

REPUBLIC OF SOUTH AFRICA

OPEN DEMOCRACY BILL

(As introduced in the National Council of Provinces)

(SELECT COMMITTEE ON SECURITY AND JUSTICE)

[B 67—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP OOP DEMOKRASIE

(Soos ingedien in die Nasionale Raad van Provinsies)

(GEKOSE KOMITEE OOR VEILIGHEID EN JUSTISIE)

[W 67—98]

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BILL

To give effect to the constitutional right of access to any information held by the state; to make available to the public information about the functions of governmental bodies; to provide persons with access to their personal information held by private bodies; to provide for the correction of personal information held by governmental or private bodies and to regulate the use and disclosure of that information; to provide for the protection of persons disclosing evidence of contraventions of the law, serious maladministration or corruption in governmental bodies; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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PART 1

INTRODUCTORY PROVISIONS

Interpretation

1. (1) In this Act, unless the context otherwise indicates—
- (i) **“access fee”** means a fee prescribed for the purposes of section 24; (xxvii) 5
 - (ii) **“application”** means an application to a High Court in terms of section 74 or 75, as the case may be; (i)
 - (iii) **“commercial requester”** means a requester other than a personal or non-commercial requester; (xv)
 - (iv) **“Constitution”** means the Constitution of the Republic of South Africa, 1996; (viii) 10
 - (v) **“governmental body”** means—
 - (a) any department of state or administration in the national, provincial or local sphere of government or any other functionary or institution exercising a power or performing a duty in terms of the Constitution or a provincial constitution or exercising a public power or performing a public duty in terms of any legislation, and includes, without limiting the generality of the foregoing, any body—
 - (i) of which the accounts and financial statements which are required by legislation to be audited by the Auditor-General; 20
 - (ii) of which the majority of the members are appointed, whether alone or on the advice or recommendation of, or in or after consultation with some other person or body, by the President, the Deputy President, a Minister, the Premier of a province, a member of the executive council of a province or of the municipal council of a municipality, another governmental body, or more than one of those authorities; 25
 - (iii) in which the state, a province or a municipality is the majority or controlling shareholder;
 - (iv) of which more than 50 per cent of its expenditure is defrayed directly or indirectly from funds voted by Parliament, a provincial legislature or a municipal council; 30
 - (v) which is or was dependent for more than 50 per cent of its total permanent capital needs, including share capital, loans or other forms of permanent capital, on funds voted by Parliament, a provincial legislature or a municipal council, and in which permanent capital the state, a province or a municipality still holds a direct or indirect interest of more than 50 per cent; 35
 - (vi) which supplies products or services in terms of monopolistic rights conferred on it by legislation; 40
 - (vii) in respect of which the state, a province or a municipality creates the probability through contingent liability that funds voted by Parliament, a provincial legislature or a municipal council will have to be used in future to defray more than 50 per cent of the body’s expenditure or to provide more than 50 per cent of the body’s permanent capital; 45
 - (viii) of which the funds, assets or other property are administered by the state, a province or a municipality on a trust basis on behalf of the inhabitants of the Republic or of a particular interest group; or
 - (b) any other body which was a body contemplated in paragraph (a)(vi) and which exercises in a monopolistic manner substantially the same functions as it performed when it was a body contemplated in paragraph (a)(vi), 50

but does not include the Cabinet, a court, a judicial officer or a body regarded as being part of another body as contemplated in subsection (2) or (3); (xxiv) 55
 - (vi) **“head”**, in relation to—
 - (a) a governmental body—

