingsinligting wat iemand of die navorsingsmateriaal aan ernstige skade kan blootstel.

21.2 Die kennisgewing aan die derde party wie se rekords of inligting onderhewig is aan die versoek, moet die derde party nooit om -

²⁹ Artikel 47 en 71 van PAIA

- 21.2.1 skriftelike of mondelinge verhoë tot die Inligtingsbeampte rig waarom die versoek om toegang geweier moet word; of
- 21.2.2 skriftelike toestemming gee vir die openbaarmaking van die rekord aan die versoeker.
- 21.3 Meer belangrik vir die versoeker, **PAIA** stel dat die skriftelike kennisgewings binne 21 dae na ontvangs van die versoek aan die derde party gestuur moet word, en dat die Inligtingsbeampte of Adjunk-inligtingsbeampte die versoeker in kennis moet stel dat 'n kennisgewing aan die derde party gestuur is.
- 21.4 Sodra die kennisgewing gestuur is, moet die Inligtingsbeampte of Adjunk-inligtingsbeampte dan 'n finale besluit neem om die rekords binne 30 dae nadat die kennisgewing gestuur is, bekend te maak of nie.
- 21.5 Die derde party moet in kennis gestel word van die besluit wat geneem is en voldoende redes vir die toestaan van die versoek moet ook verstrekkend word. Die derde party moet ook ingelig word oor die reg en die prosedure om die beslissing te betwis, soos aangedui in paragraaf 22 hieronder.

22. REGSMIDDELE BESKIKBAAR TEEN 'N BESLUIT OF VERSUIM OM 'N BESLUIT TE NEEM DEUR DIE INLIGTINGSBEAMPTTE OF ADJUNK-INLIGTINGSBEAMPTTE

- 22.1 Stappe om te neem sodra 'n besluit oor 'n versoek geneem is
- 22.1.1 'n Versoeker kan skriftelik 'n opvolgaksie neem op die hangende besluit van 'n inligtingsbeampte of adjunk-inligtingsbeampte. Dit word aangemoedig dat alle korrespondensie tussen 'n versoeker en die inligtingsbeampte of adjunk-inligtingsbeampte skriftelik moet wees vir toekomstige verwysingsdoeleindes.
- 22.1.2 Daar is verskillende prosesse vir openbare en private liggame, veral met betrekking tot interne appèlle. Met betrekking tot 'n versoek om toegang tot 'n rekord van 'n openbare liggaam, moet die versoeker byvoorbeeld eers 'n interne appèl indien voordat hy die Reguleerder of die Hof nader. Daar is egter geen interne appèl teen 'n beslissing (hetsy die toegang tot rekords toegestaan of geweier is) of vermeende weiering van toegang tot die rekords van 'n privaat liggaam nie.
- 22.1.3 In hierdie afdeling word die regsmiddele uiteengesit wat beskikbaar is vir versoekers wat sulke beslissings wil betwis, waaronder interne appèlle, die indiening van 'n klag by die Reguleerder en aansoeke by die hof. Sien ook diagram van **PAIA**-versoekvloei, in paragraaf 27 hieronder.

22.1.4 'n Versoeker kan onder andere die volgende beslissing van 'n privaat en/of openbare liggaam betwis -

22.1.4.1 die betaalmiddel of betaling van die versoekfooie;

22.1.4.2 die betaalmiddel of betaling van 'n deposito;

22.1.4.3 die toegangsfooie betaalbaar is buitensporig;

22.1.4.4 die vorm van toegang wat verleen word;

22.1.4.5 die weiering van die versoek;

22.1.4.6 die prosedure (met inbegrip van die tydperk) vir die indiening van die Interne appèl;

22.1.4.7 ontoepaslike tyd uitstel is geneem om te reageer op 'n versoek om toegang;

22.1.4.8 versuim om rekords bekend te maak;

22.1.4.9 die toestaan van 'n versoek om toegang tot 'n rekord;

22.1.4.10 weiering om sodanige versoek toe te staan om fooie oor te sien;

22.2 Interne regsmiddele

22.2.1 Hoe teken 'n versoeker intern appèl aan teen 'n openbare liggaam se beslissing?

22.2.1.1 'n Interne appèl kan slegs ingevolge artikel 74 van **PAIA** by die betrokke owerheid van die nasionale of provinsiale regeringsfeer of enige munisipaliteit in die plaaslike regeringsfeer, na gelang van die geval, ingedien word.³⁰

22.2.1.2 Die Stad Johannesburg is 'n voorbeeld van 'n plaaslike regeringsfeer waarteen 'n interne appèl ingedien kan word. Die Padongelukkefonds of die Reguleerder is 'n voorbeeld van 'n openbare liggaam wat nie deel uitmaak van die nasionale, provinsiale of plaaslike regeringsfeer soos dit deur wetgewing ingestel is nie, en daarom kan 'n interne appèl nie daarteen ingestel word nie.

³⁰ Artikel 74(1) van PAIA

22.2.1.3 Indien 'n versoeker of 'n derde party ontevrede is met 'n besluit geneem deur die Inligtingsbeampte of Adjunk-inligtingsbeampte van 'n nasionale, provinsiale of plaaslike regeringsfeer, het die versoeker of 'n derde party die reg om 'n interne appèl in te dien ingevolge artikel 74(1) of (2) van **PAIA**. Die proses om 'n appèl aanhangig te maak, word voorgeskryf in die PAIA-gids van die betrokke instansie en die wyse waarop 'n interne appèl aangeteken kan word, word ook hieronder uiteengesit.

