

## Advice re new PAIA manual and POPI Act requirements

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### IACT-Africa advice to clients as at 13 November 2015 is:

1. If you do not already have a PAIA manual, use our template (based on the SAHRC template) to compile one
2. If you already have a PAIA manual, compare it to our template to identify areas you need to change or update
3. Once you compiled or updated your PAIA manual go to step 4
4. Wait until the Information Regulator issues a new PAIA / POPI manual template. If this has not happened within nine months of the announced commencement date of the POPI Act, take steps to complete your POPI / PAIA manual taking into account the requirements below.

These references can be found on page 125 to 132 of the POPI Act.

12. The amendment of section 51 by—

(a) by the substitution of subsection (1) for the following subsection:

“(1) [Within six months after the commencement of this section or the coming into existence of the private body concerned, the] The head of a private body must [compile] make a **manual** available in terms of subsection (3) containing—

(a) in general—

(i) the postal and street address, phone and fax number and, if available, electronic mail address of the head of the body; and

(ii) such other information as may be prescribed;

(b) insofar as this Act is concerned—

- [(b)] (i) a description of the guide referred to in section 10, if available, and how to obtain access to it;
- [(c)] (ii) the latest notice in terms of section 52(2), if any, regarding the categories of record of the body which are available without a person having to request access in terms of this Act;
- [(d)](iii) a description of the records of the body which are available in accordance with any other legislation; and
- [(e)](iv) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject; [and]

(c) insofar as the Protection of Personal Information Act, 2013, is concerned—

- (i) the purpose of the processing;
- (ii) a description of the categories of data subjects and of the information or categories of information relating thereto;
- (iii) the recipients or categories of recipients to whom the personal information may be supplied;
- (iv) planned transborder flows of personal information; and
- (v) a general description allowing a preliminary assessment of the suitability of the information security measures to be implemented by the responsible party to ensure the confidentiality, integrity and availability of the information which is to be processed.”.

- [(f) in general such other information as may be prescribed.]”; and
- (b) by the substitution for subsection (3) of the following subsection:

“(3) [Each manual must be made available as prescribed] The manual referred to in subsection (1), or the updated version thereof as referred to in subsection (2) must be made available—

- (a) on the web site, if any, of the private body;
- (b) at the principal place of business of the private body for public inspection during normal business hours;
- (c) to any person upon request and upon the payment of a reasonable amount; and
- (d) to the Information Regulator upon request.”.

13. The amendment of section 52 by the—

- (a) substitution for the words preceding paragraph (a) of subsection (1) of the following words:
- “(1) The head of a private body may, on a voluntary [and periodic] basis, [submit to the Minister] make available in the prescribed manner a description of—”;
- (b) deletion of subsection (2); and
- (c) substitution of subsection (3) of the following subsection:

“(3) The only fee (if any) for access to a record [included in a notice in terms of subsection (2)] referred to in subsection (1) is a prescribed fee for reproduction.”.

14. The amendment of section 54 by the substitution for—

(a) subsection (1) of the following subsection:

“(1) The head of a private body to whom a request for access is made must by notice require the requester[, **other than a personal requester,**] to pay the prescribed request fee (if any), before further processing the request.”;

(b) subsection (2) of the following subsection:

“(2) If—

- (a) the search for a record of a private body in respect of which a request for access by a requester [, **other than a personal requester,**] has been made; and
- (b) the preparation of the record for disclosure (including any arrangements contemplated in section 29(2)(a) and (b)(i) and (ii)(aa)),

would, in the opinion of the head of the private body concerned, require more than the hours prescribed for this purpose for requesters, the head must by notice require the requester[, **other than a personal requester,**] to pay as a deposit the prescribed portion (being not more than one third) of the access fee which would be payable if the request is granted.”; and

(c) paragraphs (b) and (c) of subsection (3) of the following paragraphs:

- “(b) that the requester may lodge a complaint to the Information Regulator or an application with a court against the tender or payment of the request fee in terms of subsection (1), or the tender or payment of a deposit in terms of subsection (2), as the case may be; and
- (c) the procedure (including the period) for lodging the complaint to the Information Regulator or the application.”.



15. The amendment of section 56 by the—

- (a) substitution for paragraph (c) of subsection (2) of the following paragraph between:

“(c) that the requester may lodge a complaint to the Information Regulator or an application with a court against the access fee to be paid or the form of access granted, and the procedure, including the period allowed, for lodging a complaint to the Information Regulator or the application.”; and

- (b) substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) state that the requester may lodge a complaint to the Information Regulator an application with a court against the refusal of the request, and the procedure (including the period) for lodging a complaint to the Information Regulator or the application.”.

16. The amendment of section 57 by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) that the requester may lodge a complaint to the Information Regulator or an application with a court against the extension, and the procedure (including the period) for lodging the application.”.

17. The amendment of section 73 by the—

- (a) substitution for paragraphs (b) and (c) of subsection (3) of the following paragraphs:

“(b) that the third party may lodge a complaint to the Information Regulator or an application with a court against the decision of the head within 30 days after notice is given, and the procedure for lodging the complaint to the Information Regulator or the application; and

- (c) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph (b), unless a complaint to the Information Regulator or an application with a court is lodged within that period."; and
- (b) substitution of subsection (4) of the following subsection:
- “(4) If the head of the private body decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record concerned after the expiry of 30 days after notice is given in terms of subsection (1)(b), unless a complaint to the Information Regulator or an application with a court is lodged against the decision within that period.”.