- (i) in the case of a national department, provincial administration or organisational component mentioned in the first column of Schedule 1 or 2 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in the second column of the said Schedule 1 or 2 opposite the name of the relevant department, provincial administration or organisational component or the officer who is acting as such; 5
- (ii) in the case of any other governmental body, means the chief executive officer of that governmental body or the person who is acting as such; 10
- (b) a private body—
 - (i) in the case of a natural person, that natural person;
 - (ii) in the case of any other private body, the chief executive officer of the private body or the person who is acting as such; (x) 15
- (vii) **“Human Rights Commission”** means the Human Rights Commission referred to in section 181(1)(b) of the Constitution; (xvi)
- (viii) **“inaccurate”**, in relation to a record or information contained therein, means incorrect, incomplete or misleading; (vii)
- (ix) **“information officer”**, in relation to a governmental body, means the person appointed as information officer of that governmental body in terms of section 4(1)(a); (xi) 20
- (x) **“internal appeal”** means an internal appeal to the head of a governmental body in terms of section 67(1); (xiii)
- (xi) **“international organisation”** means an international organisation— 25
 - (a) of states; or
 - (b) established by the governments of states; (xii)
- (xii) **“non-commercial requester”** means a requester seeking access to a record for the purpose of—
 - (a) gathering news for the production of, or disseminating news by, a printed or electronic medium; or 30
 - (b) research or education by a non-profit or an educational body or a member or employee of that body in his or her capacity as such; (xvii)
- (xiii) **“notice”** means notice in writing, and **“notify”** and **“notified”** have corresponding meanings; (xiv) 35
- (xiv) **“objects of this Act”** means the objects of this Act referred to in section 3(1); (vi)
- (xv) **“official”**, in relation to a governmental body, means any person in the employ (permanently or temporarily and full-time or part-time) of that governmental body, including the head of the body, in his or her capacity as such; (iv) 40
- (xvi) **“person”** means an individual or a juristic person; (xix)
- (xvii) **“personal information”** means information about an identifiable person; (xx)
- (xviii) **“personal information bank”** means a collection or compilation of personal information that is organised or capable of being retrieved by using a person’s name or an identifying number or another particular assigned to the person; (xxi) 45
- (xix) **“personal requester”** means a requester seeking access to a record containing information about the requester; (xxii) 50
- (xx) **“prescribed”** means prescribed by regulation in terms of section 86; (xxxi)
- (xxi) **“private body”** means a person, other than a governmental body, in possession of or controlling a personal information bank; (xxiii)
- (xxii) **“public safety or environmental risk”** includes the risk or potential risk to the environment or the public (including individuals in their place of work) associated with— 55
 - (a) a product or service which is available to the public;
 - (b) a substance which is released into the environment or workplace or is present in food for human or animal consumption;
 - (c) a form of public transport; or 60
 - (d) an installation or manufacturing process or substance which is used in that installation or process; (xxvi)

- (xxiii) **“record”** means recorded information regardless of form or medium, and includes—
- (a) a record which is capable of being produced by means of computer equipment (whether hardware or software or both) which is used for that purpose by a governmental body; or
 - (b) a part of a record,
- and, in relation to—
- (i) a governmental body, means a record in the possession or under the control of that governmental body or of an official of the body and whether or not the record was created by the body and whether it was created before or after the commencement of this section;
 - (ii) a private body, means a record in the possession or under the control of that private body or any person in the employ (permanently or temporarily and full-time or part-time) of the private body (including the head of the body) in his or her capacity as such, and whether or not it was created by the body and whether it was created before or after the commencement of this section; (xxv)
- (xxiv) **“request fee”** means a fee prescribed for the purposes of section 17; (xxviii)
- (xxv) **“request for access”** means a request for access to a record of a governmental body in terms of section 9, and **“requester”**, in relation to that request, means a person making that request; (xxx)
- (xxvi) **“request for correction”** means a request for the correction of personal information in a record of a governmental body in terms of section 52(2), and **“requester”**, in relation to that request, means a person making that request; (xxix)
- (xxvii) **“third party”**, in relation to a request for access, means any person (including the government of a foreign state, an international organisation or an organ of that government or organisation) other than—
- (a) the requester concerned;
 - (b) a person contemplated in section 13(5); or
 - (c) a governmental body; (v)
- (xxviii) **“this Act”** includes any regulation made and in force in terms of section 86; (ix)
- (xxix) **“transfer”**, in relation to a record, means transferred in terms of section 15(1) or (2), and **“transferred”** has a corresponding meaning; (xviii)
- (xxx) **“urgent appeal application”** means an application referred to in section 71(1); (ii)
- (xxx1) **“urgent request application”** means an application referred to in section 20(1); (iii)
- (xxxii) **“working day”** means any day other than a Saturday, Sunday or public holiday. (xxxii)
- (2) For the purposes of this Act, a board, council, committee, commission or other body—
- (a) established or constituted in terms of legislation; or
 - (b) wholly or partly constituted by appointment made by the President, the Deputy President, a Minister, the Premier of a province, a member of the Executive Council of a province or of the Municipal Council of a municipality, a governmental body, or more than one of those authorities, to manage or administer any activity of, to exercise any power of, to perform any duty of, or to advise or assist, a body contemplated in paragraph (a) or (b) of the definition of “governmental body” in subsection (1) is regarded as being part of that body.
- (3) For the purposes of this Act, the Human Rights Commission may, as prescribed, determine that a governmental body is to be regarded as being part of another governmental body.