22.2.1.4 Indien die antwoord van die nasionale, provinsiale of plaaslike regeringsfeer 'n vermeende weiering is, met ander woorde, hy nie binne 30 dae of enige verlengde tydperk op 'n versoek reageer nie, kan die versoeker 'n interne appèl indien volgens die prosesse hierin uiteengesit, voordat die versoeker die Reguleerder of 'n Hof mag nader.

22.3 **Bewaring van rekords totdat 'n finale beslissing oor die versoek finaal bepaal is**

22.3.1 Die Inligtingsbeampte van 'n nasionale, provinsiale of plaaslike regeringsfeer waarop 'n interne appèl van toepassing is, word ingevolge artikel 21 van PAIA vereis om toepaslike stappe te neem wat redelikerwys nodig is om die rekord te bewaar en mag geen versoekte rekord verwyder of vernietig totdat alle of enige verrigtinge in 'n interne appèl of 'n klag by die Reguleerder of 'n aansoek by die hof finaal beslis word nie.

22.3.2 Dit beteken dat die Inligtingsbeampte nie die inligting wat gevra word, kan verwyder of vernietig nie, hangende enige proses wat in paragraaf 22.3.1.1 hierbo voorgeskryf word.

22.4 **Aan wie moet die interne appèl gerig word?**

22.4.1 Alhoewel die appèl deur die betrokke owerheid oorweeg sal word, moet 'n interne appèl gelewer of gestuur word aan die Inligtingsbeampte van die nasionale, provinsiale of plaaslike regeringsfeer, na gelang van die geval, na sy adres, faksnommer of elektroniese posadres, waarvan die kontakbesonderhede in die **PAIA**-gids gevind kan word of soos by die Reguleerder verkrygbaar is.

22.4.2 Die Inligtingsbeampte van die nasionale, provinsiale of plaaslike regeringsfeer, na gelang van die geval, het 'n spesifieke verpligting ingevolge artikel 75 (4) van **PAIA** om die appèl aan die Appèlowerheid voor te lê, tesame met sy redes vir

³¹ Artikel 75(1)(b) van PAIA

die besluit onder appèl. Die indiening van die appèl by die betrokke owerheid moet binne 10 werksdae na ontvangs van die appèl geskied.

22.5 **Wie is die betrokke owerheid?**

22.5.1 Die betrokke owerheid, hierna "appèlowerheid" genoem, is oor die algemeen die politieke hoof van die betrokke liggaam (hoewel hierdie funksie amptelik gedelegeer kan word) en verwys spesifiek na die volgende persoon -

Openbare Liggaam ("Regering")	Relevante Owerheid ("Appèlowerheid")
Kantoor van die President	Die persoon wat skriftelik deur die President aangewys is, indien enige, anders sal die President die appèlowerheid wees.
Nasionale Departement	Minister verantwoordelik vir daardie Departement, of die persoon wat skriftelik deur die Minister aangewys is.
Kantoor van die Premier	Die persoon wat skriftelik deur die Premier aangewys is.
Provinsiale Departement	Lid van die Uitvoerende Raad (LUR) wat verantwoordelik is vir daardie Provinsiale Departement of die persoon wat skriftelik deur die LUR aangewys is;
Munisipaliteit	Die Burgemeester, die Speaker of enige ander persoon wat skriftelik deur die Munisipale Raad van daardie munisipaliteit aangewys is;

22.5.2 In enige ander geval, waar dit nie die kantoor van die Premier is nie: die lid van die uitvoerende gesag wat verantwoordelik is vir daardie openbare liggaam of die persoon wat skriftelik deur daardie lid aangewys is.

22.5.3 Indien die appèlowerheid die besluit van die Inligtingsbeampte goedkeur, word die interne appèl geweier en die oorspronklike besluit van die Inligtingsbeampte volstaan. Sou die appèlowerheid egter nie saamstem met die besluit van die Inligtingsbeampte nie, dan word die appèl toegestaan en word die oorspronklike besluit omvergewerp.

22.5.4 decision of the Information Officer stands. However, should the appeal authority disagree with the Information Officer's decision, then the appeal is granted and the original decision is overturned.

22.6 Wie kan 'n interne appèl aanteken?

22.6.1 Enige versoeker wie se **PAIA**-versoek om toegang tot die rekords van die nasionale, provinsiale of plaaslike regeringsfeer, na gelang van die geval, geweier is, en van mening is dat een van die appèlgronde in paragraaf 22.2.4 hierbo van toepassing op hul versoek is, het die reg om 'n interne appèl aan te teken.

22.6.2 Derde partye kan ook interne appèlle aanteken teen die besluit wat 'n Inligtingsbeampte geneem het om toegang te verleen tot 'n rekord wat hulle betref. As die interne appèl 'n derde party betrek, moet die appèlowerheid wat die interne appèl ontvang het, daardie derde partye in kennis stel (die verantwoordelikheid skuif dus van die Inligtingsbeampte na die appèlowerheid).

22.7 Periode waarin appèl aangeteken moet word

22.7.1 'n Interne appèl moet aangeteken word - -

22.7.1.1 binne **60 dae**³² nadat die besluit geneem is;

22.7.1.2 binne **30 dae**³³ nadat kennisgewing aan die derde party gegee is van die geappelleerde beslissing

22.7.2 Die aanteken van appèl na bogenoemde tydperk (laat) kan moontlik nie toegelaat word nie, tensy 'n geldige rede vir laat wees aan die appèlowerheid verskaf word. Byvoorbeeld, om langer as 60 dae in die hospitaal opgeneem te word, kan as geldige redes om laat te wees aanvaar word.

