



## A report by funds and companies to the Information Regulator

All private bodies, for example companies and retirement funds, have been requested by the Information Regulator to provide it with a specific report.

The Information Regulator recently confirmed that providing this report is compulsory.

On 7 May 2023, the Information Regulator published a notice requesting the heads of all private bodies (which includes companies and retirement funds) to submit a report to it under the Promotion of Access to Information Act (PAIA) (section 83(4)).

This report must be submitted by 30 June 2023.

### WHAT IS A PAIA SECTION 83(4) REPORT?

This section permits<sup>1</sup> the Information Regulator to request the heads of private bodies to submit reports to it *about requests for access to records that the private body holds*.

The Information Regulator must then submit an annual report to the National Assembly<sup>2</sup>. If the Information Regulator chooses, it can include information about access requests that private bodies receive in its annual report to the National Assembly.

Please note the difference between a section 32 report and a section 83(4) report –

- The section 32 PAIA report applies to information officers of public bodies and

<sup>1</sup> Section 83(4) of the Promotion of Access to Information Act: For the purpose of the annual report referred to in section 84 and if so requested by the Information Regulator, the head of a private body may furnish to that Commission information about requests for access to records of the body.

<sup>2</sup> See section 84 of the Promotion of Access to Information Act.

- A section 83(4) PAIA report applies to heads of private bodies.

The Information Regulator has not asked private bodies to submit a report like this before.

### WHAT IS A PRIVATE BODY?

According to PAIA “private body” means –

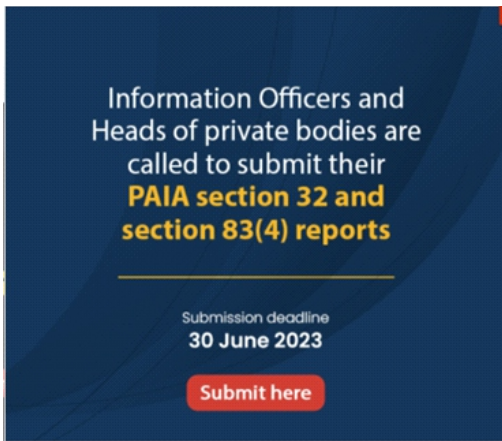
- a natural person who carries or has carried on any trade, business or profession, but only in such capacity;
- a partnership which carries or has carried on any trade, business or profession;
- any former or existing juristic person; or
- a political party,
- but excludes a public body.

A retirement fund is a private body.

The “Head” of a private body has been interpreted by many people to refer to the Principal Officer of a fund. Thus, the principal officer of the fund would have the responsibility to submit this report.

### HOW DO I SUBMIT THE REPORT?

The head of a private body must submit the report through the Information Regulator's online portal. The following banner appears on the information Regulator's website ([info regulator.org.za](http://info regulator.org.za)):



<https://infoeregulator.org.za/wp-content/uploads/2020/07/Manual-for-PAIA-Section-32-Report.pdf>

- There is a section 32 annual report user manual to submit the report. This seems to also apply to section 83(4) reports.
- Register the fund/company on the Information Regulator's portal so that you can sign it and submit the report. This requires you to create your profile using an OTP.
- Once you sign in on your profile, you should see a PAIA section 83(4) report button.
- Once you click on the button to submit the report, you can complete the required information. There is a list of questions you must answer and then click "submit".

Please complete all the questions and fields properly, otherwise you may find yourself in receipt of an Information Notice from the Information Regulator.

*Please note: we have not yet been able to successfully navigate the online portal and were told (at the time of writing this publication) by the Information Regulator's office that the system was not operational. No doubt this is a teething problem and will resolve itself.*

#### **WHAT ARE THE QUESTIONS IN THE REPORT ABOUT?**

We expect that the questions that will be required to be answered in the report will relate to the below. As these are the questions asked currently of public bodies, there may be changes to the questions for private bodies. Once we have seen the questions for private bodies, we can update you further.

- The number of requests for access to information under PAIA received;

- The number of requests for access granted in full;
- The number of requests for access granted in terms of section 46 of PAIA (mandatory disclosure in the public interest);
- The number of requests for access refused in full and refused partially and the number of times each provision of PAIA was relied on to refuse access in full or partially;
- The number of cases in which the periods stipulated in section 25(1) of PAIA were extended in terms of section 26 (1) of PAIA (periods relating to granting of requests and notifying of decisions);
- The number of internal appeals lodged with the private body and the number of cases in which, as a result of an internal appeal, access was given to a record;
- The number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27 of PAIA (failure to give a decision is a deemed refusal);
- The number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 (7) of PAIA (failure to give notice of a decision in an internal appeal).

#### **WHAT HAPPENS IF I DON'T SUBMIT THE REPORT ON TIME?**

Compliance with the Information Regulator's request for a section 83(4) report is compulsory. All heads of private bodies must submit the report by 30 June 2023.

Failure to comply may result in the Information Regulator, on its own-initiative, conducting a compliance assessment on the private body in question<sup>3</sup>.

#### **KEEPING INFORMATION ABOUT REQUESTS**

It is important that funds keep information about requests under PAIA as well as certain requests under the Protection of Personal Information Act. This could be done in many different ways, but a register should be kept in your chosen manner. Please let your consultant know if you need assistance with this.

It is important that the Information Officers of funds report requests through to the Board and that such requests are properly considered and replied to within the relevant time periods. In addition, these requests should be analysed by the fund for possible learnings and improvements.

<sup>3</sup>PAIA - the Information Regulator, on its own initiative, or at the request by or on behalf of an information officer or head of a private body or any other person may make an assessment in the manner prescribed of whether a public or private body generally complies with the provisions of this Act insofar as its policies and implementation procedures are concerned.