Application of Act

2. This Act applies despite the provisions of any other legislation.

Objects of Act

3. (1) The objects of this Act are—

- (a) to give effect to the constitutional right of access to any information held by the state by providing public access, as swiftly, inexpensively and effortlessly as reasonably possible, to that information without jeopardising good governance, privacy and commercial confidentiality;
 - (b) to require governmental bodies to make information available that will assist the public in understanding the powers, duties and operation of governmental bodies; 5
 - (c) to provide persons with access to their personal information held by private bodies;
 - (d) to provide for the correction of inaccurate personal information held by governmental or private bodies; 10
 - (e) to regulate the use and disclosure of personal information held by governmental or private bodies;
 - (f) to protect persons disclosing evidence of contraventions of the law, maladministration or corruption in governmental bodies; and 15
 - (g) generally, to promote transparency and accountability of all organs of state by providing the public with timely, accessible and accurate information and by empowering the public to effectively scrutinise, and participate in, governmental decision making that affect them.
- (2) When interpreting a provision of this Act, every court must prefer any reasonable interpretation of the provision that is consistent with the objects of this Act over any alternative interpretation that is inconsistent with those objects. 20

Designation of information officers, and delegation of powers by information officer and head of governmental body

4. (1) For the purposes of this Act, each governmental body must, subject to legislation governing the employment of personnel of the governmental body concerned, designate— 25
- (a) a person as the information officer of the body; and
 - (b) such number of persons as deputy information officers as are necessary.
- (2) The information officer of a governmental body has direction and control over every deputy information officer of that body. 30
- (3) The information officer of a governmental body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that governmental body.
- (4) The head of a governmental body may delegate a power or duty conferred or imposed on the head by this Act to any official of that body who is— 35
- (a) not the information officer or a deputy information officer of that body; and
 - (b) more senior than that information officer.
- (5) Any power or duty delegated in terms of subsection (3) or (4) must be exercised or performed subject to such conditions as the person who made the delegation 40 considers necessary.
- (6) Any delegation in terms of subsection (3) or (4)—
- (a) must be in writing;
 - (b) does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself; 45
 - (c) may at any time be withdrawn or amended in writing by that person.
- (7) Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegation in terms of subsection (3) or (4) is not affected by any subsequent withdrawal or amendment of that decision.

PART 2

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**GUIDE ON ACT AND MANUALS ABOUT FUNCTIONS OF
GOVERNMENTAL BODIES**

Guide on how to use Act

5. (1) The Human Rights Commission must, within six months after the commence-

ment of this section, publish in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.

- (2) The guide must, without limiting the generality of subsection (1), include a description of— 5
- (a) the objects of this Act;
 - (b) the postal and street address, phone and fax number and, if available, electronic mail address of—
 - (i) the information officer of every governmental body; and
 - (ii) every deputy information officer of every governmental body appointed 10 in terms of section 4(1)(b);
 - (c) the manner and form in which a request for—
 - (i) access to a record of a governmental body;
 - (ii) access to a record of a private body containing personal information; and
 - (iii) correction of personal information held by a private body and a 15 governmental body, contemplated in sections 9, 50, 51 and 52 must be made;
 - (d) the assistance available from the information officer of a governmental body and the Human Rights Commission in terms of this Act;
 - (e) the manner of lodging— 20
 - (i) an internal appeal with the head of a governmental body; and
 - (ii) an application with a High Court;
 - (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act, except the remedies referred to 25 in paragraph (e);
 - (g) the manual to be published by every governmental body in terms of section 6, the information contained therein and how to obtain access to the manual; and
 - (h) the categories of records open to the public in terms of legislation as contemplated in section 43 and how to obtain access to those records.
- (3) The Human Rights Commission must, if necessary, update and publish the guide 30 at intervals of not more than one year.
- (4) The guide must—
- (a) if reasonably possible, be made available on the Internet by the Human Rights Commission; and
 - (b) otherwise be made available as prescribed. 35

Manual on functions of, and index of records held by, governmental body

6. (1) This section does not apply to a governmental body which is a public enterprise that operates a system of financial administration separate from the national, provincial and local spheres of government.

- (2) Within 12 months after the commencement of this section or the coming into 40 existence of a governmental body, the head of the governmental body concerned must publish in at least two official languages a manual containing—
- (a) a description of its structure and functions;
 - (b) the postal and street address, phone and fax number and, if available, 45 electronic mail address of the information officer of the body and of every deputy information officer of the body appointed in terms of section 4(1)(b);
 - (c) a description of the guide referred to in section 5 and how to obtain access to it;
 - (d) in sufficient detail to facilitate a request for access to, and for correction of 50 personal information in, a record of the body, a description of—
 - (i) the subjects on which the body holds records and the categories of records held on each subject;
 - (ii) every personal information bank held by the body, including, in respect of each bank—
 - (aa) the identification of the bank and a description of the categories of 55 persons to whom or which the bank relates;