22.7.3 Sou die appèlowerheid nie die laat indiening van 'n interne appèl aanvaar nie, moet dit aan u redes verstrek waarom die appèl van die hand te gewys is en moet dit ook leiding bied van enige addisionele inligting, indien nodig, om die appèl te aanvaar. Die appèlowerheid moet u ook adviseer oor die proses om 'n klag teen hul beslissing by die Reguleerder of 'n hof in te dien.

³² Artikel 75(1)(a)(i) van PAIA

³³ Artikel 75(1)(a)(ii) van PAIA

22.7.4 Soos hierbo aangedui, moet u appèl binne 10 werksdae na ontvangs van 'n interne appèl³⁴ deur die Inligtingsbeampte by die appèlowerheid ingedien word.

22.8 Kennisgewing van appèl deur appèlowerheid aan die versoeker of derde party

22.8.1 Die appèlowerheid moet so gou as wat dit redelik moontlik is, maar in elk geval binne 30 dae na ontvangs van die interne appèl³⁵, daarvan kennis gee aan -

22.8.1.1 die derde party aan wie die rekord onder appèl behoort, of

22.8.1.2 die versoeker oor die interne appèl teen die toestaan van 'n versoek om toegang.

22.8.2 'n Versoeker of 'n derde party aan wie kennisgewing gegee word, kan binne 21 dae nadat die kennisgewing gegee is, skriftelik vertoë aan die appèlowerheid rig waarom die versoek om toegang toegestaan moet word of nie.

22.9 Beslissing oor die interne appèl en kennisgewing daarvan³⁶

22.9.1 Die appèlowerheid moet die interne appèl so spoedig moontlik redelikerwys beslis, maar in elk geval binne 30 dae:

22.9.1.1 nadat die Inligtingsbeampte van 'n liggaam die interne appèl ontvang het;

22.9.1.2 nadat 'n derde party in kennis gestel is, soos aangedui in paragraaf 22.3.6.1 hierbo.

22.9.2 Die beslissing van die appèlowerheid moet aan die appellant, derde party en die versoeker meegedeel word. Die beslissing van die appèlowerheid moet gepaard gaan met voldoende redes vir die beslissing, insluitend die voorsiening van **PAIA** of **POPIA** waarop gesteun word.

22.9.3 Indien die appèlowerheid versuim om binne 30 dae kennis te gee van die beslissing oor 'n interne appèl, word die appèl geweier vermeen en kan die versoeker voortgaan om 'n klag by die Reguleerder in te dien of die hof te nader vir toepaslike verligting.³⁷

³⁴ Artikel 75(4) van PAIA

³⁵ Artikel 76(2)(a) van PAIA

³⁶ Artikel 77 van PAIA

³⁷ Artikel 77(7) van PAIA

22.10 Voltooiing van die interne appèl - Vorm 4

- 22.10.1 Ten einde enige beslissing van 'n nasionale, provinsiale of plaaslike regeringsfeer te appelleer, moet die versoeker sy interne appèl aanteken deur Vorm 4 in te vul. Vorm 4 moet ingedien word by die Inligtingsbeampte van die betrokke regeringsfeer, wie dan verplig word om dit aan die appèlowerheid te stuur, soos hierbo vermeld.
- 22.10.2 Vorm 4 is beskikbaar op die Reguleerder se webblad, <https://www.justice.gov.za/inforeg/>, sowel as die webwerf van die betrokke regeringsfeer.
- 22.10.3 Die Inligtingsbeampte of Adjunk-inligtingsbeampte van die betrokke regeringsfeer is nie uitdruklik verplig om die versoeker te help om die interne appèlvorm in te vul nie; die versoeker kan egter steeds die inligtingsbeampte versoek om hom in hierdie verband te help.
- 22.10.4 Hieronder is die stapsgewyse proses om die interne appèl vorm te voltooi -

Vereiste Inligting	Beskrywing
Besonderhede van openbare liggaam	Hierdie afdeling moet die naam van die betrokke nasionale, provinsiale of plaaslike regeringsfeer bevat en die Inligtingsbeampte se naam en van.
Besonderhede van die appellant wat die interne appèl aanteken	Hierdie afdeling moet deur die appellant voltooi word, hetsy in verteenwoordigende hoedanigheid al dan nie. Die volle naam en van, identiteitsnommer en die hoedanigheid waarin 'n interne appèl namens 'n ander persoon ingestel moet word, indien van toepassing, moet verstrek word. Indien die appèl in 'n persoonlike hoedanigheid aangeteken word, moet sodanige hoedanigheid aangeteken word. Addisionele inligting wat vereis word, sluit in die besonderhede van die versoeker:

