



## SUMMARY OF NEW REGULATIONS PUBLISHED UNDER THE PROMOTION OF ACCESS TO INFORMATION ACT APPLICABLE TO PRIVATE BODIES

### EFFECTIVE DATE

With effect from 27 August 2021, the new Regulations under the Promotion of Access to Information Act 2 of 2000 (“PAIA”) were published. The purpose of these Regulations is to align the requirements of PAIA with the provisions of the Protection of Personal Information Act (“POPIA”).

### THE INFORMATION GUIDE

The Information Regulator has prepared an information guide which details how the public may make requests for records of private bodies (like retirement funds) under PAIA (“the Guide”). This Guide is available in all official languages and in Braille on the Information Regulator’s website: <https://www.justice.gov.za/inforeg/docs.html>.

Retirement funds must make a copy of the Guide available for inspection at their registered office in any two of the official languages. The fund can choose which two official languages. If a person asks for a copy of the Guide from the fund (using a Form 1, which is available on the Information Regulator’s website) then the fund must provide it free of charge.

The Guide, among other things, contains details about:

- the objectives of PAIA and POPIA;
- how to request access to a record held by a private body;
- the assistance available from information officers and the Information Regulator to make requests;

- remedies in law regarding any act or failure to act in respect of a right or duty in PAIA and POPIA;
- the requirements of private bodies to compile a manual.

Comment: for many funds, the registered office of the fund may be their administrator. Thus, administrators should keep the Guide available for inspection and copying (in the languages chosen by the funds they administer) at their offices. It will probably be practical for the administrator to keep copies of the Guide in all the official languages at their offices.

### SECTION 52 RECORDS

Private bodies can elect to make certain records available for inspection without a requester having to apply for inspection of the record (section 52 of PAIA). If they elect to do so, they must make the list of records, which must be kept updated –

- available to the Information Regulator;
- available on the fund/company’s website (if they have one); and
- available for inspection at the fund’s registered office during normal office hours.

Comment: funds could include this voluntary section in their section 51 manual if they so choose. It may prove useful for a fund to include this voluntary information, as it may cut down on the number of formal PAIA requests the fund receives with

respect to information that the fund would probably provide anyway. In addition, certain of the information a fund is providing, without a formal request, would have to be provided to persons (like members) under other legislation, for example, the Pension Funds Act. A fund may charge fees for providing the information, as permitted in PAIA. Note that there may be legislation that requires a fund to provide information free of charge to members and others. For example, under the Pension Funds Act members have a right of access upon payment of a fee set out in the rules of the fund to rules, the last revenue account and balance sheet, last valuation report as well as sections 17 and 18 reports (among other documentation) and a right to inspect these documents at no charge.

### OTHER RECORDS

For all other records, the requester must apply to the private body in the correct format (for requesters who cannot complete the form, the information officer must complete and submit a form on that person's behalf). After considering the application, the information officer must inform the requester whether or not the private body is prepared to release the record and what the cost will be. If the information officer intentionally or in a grossly negligent manner charges a fee that is not allowed by the Regulations, he/she could be liable to pay a fine or suffer imprisonment.

### PAIA MANUAL

Private bodies have until 31 December 2021 to prepare their PAIA manuals, which set out what records are held by a private body and how they may be accessed.

### COMPLAINTS TO THE INFORMATION REGULATOR

If the requester is not satisfied with the information officer's decision, he/she may lodge a complaint with the Regulator. When a complainant lodges a complaint, the Information Regulator will decide whether to –

- investigate the complaint or
- refer it to the Enforcement Committee or
- request the parties to attend a meeting to settle the matter.

If the complaint is to be investigated, the information officer will be made aware of the complaint. An information officer will have 20 working days to respond to the complaint. No record may be withheld from the Information Regulator.

The Information Regulator must keep the complainant and the information officer informed of the developments in the investigation and the outcome of the investigation.

### FORMS INCLUDED IN THE REGULATIONS

The new Regulations include the forms which must be used, the most important of which are –

- Request for copy of the Guide
- Request for Access to a Record
- Outcome of Request and Fees Payable
- Lodging of a Complaint