- (bb) a statement of the purposes for which the information in the bank was obtained or the bank was compiled and a statement of the purposes consistent with those purposes for which the information in the bank is used or disclosed; and
 - (cc) a statement of the standards of retention and disposal applied to information in the bank as contemplated in section 62(1) and (3); 5
 - (e) a description of the categories of records of the body open to the public in terms of legislation as contemplated in section 43 and how to obtain access to those records;
 - (f) a description of the duty of the head of the body to disclose in terms of section 8 records revealing a serious public safety or environmental risk; 10
 - (g) a description of the services available to members of the public from the body and how to gain access to those services;
 - (h) a description of any arrangement or provision for a person (other than a governmental body) by consultation, making representations or otherwise, to participate in or influence— 15
 - (i) the formulation of policy; or
 - (ii) the exercise of powers or performance of duties, by the body;
 - (i) a description of all remedies available in respect of an act or a failure to act by the body; 20
 - (j) a description of all remedies (including the procedure contemplated in section 63) available to a member of the public or an official of the body who wishes to report or otherwise remedy an impropriety contemplated in section 63 and the protection for an official of the body against reprisals provided for in section 65; 25
 - (k) such other information as may be prescribed.
- (3) A governmental body must, if necessary, update and publish its manual referred to in subsection (2) at intervals of not more than one year.
- (4) Each manual must— 30
- (a) if reasonably possible, be made available on the Internet by the head of the governmental body concerned; and
 - (b) otherwise be made available as prescribed.
- (5)(a) If the functions of two or more governmental bodies are closely connected, the Human Rights Commission may on request or of its own accord determine that the two or more bodies publish one manual only. 35
- (b) The cost of that publication must be shared between the relevant bodies as determined by that Commission.
- (6) The Human Rights Commission may on request or of its own accord by notice in the *Gazette* exempt any category of governmental bodies from any provision of this section for such period as it thinks fit. 40

Information in telephone directory

7. (1) The Director-General of the national department responsible for communications must at that department's cost ensure the publication of the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of every governmental body in every telephone directory issued for general use by the public. 45
- (2) The information contemplated in subsection (1) must be published in the first telephone directory to be issued after the expiry of a period of six months after the commencement of this section and thereafter in every telephone directory that is issued. 50

Announcement of public safety or environmental risk

8. (1) If there are reasonable grounds for believing that—
- (a) a record of a governmental body reveals a serious public safety or environmental risk; and
 - (b) it is in the public interest to disclose the record to the public or persons affected, 55

the head of the body must, subject to this section, as soon as reasonably possible, so disclose the record.

(2) If the record referred to in subsection (1) contains information contemplated in section 29(1) or 31(1) (in this section referred to as “third person information”), the head of the governmental body concerned must, before disclosing the record, inform by the fastest means reasonably possible, the person to whom or which the information relates (in this section referred to as the “third person”) of the intended disclosure, unless all necessary steps to locate the third person within a reasonable period have been unsuccessful.

(3) When informing a third person in terms of subsection (2), the head of the governmental body concerned must—

- (a) state that he or she intends disclosing a record that contains third person information and describe that information; and
- (b) inform the third person that he or she may, within the period referred to in subsection (4) after he or she is informed, make written or oral representations to the head of the body why the third person information should not be disclosed.

(4) A third person informed in terms of subsection (2) of an intended disclosure may, within such reasonable period as the head of the relevant governmental body determines, make written or oral representations to that head why the third person information should not be disclosed.

(5)(a) The head of the governmental body concerned must—

- (i) after due regard to any representations made by a third person in terms of subsection (4) and the grounds for disclosure contemplated in subsection (1)(a) and (b), decide whether the third person information should be disclosed or not; and
- (ii) notify the third person informed in terms of subsection (2) and a third person not located as contemplated in that subsection, but that can be located by taking all necessary steps before the decision is taken, of the decision.

(b) If a third person cannot be located as contemplated in subsection (2), any decision whether to disclose the third person information must be made with due regard to the fact that the third person did not have the opportunity to make representations why the information should not be disclosed.

(6) If the head of a governmental body decides in terms of subsection (5) to disclose the third person information, the notice in terms of that subsection must state—

- (a) the findings on all material questions of fact, referring to the material on which those findings were based;
- (b) the reasons for the decision in such manner as to enable the third person—
 - (i) to understand the justification for the decision of the head of the body; and
 - (ii) to make an informed decision about whether to lodge an application with a High Court or to utilise any other remedy in law available to the third person;
- (c) that the third person may lodge an application with a High Court against the decision of the head of that body within 10 working days after notice is given, and the procedure for lodging that application; and
- (d) that the third person information will be disclosed after the expiry of 10 working days after notice is given, unless such an application is lodged within that period.

(7) If the head of a governmental body decides in terms of subsection (5) to disclose the third person information, the head must disclose that information after the expiry of 10 working days after notice is given in terms of that subsection, unless an application with a High Court is lodged against the decision within that period or an extended period granted in terms of section 73(3).