Vereiste Inligting	Beskrywing
	<p>posadres, e-pos, faks en/of telefoonnommer. Hierdie inligting moet dieselfde wees as in die oorspronklike versoek. Indien die persoon wat die vorm in vul, die verteenwoordiger van die versoeker is, moet bewys van die hoedanigheid waarin die appèl ingedien word by hierdie vorm aangeheg word.</p>
<p>Besonderhede van die persoon namens wie die versoek gerig word (Indien deur 'n derde party gerig)</p>	<p>Hierdie gedeelte hoef slegs voltooi te word deur iemand wat inligting vir 'n ander persoon vra. Indien die persoon wat die interne appèl indien nie die persoon is wat aanvanklik die inligting aangevra het nie, moet net die besonderhede van die versoeker hierin verstrekkend word. As die versoek in 'n persoonlike hoedanigheid is, hoef hierdie afdeling nie voltooi te word nie.</p>
<p>Die besluit waarteen die interne appèl aangeteken word</p>	<p>Die vorm bied ruimte vir die versoeker om met 'n 'x' aan te dui watter van die genoemde appèlgronde op die appèl van toepassing is.</p>
<p>Gronde vir appèl</p>	<p>Onder hierdie afdeling, word die versoeker vereis om 'n omvattende beskrywing te gee waarom hy meen dat die gronde vir appèl van toepassing is. Hy word vereis om redes(s) te gee waarom hy meen dat die besluit van die Inligtingsbeampte nie korrek is nie. Hy moet ook enige dokumente wat die appèl ondersteun, aanheg. Die lys van redes waarom die appèl ondersteun word, kan op 'n aparte bladsy in meer besonderhede uiteengesit word as die spasie in die vorm nie voldoende is nie. Die addisionele bladsye wat ingedien word, moet onderteken word.</p>

Vereiste Inligting

Beskrywing

Daar moet voldoende redes wees en ondersteunende inligting om die appèlowerheid in staat te stel om 'n ingeligte besluit te neem. Daarom moet u ook 'n uiteensetting van alles wat gebeur het in die aanloop tot die interne appèl insluit. 'n Mens kan op 'n aparte bladsy verwys na spesifieke afdelings van **PAIA** as 'n grondslag vir die appèl.

Kennisgewing van die beslissing op die appèl

'n Ruimte word gegee vir 'n beskrywing van die wyse waarop die beslissing gestuur moet word, byvoorbeeld deur die pos, faks of e-pos of per koerier. Kies asseblief die verkose wyse van kennisgewing.

22.10.5 Alhoewel daar geen verbod is op die verkryging van 'n prokureur in enige stadium van die versoek om inligting nie, is die verskillende **PAIA**-prosesse bedoel om gebruikersvriendelik te wees, wat die behoefte aan 'n prokureur en die aangaan van regskostes verwyder.

23. KLAGTE AAN DIE INLIGTINGSREGULEERDER

- 23.1 'n Versoeker of derde party mag slegs 'n klag by die Reguleerder indien nadat die versoeker of derde party die interne appèlprosedure teen 'n beslissing van die Inligtingsbeampte van 'n nasionale, provinsiale of plaaslike regeringsfeer uitgeput het. Dit beteken dat 'n mens 'n klag teen 'n bepaalde regeringsfeer slegs by die Reguleerder kan indien in die geval dat u ontevrede is met die beslissing van die appèlowerheid. Die Reguleerder sal die klag van die hand wys indien 'n appèlproses na die betrokke regeringsfeer nie afgehandel is nie.
- 23.2 Hoewel, ten opsigte van 'n openbare liggaam (waarvoor 'n interne appèl nie van toepassing is nie) en 'n privaat liggaam, kan 'n versoeker of derde party egter 'n klag by die Reguleerder indien, indien dit nie tevrede is met die beslissing van die betrokke liggaam nie.
- 23.3 'n Klag aan die Reguleerder deur 'n versoeker of derde party moet binne 180 dae na ontvangs van die beslissing van die liggaam ingedien word.

23.4 'n Versoeker kan 'n klag indien by die Reguleerder, indien ontevrede met -

23.4.1 Die uitslag van 'n interne appèl by die appèlowerheid van enige regeringsfeer;

23.4.2 'n beslissing van die appèlowerheid om nie laat aantekening van 'n interne appèl toe te staan nie;

23.4.3 'n besluit van die Inligtingsbeampte van 'n openbare liggaam wat nie deel is van 'n sfeer van regering om -

23.4.3.1 'n versoek om toegang te weier; of

23.4.3.2 die tydperk om met die versoek te handel te verleng; of

23.4.3.3 toegang in 'n bepaalde vorm toe te staan.

23.4.4 'n besluit van die hoof van 'n privaat liggaam om -

23.4.4.1 'n versoek om toegang te weier; of

23.4.4.2 betaling te eis vir die versoek fooi, of 'n deposito van die toegangsfooi; of

23.4.4.3 die tydperk om met die versoek te handel te verleng; of

23.4.4.4 toegang in 'n bepaalde vorm toe te staan.

23.5 'n Derde party kan 'n klag by die Reguleerder indien, indien nie gelukkig met -

23.5.1 die uitslag van 'n interne appèl by die appèlowerheid van die betrokke regeringsfeer;

23.5.2 'n besluit van die Inligtingsbeampte van 'n openbare liggaam wat nie deel is van 'n sfeer van die regering om 'n versoek om toegang; of

23.5.3 'n besluit van die hoof van 'n privaat liggaam om toegang te verleen tot inligting van daardie liggaam,

23.6 Hoe kla mens by die Reguleerder?

- 23.6.1 'n Klagte aan die reguleerder moet skriftelik gerig word en 'n klagvorm moet voltooi word, hetsy met die hand of aanlyn. 'n Klagvorm, Vorm 5 kan van die Reguleerder se webtuiste afgelaai word, <https://www.justice.gov.za/inforeg/>
- 23.6.2 Dit beteken dat die Reguleerder nie 'n klagte telefonies sal aanvaar nie; daar word egter van die Reguleerder verwag om redelike hulp te verleen aan enige persoon wat 'n klag wil indien en dit sluit hulp in met die invul van 'n klagvorm.
- 23.6.3 As u die beslissing van die Inligtingsbeampte van 'n private liggaam betwis, moet u voldoende bewyse lewer om te bewys dat die aangevraagde rekord benodig word vir die uitoefening of beskerming van enige ander reg(te). Toegang tot die rekords van 'n privaat liggaam kan slegs verleen word as u kan bewys dat u van plan is om enige ander reg(te) uit te oefen of te beskerm met die gevraagde rekord.

