



**Western Cape
Government**

Department of the Premier

Introductory presentation on Promotion of Access to Information Act

15 June 2012

SPATIAL DATA INFRASTRUCTURE ACT

The Spatial Data Infrastructure Act, 2003 applies to all organs of state which hold spatial information as well as users of such spatial information

OBJECTIVES

- The objectives of the SDI Act are, *inter alia*, to-
 - Facilitate the capture of spatial information through co-operation among organs of state
 - Create an environment which facilitates co-ordination regarding access to spatial information

PURPOSE

- The purpose of the SDI Act can be summarised as the promotion of the sharing of spatial information
- It is essential that spatial data be used and shared to support spatial planning, socio-economic development and related activities

COMMITTEE

- The SDI Act established the Committee for Spatial Information
- This Committee must, *inter alia*, facilitate an environment for the efficient collection and distribution of spatial information

PERFORMANCE OF FUNCTIONS

- It is clear from the provisions of the SDI Act that all powers exercised and functions performed in terms of the Act, must be exercised and performed in a manner that will not encroach on copyright and that will give effect to the principles entrenched in the Promotion of Access to Information Act, 2000 (PAIA)

- It is against this background that we will briefly discuss the provisions of the Promotion of Access to Information Act

CONSTITUTION

- Section 32
- Every person has the right of access to records in possession of a public body
- National legislation
- PAIA

CONSTITUTIONAL RIGHT

- Anyone may request access to records in possession of a public body
- Cannot request persons to justify their interest in the records sought
- Right applies to records in possession of all public bodies
 - Private bodies

PURPOSE OF PAIA

- Promote culture of transparency and accountability
- Protect and give effect to right of access to information
- Afford opportunity to be involved in decision making

OBJECT OF THE PAIA

- To make public sector more open and accountable
- Help people to understand better how public authorities carry out their duties
- Assist people to understand why a public authority made a decision

PRINCIPLE

- In terms of section 11 any requester has an in principle right of access to any record in possession of or under the control of a public body
- Must comply with procedural requirements
- Subject to justifiable limitation as prescribed in the PAIA

RIGHT OF ACCESS TO RECORDS

The right of access to records of a public body is not affected by –

- ❖ any reasons the requester gives for requesting access
- ❖ the information officer's belief as to what the requester's reasons are for requesting access

PUBLIC BODY (def in PAIA)

- Any Department of State or Administration in the National or Provincial sphere of government or any municipality in the local sphere of government
- Any other functionary –
 - ✓ Exercising a power / performing a duty in terms of the Constitution or Provincial Constitution
 - ✓ Exercising a public power / performing a public function in terms of any legislation

RECORD

Means any recorded information –

- regardless of form or medium
- in possession / under control of that public body
- irrespective of whether it was created by that public body or not
- irrespective of when it was created

REQUESTER

A requester means any person -

- other than a provincial department, provincial government, national department or municipality in the local sphere of government, or an official acting on its behalf requesting a record from any of these
 - requesting access to a record from a public body

INTERESTING OBSERVATION

Although the Constitution refers to access to information, PAIA deals with access to records



RECORD KEEPING

- Access to records means by implication that record keeping is of the utmost importance
- One of the principles of a democracy is that the state actually gathers and stores records on behalf of the citizenry
- Therefore access to records should follow a simple request procedure and NOT only be provided on a need to know basis

PRESERVATION OF RECORDS

- All public bodies are subject to provisions of Archives Act
- Records must be preserved until all proceedings in connection with the request for access to a record has been finalised
(Section 21)

DUTY TO ASSIST REQUESTERS

- Must provide assistance to requesters as provided for in sections 18 and 19
- Inform requester of requirement to complete Annexure A and pay a request fee of R35-00 / automatically available records
- Refer to correct “public body” (department)

STATUTORY OBLIGATIONS

- Section 14 requires that manuals on, *inter alia*, the functions of public bodies be published
- Section 12 of the SDI Act specifically makes provision for a data custodian (organ of state) to include spatial information held in accordance with the SDI in the section 14 manual
- Proper communication between the relevant functionaries within a public body is therefore important

AUTOMATICALLY AVAILABLE INFORMATION

- Public bodies are required to submit lists of automatically available information to the Minister of Justice and Constitutional Development for publication in the Government Gazette (in terms of section 15)
- This section on automatically available information also forms part of the section 14 manuals

REQUEST FORM

Annexure A

- Makes provision to state the particular language / form (medium) in which the record must be made available
- No obligation to translate (Section 31)
- Right to appeal if not in form / medium s requested

PERIOD TOP DEAL WITH REQUEST

Section 25 – 30 days to deal with request

Section 26 – Extension of period

Section 27 – Failure to deal with request
within prescribed period
regarded as refusal

Section 28 – Severability

**State adequate reasons for refusal –
including provisions of PAIA relied upon**

RECORD THAT CANNOT BE FOUND / DOES NOT EXIST

- Records that cannot be found / do not exist – section 23
- Affidavit
- Will be regarded as refusal

FEES

Request fees (R35-00)

- Must be paid before processing of the request
- Prescribed by regulation

Access fees (Section 22)

- Calculate:

Cost of making copies

Time reasonably required to search for and
prepare record

THIRD PARTY

Any other person than requester or public body

Inform third party -

- considering request
- content of request / record
- name of requester
- in terms of which section it can be refused
- right to make representations
- consent for disclosure of record

INTERNAL APPEALS

- Most public bodies have an internal appeals process
- Appeal against
 - Requester
 - Amount of access fees
 - Payment of deposit (Access fee)
 - Decision to refuse access to record
 - Form/medium of record
 - Third party
 - Disclosure of record

APPLICATIONS TO COURTS

- After requester or third party has exhausted the internal appeal procedure, he/she may approach a court of law
- Ask for appropriate order

GROUNDS FOR REFUSAL

- Chapter 4 deals with grounds for refusal
- Some discretionary / some mandatory
- Only grounds in terms of which access may be refused

GROUNDS FOR REFUSAL

- Mandatory protection of the privacy of a third party who is a natural person
- Mandatory protection of commercial information of a third party
- Mandatory protection of certain confidential information of a third party

✓ MISS

GROUNDS FOR REFUSAL

- Mandatory protection of the safety of individuals and property
- Mandatory protection of research information of a third party, and protection of research information of a public body
- Operations of public bodies

GROUNDS FOR REFUSAL

- Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources
- Mandatory disclosure in public interest
- Judgments

OFFENCES

- No person is criminally or civilly liable for anything done in good faith in the exercise or performance of any power or duty in terms of the PAIA (Section 89)
- Commits an offence and liable to a fine/imprisonment if-
 - Destroys, damages or alters a record
 - Conceals a record
 - Falsifies a record/ make a false record



Thank you