PART 3

ACCESS TO RECORDS OF GOVERNMENTAL BODIES

CHAPTER 1

RIGHT AND MANNER OF ACCESS

Right of access to records of governmental bodies 5

9. Any person must, on request, but subject to this Act, be given access to any record of a governmental body.

Use of Act for criminal or civil discovery of governmental bodies' records excluded

10. No request for access to a record of a governmental body may be made in terms of this Act for the purpose of criminal or civil discovery provided for in any other law. 10

Right of disclosure of record to which access is given

11. Subject to the common law, any person, whether or not he or she is the relevant requester, may publish, broadcast or otherwise disclose information contained in a record of a governmental body to which access is given in terms of this Act.

Access to records in terms of other law 15

12. Nothing in this Act, except section 56, prevents a governmental body from giving access to a record of that body in accordance with any other law.

Form of requests

13. (1) A request for access must be made in the prescribed form to the information officer of the governmental body concerned at his or her address or fax number or electronic mail address. 20

(2) The form for a request of access prescribed for the purposes of subsection (1) must at least require from the requester concerned—

- (a) to provide sufficient particulars to enable an official of the governmental body concerned to identify the record or records requested; 25
- (b) to indicate which applicable form of access referred to in section 25(2) is required;
- (c) to state whether the record concerned is preferred in a particular language;
- (d) to state whether the requester is a personal, non-commercial or commercial requester and, in the case of a commercial requester, to include the request fee; 30
- (e) to specify a postal address or fax number and, if the request includes an urgent request application, a phone number, for the requester in the Republic;
- (f) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and 35
- (g) in the case of a request for access to a record containing personal information, to state the capacity contemplated in subsection (5) in which the requester is making the request and to submit—
 - (i) the requester's identity document or a certified copy thereof or any other reasonable proof of the requester's identity; or 40
 - (ii) if the requester is not the person to whom or which the personal information relates, reasonable proof of the capacity in which the requester is making the request.

(3) If a requester can, according to the purposes for which access is sought, be classified as a personal, non-commercial and commercial requester or as any two of those requesters, that requester is regarded, for the purposes of this Act, to be that type of requester who would, upon the request for access being granted, be liable to pay the higher or highest access fee in respect of the request. 5

(4)(a) An individual who because of illiteracy, poor literacy or a physical disability is unable to make a request for access to a record of a governmental body in accordance with subsection (1), may make that request orally.

(b) The information officer of that body must reduce that oral request to writing in the prescribed form and provide a copy thereof to the requester. 10

(5) A request for access to a record containing personal information may be made—

(a) by the person to whom or which the personal information relates or that person's authorised representative;

(b) if the individual contemplated in paragraph (a) is—

(i) under the age of 16 years, by a person having parental responsibility for the individual; 15

(ii) incapable of managing his or her own affairs, by a person appointed by the court to manage those affairs; or

(iii) deceased, by the executor of his or her estate.

Duty to assist requesters

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14. (1) If a requester informs the information officer of a governmental body that he or she wishes to make a request for access to a record of that or another governmental body, the information officer must render such assistance, free of charge, as is necessary to enable that requester to comply with section 13(1).

(2) If a requester has made a request for access that does not comply with section 13(1), the information officer concerned may not refuse the request because of that non-compliance unless the information officer has— 25

(a) notified that requester of an intention to refuse the request and stated in the notice—

(i) the reasons for the contemplated refusal; and 30

(ii) that the information officer or another official identified by the information officer would assist that requester in order to make the request in a form that would remove the grounds for refusal;

(b) given the requester a reasonable opportunity to seek such assistance;

(c) as far as reasonably possible, furnished the requester with any information (including information about the records, other than information on the basis of which a request for access is required or permitted by this Act to be refused, held by the body which are relevant to the request) that would assist the making of the request in that form; and 35

(d) given the requester a reasonable opportunity to confirm the request or alter it to comply with section 13(1). 40

(3) When computing any period referred to in section 19(1) or 20(2) or (3), the period commencing on the date on which notice is given in terms of subsection (2) and ending on the date on which the person confirms or alters the request for access concerned must be disregarded. 45

(4) If it is apparent on receipt of a request for access that it should have been made to another governmental body, the information officer of the governmental body concerned must—

(a) render such assistance as is necessary to enable the person to make the request, to the information officer of the appropriate governmental body; or 50

(b) transfer the request in accordance with section 15 to the last-mentioned information officer,

whichever will result in the request being dealt with earlier.