23.7 Wat gebeur na ontvangs van die klagte

- 23.7.1 By ontvangs van 'n klagte moet die reguleerder -
- 23.7.1.1 Die klag ondersoek en sy bevindinge aan die Afdwingingskomitee verwys vir 'n beslissing; of
 - 23.7.1.2 Geen aksie op die klag neem te wyte aan die feit dat -
 - 23.7.1.2.1 die klagte nie binne die tydperk van 180 dae ingedien is nie en daar is geen redelike gronde is om die laat indiening van 'n klagte toe te laat nie.
 - 23.7.1.2.2 die klagte is nietig of kwelsugtig of nie te goeder trou nie; of
 - 23.7.1.2.3 met inagneming van al die omstandighede van die geval, is enige verdere optrede onnodig of onvanpas. Die aangevraagde inligting is byvoorbeeld in die openbaar beskikbaar gestel.
 - 23.7.1.3 waar toepaslik, die beste probeer om so 'n skikking te bewerkstellig of die partye te help om hul geskil (le) te besleg; en

23.7.1.4 die klaer en die Inligtingsbeampte, op wie die klagte betrekking het, in kennis te stel van die aksie wat gevolg moet word.

23.8 **Reguleerder se eerste mededeling aan die klaer en Inligtingsbeampte rakende die klag wat ingedien is**

23.8.1 As die Reguleerder besluit om nie verder op te tree teen die klagte nie, sal die Reguleerder die versoeker in kennis stel van die besluit en die redes waarom hy nie verder opgetree het nie.

23.8.2 As die Reguleerder besluit om 'n klag te ondersoek, sal die versoeker 'n brief ontvang waarin hy in kennis gestel word dat die Reguleerder besluit het om 'n ondersoek te doen.

23.8.3 Na ontvangs van 'n klagte sal die Reguleerder die besonderhede van die klagte aan die Inligtingsbeampte van die betrokke liggaam stuur, en hom versoek om 'n skriftelike antwoord op die klag by die Reguleerder in te dien.

23.9 **Ondersoekende bevoegdhede van die reguleerder**

23.9.1 Die Reguleerder het, ingevolge artikel 77G (2) van **PAIA**, die bevoegdheid om -

23.9.1.1 sy beste pogings aanwend om sodanige skikking te beveilig;

23.9.1.2 mense dagvaar om voor die Reguleerder te verskyn en dit af te dwing;

23.9.1.3 hulle verplig om mondelinge of geskrewe getuienis onder eed te lewer en om enige rekords op te lewer;

23.9.1.4 ontvang en aanvaar enige bewyslewing en ander inligting, hetsy onder eed of deur beëdigde verklaring;

23.9.1.5 enige perseel wat deur die verantwoordelike party beset word te betree en visenteer;

23.9.1.6 'n persoonlike onderhoud te voer met enige persoon op enige perseel wat betree word; en

23.9.1.7 voer enige navrae wat die Reguleerder gepaslik vind op daardie persele.

23.10 Evaluering van voldoening aan die bepalings van PAIA

- 23.10.1 Die Reguleerder kan 'n assessering uitvoer of 'n openbare of private liggaam in die algemeen aan die bepalings van **PAIA** voldoen.
- 23.10.2 Die Reguleerder kan willekeurig 'n nakomingsbeoordeling op 'n liggaam doen, uit eie wil, maar die Reguleerder kan die nakomingsbeoordeling ook op versoek deur of namens die Inligtingsbeampte van 'n liggaam of enige ander persoon uitvoer. Dit beteken dat enige persoon die Reguleerder kan versoek om nakomingsbeoordeling op 'n liggaam te doen. 'n Persoon kan ook 'n anonieme versoek indien om 'n nakomingsbeoordeling uit te voer deur aan te dui dat hy of sy versoek om anoniem te bly.
- 23.10.3 Die Reguleerder sal die persoon wat die assessering aangevra het, die assesseringsverslag en 'n aanbeveling van die aksie, indien enige, voorsien.

23.11 Inligtingskennisgewing

Die Reguleerder kan die Inligtingsbeampte van 'n instansie met 'n Inligtingskennisgewing dien wat van die party vereis om die Reguleerder te voorsien met die inligting wat in die kennisgewing gespesifiseer word. Byvoorbeeld, as 'n klag wat by die Reguleerder ingedien word, betrekking het op die weiering van toegang gebaseer op enige van die vrygestelde gronde, kan die Reguleerder in 'n Inligtingskennisgewing afskrifte van die rekords waartoe toegang geweier is, versoek om te bepaal of die redes vir weiering geldig is al dan nie.

23.12 Vestiging van die Afdwingingskomitee

- 23.12.1 Die Reguleerder word verplig om 'n Afdwingingskomitee³⁸ te vestig, wat bevoegd hede het om -
- 23.12.1.1 alle aangeleenthede wat die Reguleerder in terme van **PAIA** daarna verwys, oorweeg en 'n bevinding daarvoor maak; en
- 23.12.1.1 enige aanbevelings te maak aan die Reguleerder rakende enige stappe wat teen die Inligtingsbeampte van 'n liggaam geneem moet word.