Transfer of requests

- 15.** (1) If a request for access is made to the information officer of a governmental body in respect of which—
- (a) the record is not in the possession or under the control of that body but is in the possession of another governmental body; 5
 - (b) the record's subject matter is more closely connected with the functions of another governmental body than those of the governmental body of the information officer to whom the request is made; or
 - (c) the record contains commercial information contemplated in section 38(2) in which any other governmental body has a greater commercial interest, 10
- the information officer to whom the request is made must as soon as reasonably possible, but in any event within 14 days after the request is received—
- (i) transfer the request to the information officer of the other governmental body or, if there is in the case of paragraph (c) more than one other governmental body having a commercial interest, the other governmental body with the greatest commercial interest; and 15
 - (ii) if the governmental body of the information officer to whom the request is made is in possession of the record and considers it helpful to do so to enable the information officer of the other governmental body to deal with the request, send the record or a copy of the record to that information officer. 20
- (2) If a request for access is made to the information officer of a governmental body in respect of which—
- (a) the record is not in the possession or under the control of the governmental body of that information officer and the information officer does not know which governmental body has possession or control of the record; 25
 - (b) the record's subject matter is not closely connected to the functions of the governmental body of that information officer and the information officer does not know whether the record is more closely connected with the functions of another governmental body than those of the governmental body of the information officer to whom the request is made; and 30
 - (c) the record—
 - (i) was created by or for another governmental body; or
 - (ii) was not so created by or for any governmental body, but was received first by another governmental body,
- the information officer to whom the request is made, must as soon as reasonably possible, but in any event within 14 days after the request is received, transfer the request to the information officer of the governmental body by or for which the record was created or which received it first, as the case may be. 35
- (3) If a request for access which is to be transferred includes an urgent request application, the request must be so transferred immediately or, if that is not reasonably possible, as soon as reasonably possible, but in any event, within five working days after it is received. 40
- (4) Subject to subsection (5), the information officer to whom a request for access is transferred, must give priority to that request in relation to other requests as if it were received by him or her on the date it was received by the information officer who transferred the request. 45
- (5) If a request for access is transferred, any period referred to in section 19(1) or 20(2) or (3) must be computed from the date the request is received by the information officer to whom the request is transferred.
- (6) Upon the transfer of a request for access, the information officer making the transfer must immediately notify the requester of— 50
- (a) the transfer;
 - (b) the reasons for the transfer; and
 - (c) the period within which the request must be dealt with.

Preservation of records until final decision on request

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16. If the information officer of a governmental body has received a request for access to a record of the body, the head of the body must take the steps that are reasonably necessary to preserve the record, without deleting any information contained in it, until

the information officer has notified the requester concerned of his or her decision in terms of section 19 and—

- (a) the periods for lodging an internal appeal with that head, an application with a High Court or an appeal against a decision of that Court have expired; or
- (b) that internal appeal, application or appeal against a decision of that Court or other legal proceedings in connection with the request has been finally determined,

whichever is the later.

Payment of request fee

17. (1) A commercial requester must, when making his or her request for access, pay the prescribed request fee. 10

(2) If—

- (a) there are reasonable grounds for believing that a requester is a commercial requester; and
- (b) that requester has not paid the prescribed request fee,

the information officer of the governmental body concerned must by notice require the requester to pay that fee. 15

(3) That notice must state—

- (a) that the requester may lodge an internal appeal with the head of the body against the payment of the fee; and
- (b) the procedure (including the period) for lodging the internal appeal.

(4) If the prescribed request fee is payable in respect of a request for access, the decision on the request in terms of section 19 may be deferred until the fee is paid. 20

Payment of deposit

18. (1) If— 25

- (a) the search for a record of a governmental body in respect of which a request for access by a non-commercial or commercial requester has been made; and
- (b) the preparation of the record for disclosure (including any arrangements contemplated in section 25(2)(a) and (b)(i) and (ii)(aa)),

would, in the opinion of the information officer of the body, require more than the hours prescribed for this purpose for non-commercial or commercial requesters, as the case may be, the information officer must by notice require the 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. 30

(2) No deposit is payable in respect of a request for access by— 35

- (a) a personal requester; or
- (b) a member of Parliament, a provincial legislature or a municipal council in connection with the member's official duties.

(3) The notice referred to in subsection (1) must state—

- (a) the amount of the deposit; and
- (b) that the requester may lodge an internal appeal with the head of the governmental body concerned against the payment of a deposit, and the procedure (including the period) for lodging the internal appeal.

(4) If a deposit is payable in respect of a request for access, the decision on the request in terms of section 19 may be deferred until the deposit is paid. 45

(5) If a deposit has been paid in respect of a request for access which is refused, the information officer concerned must repay the deposit to the requester.

Decision on request and notice thereof

19. (1) The information officer to whom a request for access is made or transferred, must, subject to sections 20 and 21 and Chapter 3 of this Part, as soon as reasonably possible, but in any event, within 30 days, after the request is received or transferred— 50

- (a) decide in accordance with this Act whether to grant the request; and

- (b) notify the requester of the decision and, if the requester stated as contemplated in section 13(2)(f) that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.
- (2) If the request for access is granted, the notice in terms of subsection (1)(b) must state— 5
- (a) the access fee (if any) to be paid upon access;
 - (b) the form in which access will be given; and
 - (c) that the requester may lodge an internal appeal with the head of the governmental body concerned against the access fee to be paid or the form of access granted, and the procedure (including the period) for lodging the internal appeal. 10
- (3) If the request for access is refused, the notice in terms of subsection (1)(b) must state—
- (a) the findings on all material questions of fact, referring to the material on which those findings were based; 15
 - (b) the reasons for the refusal (including the provisions of this Act relied upon to justify the refusal) in such manner as to enable the requester—
 - (i) to understand the justification for the refusal; and
 - (ii) to make an informed decision about whether to lodge an internal appeal with the head of the governmental body concerned or to utilise any other remedy in law available to the requester; and 20
 - (c) that the requester may lodge an internal appeal with the head of the governmental body against the refusal of the request, and the procedure (including the period) for lodging the internal appeal. 20

Urgent requests 25

- 20.** (1) A requester who wishes to obtain access to a record of a governmental body urgently must include an application to that effect in the request for access, and give reasons for the urgency.
- (2) If a request for access includes an urgent request application, the information officer concerned must, subject to Chapter 3 of this Part, immediately or, if that is not reasonably possible, as soon as reasonably possible, but in any event within five working days, after the request for access has been received or transferred, decide on the request and give notice of the decision in accordance with section 19, unless there are reasonable grounds for believing that— 30
- (a) the nature of the reasons for the urgency furnished by the requester is such that the requester will suffer no prejudice if the request is decided upon within the applicable period contemplated in section 19(1); or 35
 - (b) it is impractical to decide on the request within five working days after the request has been received or transferred.
- (3) If the information officer refuses an urgent request application on grounds referred to in subsection (2)(a) or (b), he or she must immediately or, if that is not reasonably possible, as soon as reasonably possible, but in any event, within five working days, after the request for access has been received or transferred, notify the requester of the refusal. 40
- (4) The notice in terms of subsection (3) must state— 45
- (a) the findings on all material questions of fact, referring to the material on which those findings were based;
 - (b) the reasons for the refusal (including the provisions of this section relied upon to justify the refusal) in such manner as to enable the requester—
 - (i) to understand the justification for the refusal; and 50
 - (ii) to make an informed decision about whether to lodge an internal appeal with the head of the governmental body concerned or an application with a High Court or to utilise any other remedy in law available to the requester; and
 - (c) that the requester may lodge an internal appeal with the head of the 55

governmental body, or an application with a High Court, against the refusal of that urgent request application, and the procedure (including the periods) for lodging the internal appeal and the application with a High Court.

(5) If the notice in terms of subsection (2) or (3) of a decision is not given by fax, the requester must be informed by phone of the decision.

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Extension of period to deal with request

21. (1) Subject to section 20, the information officer to whom a request for access has been made or transferred, may extend the period of 30 days referred to in section 19(1) (in this section referred to as the “original period”) once for a further period of not more than 30 days, if—

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(a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the governmental body concerned;

(b) the request requires a search for records in, or collection thereof from, an office of the governmental body not situated in the same town or city as the office of the information officer that cannot reasonably be completed within the original period;

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(c) consultation among divisions of the governmental body or with another governmental body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period; or

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(d) more than one of the circumstances contemplated in paragraphs (a), (b) and (c) exist in respect of the request making compliance with the original period not reasonably possible.

(2) If a period is extended in terms of subsection (1), the information officer must, as soon as reasonably possible, but in any event, within 30 days, after the request is received or transferred, notify the requester of that extension.

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(3) The notice in terms of subsection (2) must state—

(a) the period of the extension;

(b) the reasons for the extension (including the provisions of this Act relied upon to justify the refusal) in such manner as to enable the requester—

30

(i) to understand the justification for the extension; and

(ii) to make an informed decision about whether to lodge an internal appeal with the head of the governmental body concerned or to utilise any other remedy in law available to the requester; and

(c) that the requester may lodge an internal appeal with the head of the governmental body against the extension, and the procedure (including the period) for lodging the internal appeal.

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Deemed refusal of request

22. If an information officer fails to give his or her decision on a request for access within the period contemplated in section 19(1), the information officer is, for the purposes of this Act, regarded to have refused the request.

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Severability

23. (1) If a request for access to a record of a governmental body containing information which is required by section 29 or 31, or permitted by section 30, 32, 33, 34, 36, 37, 38, 39 or 42, to be refused, is made, every part of the record which—

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(a) does not contain; and

(b) can reasonably be severed from any part that contains,

any such information must, despite any other provision of this Act, be disclosed.

(2) If a request for access to—

(a) a part of a record is granted; and

50

(b) the other part of the record is refused,

as contemplated in subsection (1), the provisions of section 19(2), apply to paragraph (a) of this section and the provisions of section 19(3) to paragraph (b) of this section.