23.13 Afdwingingskennisgewing

- 23.12.1 Die Reguleerder kan, na oorweging van die aanbevelings van die afdwingingskomitee, die Inligtingsbeampte van 'n liggaam dien met 'n afdwingingskennisgewing -

³⁸ Artikel 50 van POPI

23.13.1.1 bevestiging, wysiging of tersydestelling van die beslissing waaroor die klag betrekking het; of

23.13.1.1 vereis dat die Inligtingsbeampte sodanige stappe moet neem of dat hy nie die stappe sal neem soos die Inligtingsreguleerder in die kennisgewing bepaal nie.

23.14 **Wat is die gevolge vir die verontagsaming van afdwingingskennisgewings?**

23.14.1 'n Inligtingsbeampte van 'n liggaam wat weier om aan 'n afdwingingskennisgewing te voldoen, is skuldig aan 'n misdryf en is op skuldigbevinding onderhewig aan 'n boete of tot gevangenisstraf van hoogstens drie jaar of aan beide 'n boete en gevangenisstraf.

23.14.2 Artikel 77K van **PAIA** dui op die belangrikheid van die reg op toegang tot inligting of rekords. Hierdie afdeling versterk ook die belangrikheid van die Reguleerder vir die bevordering van die reg op toegang tot inligting.

24. AANSOEK BY DIE HOF

24.1 **Wie kan 'n aansoek teen die beslissing by die hof indien?**

24.1.1 'n Versoeker of derde party mag slegs in die volgende omstandighede by die hof aansoek doen om toepaslike verligting ingevolge artikel 82:

24.1.1.1 Nadat die versoeker of derde party die interne appèlproses waarna in paragraaf **22.3** hierbo verwys word, uitgeput het; of

24.1.1.2 nadat die versoeker of derde party die klagteprosedure waarna in artikel 77A verwys word, uitgeput het.

24.1.2 Ingevolge artikel 78 (1) van **PAIA** het 'n versoeker of 'n derde party twee opsies, óf om 'n beslissing in paragrawe 22.2.4, 23.4 en 23.5 hierbo na die Reguleerder of die hof te verwys. Alhoewel u nie verplig is om die Reguleerder te nader voordat u die hof nader nie, is dit raadsaam om te oorweeg om die Reguleerder te nader, aangesien die Reguleerder uitgebreide en vinnige meganismes vir dispuutoplossing het, teenoor die hof.

24.1.3 Vir die hof om egter die saak te beredder, moet 'n versoeker of 'n derde party -

24.1.3.1 gegrief wees deur een van die besluite, gelys in paragraaf 22.2.4, 23.4 of 23.5 hierbo; of

24.1.3.2 die klagteprosedure met die Reguleerder uitgeput het of die klag by die Reguleerder terugtrek. Dit beteken dat 'n mens nie die hof kan nader as die klag nog by die Reguleerder aanhangig is nie.

24.1.4 As u die beslissing van 'n Inligtingsbeampte van 'n private liggaam betwis, moet u voldoende bewyse lewer om te bewys dat die aangevraagde rekord vereis word vir die uitoefening of beskerming van enige ander reg(te) is.

24.2 Wanneer kan 'n mens 'n aansoek aanhangig maak teen die beslissing van 'n liggaam of Reguleerder?

24.2.1 'n Aansoek by die hof deur 'n versoeker of derde party, wat óf onsuksesvol was in 'n interne appèl tot die appèlowerheid van die betrokke regeringsfeer óf gegrief is deur 'n beslissing van die Inligtingsbeampte van 'n liggaam (gelys in 22.2.4, 23.4 of 23.5 hierbo) of die van die Reguleerder moet binne 180 dae vanaf die datum van die betrokke gebeurtenis ingedien word.

24.2.2 Die Inligtingsbeampte van 'n liggaam of appèlowerheid van 'n regering, na gelang van die geval, gegrief deur 'n beslissing van die Reguleerder, kan binne 180 dae by die hof aansoek doen om toepaslike verligting ingevolge artikel 82.³⁹

24.2.3 'n Versoeker, derde party, of 'n liggaam, kan by die hof aansoek doen om die beslissings waaroor hulle gegrief word, deur die hof te laat hersien.

24.2.4 'n Aansoek by die hof ingevolge **PAIA** word deur middel van 'n siviele prosedure gedoen en moet as 'n laaste uitweg gebruik word.

24.2.5 Sake vir toegang tot inligting kan voor die landdroshowe aangehoor word, as 'n hof van eerste aanleg, en die hooggeregshof wat jurisdiksie het.⁴⁰

24.2.6 Versuim om die aansoek binne 'n tydperk van 180 dae in te dien, kan deur die hof goedgekeur word as dit blyk dat die belange van

³⁹ Artikel 78(4) van PAIA

⁴⁰ Artikel 91A van PAIA en die Bevordering van toegang tot inligting, Reëls, 2019

geregtigheid dit vereis. As die rekords waartoe toegang gevra word, u sal help om aansoek te doen vir 'n appèl teen gevangenisstraf, of iemand help om verdere mediese aandag te kry, sal die hof waarskynlik kondonasië in hierdie verband verleen.

24.2.7 'n Aansoek kan ingedien word volgens die prosedure uiteengesit in reël 53 van die Hooggeregshofreëls of kragtens reël 55 van die Landdroshofreëls indien geen of 'n onvolledige rekords deur die administrateur verstrek is.

24.2.8 As die rekord reeds verstrek is, moet die aansoek ingedien word ingevolge reël 55, Landdroshofreëls, met dien verstande dat indien die applikant rede het om te glo dat die administrateur nie die volledige rekord van die verrigtinge verskaf het nie, die versoeker kan volgens die prosedure soos uiteengesit in Reël 53 van die Hooggeregshofreëls, tydens sy verkiesing voortgaan, maar moet in sy funderende eedsverklaring aandui waarom daar rede is om te glo dat die volledige rekord nie verskaf is nie.

24.3 **Wat is die regstatus van die Reguleerder se beslissing hangende die beslissing van die Hof?**

Die bevoegdheid van die Reguleerder is hoofsaaklik afkomstig van die Grondwet, **POPIA** en **PAIA**. Gevolglik het die afdwingingskennisgewing wat deur die Reguleerder uitgereik is, regsgevolge en is dit dus bindend tot tyd en wyl die hof anders beslis het. Die beslissings van die Reguleerder is dus effektief en afdwingbaar, tensy die betrokke hof anders bepaal.

24.4 **Wat is die bevel wat die hof kan verhoor?**

24.4.1 Die hof (landdros-of hooggeregshof) wat 'n aansoek verhoor, kan die volgende bevel maak: -

24.4.4.1 die besluit van die Inligtingsbeampte, of die appèlowerheid of Inligtingsreguleerder, bevestig, wysig of tersyde stel;

24.4.4.2 van die Inligtingsbeampte of appèlowerheid vereis om sodanige stappe te neem of om nie sodanige stappe te neem soos wat die hof nodig ag binne 'n tydperk wat in die bevel genoem word nie;⁴¹

24.4.4.3 'n interdik, tussentydse of spesifieke verligting, 'n verklarende bevel of 'n bevel tot vergoeding toestaan;

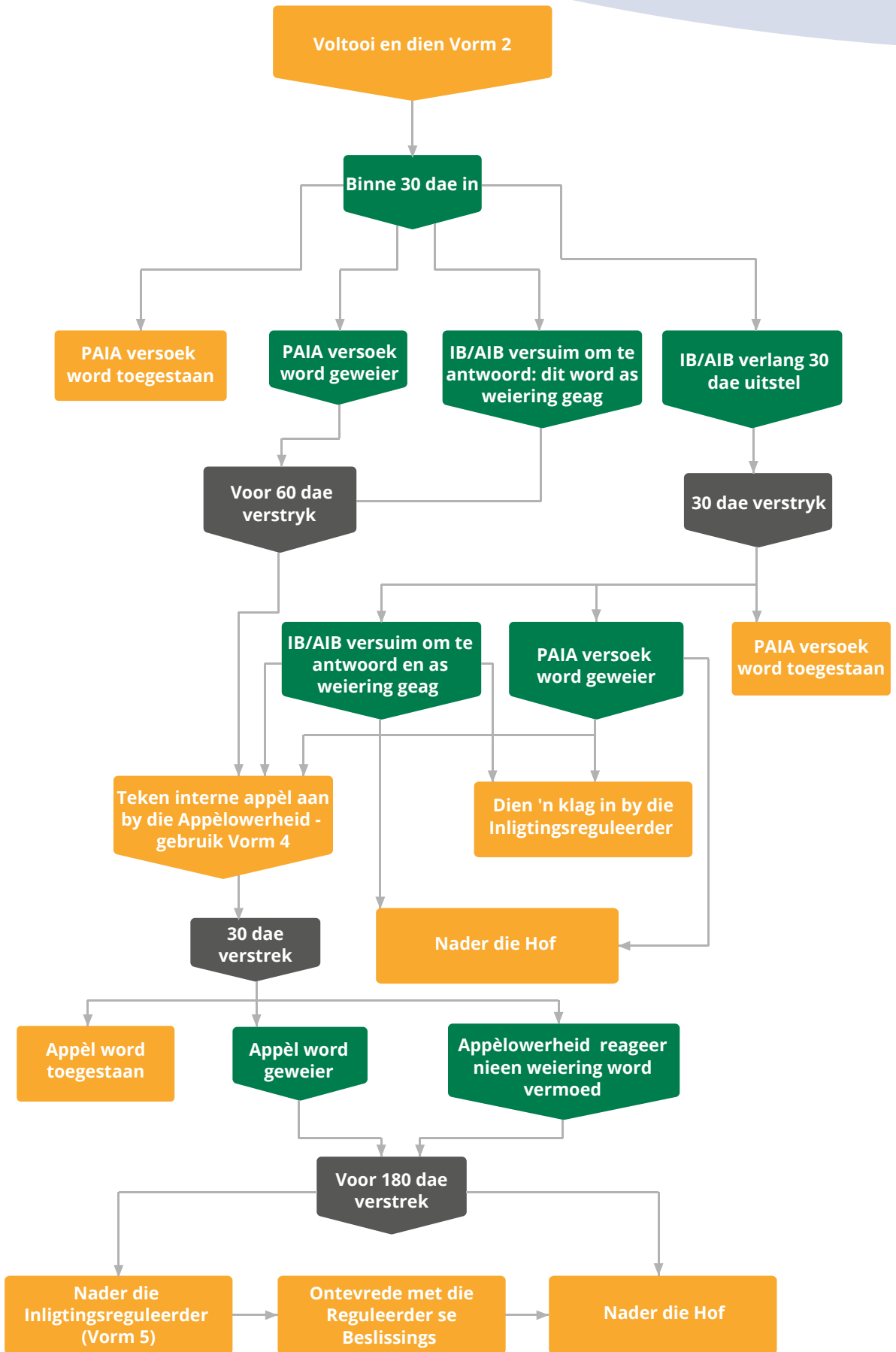
⁴¹ Reël 4 Bevordering van toegang tot inligting, Reëls, 2019

24.4.4.4 'n kostebevel teen enige party maak;

24.4.4.5 In die belang van geregtigheid moet u die nie-nakoming van die tydperk van 180 dae waarbinne u aansoek kan indien, goedkeur. Soos hierbo aangedui, moet voldoende redes vir die versuim om die voorgeskrewe tydperk na te kom in die meegaande aansoek om kondonasië volledig uiteengesit word.

25. DIAGRAM VAN DIE PAIA VERSOEKPROSES

Raadpleeg die stapsgewyse vloeï van die prosesvloeikaart oor die prosesse wat gevolg moet word wanneer u die reg op toegang tot inligting uitoefen.



26. REGULASIES KRAGTENS ARTIKEL 92 VAN PAIA

- 26.1 In ooreenstemming met artikel 92(1) en 92(4) van **PAIA**, het die Minister regulasies uitgevaardig met betrekking tot die Bevordering van Toegang tot Inligting, wat die volgende aangeleenthede dek
- 26.1.1 Verpligtinge van die Inligtingsreguleerder (**regulasie 2**);
 - 26.1.2 Verpligtinge van Inligtingsbeamptes (**regulasie 3**)
 - 26.1.3 Outomatiese beskikbaarheid van sekere rekords van openbare liggame (**regulasie 4**)
 - 26.1.4 Vrywillige openbaarmaking en outomatiese beskikbaarheid van sekere rekords van 'n privaat liggame (**regulasie 5**)
 - 26.1.5 Versoek om toegang tot inligting wat deur openbare en private liggame bewaar word (**regulasie 6**)
 - 26.1.6 Uitkoms van die versoek en fooie betaalbaar (**regulasie 7**)
 - 26.1.7 Interne appèl teen 'n beslissing deur 'n openbare liggaam (**regulasie 8**)
 - 26.1.8 Klagrigting aan die Inligtingsreguleerder (**regulasie 9**)
 - 26.1.9 Die prosedure vir die ondersoek van 'n klagte (**regulasie 10**)
 - 26.1.10 Skikking van aangeleenthede (**regulasie 11**)
 - 26.1.11 Konsiliasie van die saak (**regulasie 12**)
 - 26.1.12 Voldoeningsassessering deur die Inligtingsreguleerder in reaksie op 'n versoek (**regulasie 13**)
 - 26.1.13 Misdrywe en strawwe (**regulasie 14**)
 - 26.1.14 **Electronic communication (Regulation 15)**
 - 26.1.15 **Offences and penalties (Regulation 16)**
- 26.2 Ingevolge artikel 79 (1) van **PAIA**, het die Reëlraad vir Howe met die goedkeuring van die Minister reëlins vir die prosedure gemaak vir -
- 26.2.1 'n hof ten opsigte van aansoeke ingevolge artikel 78 van **PAIA**; ingevolge artikel 79 (1) van **PAIA**, het die Reëlraad vir Howe met die goedkeuring van die Minister reëlins vir die prosedure gemaak vir -
 - 26.2.2 'n hof om ex parte verhoë oorgebring op artikel 80(3)(a) te ontvang.

27. SLEUTELWETGEWINGS, REGULASIES , KENNISGEWINGS EN ERKENNING

Wette wat van tyd tot tyd gewysig kan word

Wet op Bevordering van Toegang tot Inligting, Wet 2 van 2000

Wet op Bevordering van Administratiewe Geregtigheid, Wet 3 van 2000

Wet op Bevordering van Toegang tot Inligting Wysigingswet, Wet 54 van 2002

Wet op Beskerming van Persoonlike Inligting, Wet 4 van 2013

Wet op Bevordering van Toegang tot Inligting, Wet 31 van 2019

Wet op die Befondsing van Politieke Partye, Wet 6 van 2018

Regulasies en Kennisgewings

Goewermentskennisgewing	Datum van publikasies	Onderwerp en beskrywing
Goewermentskennisgewing R.757 in SK No 45057	27 Augustus 2021	Wet op Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000): regulasies met betrekking tot die bevordering van toegang tot inligting, 2020
Goewermentskennisgewing R.991 in GG 28107	14 Oktober 2005	Regulasies wat die gronde voorskryf waarop iemand vrygestel is van die betaling van fooie.
Goewermentskennisgewing 397 in SK No 44785	30 Junie 2021	Vrystelling van die saamstel van 'n PAIA -handleiding vir sekere privaat liggame.
Goewermentskennisgewing 1217 in GG 42717	19 September 2019	Aanwysing van landdroshowe as beskikkend oor die vermoë om PAIA -aangeleenthede aan te hoor.
Goewermentskennisgewing R. 1284 in GG 42740	4 Oktober 2019	Reëls van prosedure vir aansoeke wat gemaak moet word ingevolge PAIA voor die Hooggeregshof of Landdroshof.

ERKENNING

Hierdie bygewerkte gids oor hoe om die **PAIA**-wet te gebruik, was oorspronklik opgestel deur die Suid-Afrikaanse Menseregtekommissie (SAMRK) en die Reguleerder erken hiermee die oorspronklike werk van die SAMRK, met inbegrip van al sy bronne.

Uitgereik deur

INLIGTINGSREGULEERDER