Access fees

24. (1) A requester whose request for access to a record of a governmental body has been granted may be given access to the record only if he or she has paid the applicable prescribed access fee (if any). 5

(2) Access fees prescribed for the purposes of subsection (1) must provide for a reasonable access fee for—

(a) the cost of making a copy of a record, or of a transcription of the content of a record, as contemplated in section 25(2)(a) and (b)(i), (ii)(bb), (iii), (iv) and (v) and, if applicable, the postal fee (in this section referred to as an “access fee for reproduction”); and 10

(b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 25(2)(a) and (b)(i) and (ii)(aa)) the record for disclosure to the requester (in this section referred to as an “access fee for search and preparation”). 15

(3) A personal requester must pay an access fee for reproduction only.

(4) A non-commercial requester must pay an access fee for reproduction and for search and preparation for any time reasonably required in excess of the prescribed hours to search for and prepare (including making any arrangements contemplated in section 25(2)(a) and (b)(i) and (ii)(aa)) the record for disclosure. 20

(5) A commercial requester must pay an access fee for reproduction and for search and preparation.

(6) A member of Parliament, a provincial legislature or a municipal council who makes a request for access in connection with his or her work as such member does not have to pay any access fee in respect of the request. 25

Access and forms of access

25. (1) If a requester has been given notice in terms of section 19(1) that his or her request for access has been granted, that requester must, subject to subsections (3), (9) and (10)— 30

(a) if an access fee is payable, upon payment of that fee; or

(b) if no access fee is payable, immediately,

be given access in the applicable forms referred to in subsection (2) as the requester indicated in the request, and in the language contemplated in section 26.

(2) The forms of access to a record in respect of which a request of access has been granted, are the following: 35

(a) If the record is in written or printed form, by supplying a copy of the record or by making arrangements for the inspection of the record;

(b) if the record is not in written or printed form—

(i) in the case of a record from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily available to the governmental body concerned, by making arrangements to view those images or be supplied with copies or transcriptions of them; 40

(ii) in the case of a record in which words or information are recorded in such manner that they are capable of being reproduced in the form of sound by equipment which is ordinarily available to the governmental body concerned— 45

(aa) by making arrangements to hear those sounds; or

(bb) if the governmental body is capable of producing a written or printed transcription of those sounds by the use of equipment which is ordinarily available to it, by supplying such a transcription; 50

(iii) in the case of a record which is held on computer, or in electronic or machine-readable form, and from which the governmental body concerned is capable of producing a printed copy of— 55

(aa) the record, or a part of it; or

- (bb) information derived from the record,
by using computer equipment and expertise ordinarily available to the
governmental body, by supplying such a copy;
- (iv) in the case of a record available or capable of being made available in
computer readable form, by supplying a copy in that form; 5
- (v) in any other case, by supplying a copy of the record.
- (3) If a requester has requested access in a particular form, access must, subject to
section 23, be given in that form, unless to do so would—
- (a) interfere unreasonably with the effective administration of the governmental
body concerned; 10
- (b) be detrimental to the preservation of the record; or
- (c) amount to an infringement of copyright not owned by the state or the
governmental body concerned.
- (4) If a requester has requested access in a particular form and for a reason referred to
in subsection (3) access in that form is refused but access is given in another form, the 15
fee charged may not exceed what would have been charged if that requester had been
given access in the form requested.
- (5) If a requester with a visual or auditory disability is prevented by that disability
from reading, viewing or listening to the record concerned in the form in which it is held 20
by the governmental body concerned, the information officer of the body must, if that
requester so requests, take reasonable steps to make the record available in a form in
which it is capable of being read, viewed or heard by the requester.
- (6) If a record is made available in accordance with subsection (5), the requester may
not be required to pay an access fee which is more than the fee which he or she would 25
have been required to pay but for the disability.
- (7) If a record is made available in terms of this section to a requester for inspection,
viewing or hearing, the requester may make copies of or transcribe the record using the
requester's equipment, unless to do so would—
- (a) interfere unreasonably with the effective administration of the governmental
body concerned; 30
- (b) be detrimental to the preservation of the record; or
- (c) amount to an infringement of copyright not owned by the state or the
governmental body concerned.
- (8) If the supply to a requester of a copy of a record is required by this section, the
copy must, if so requested, be supplied by posting it to him or her. 35
- (9) If an internal appeal with the head of a governmental body or an application with
a High Court is lodged against the granting of a request for access to a record, access to
the record may be given only when the decision to grant the request is finally confirmed.
- (10) If a request for access to a record is granted, but a request for correction is
pending in respect thereof or a part thereof, access to the record or part thereof, as the 40
case may be, may be given only when the decision on the request for correction has been
finally determined.

Language of access

26. A requester whose request for access to a record of a governmental body has been
granted must, if the record— 45
- (a) exists in the language that the requester prefers, be given access in that
language; or
- (b) does not exist in the language so preferred or the requester has no preference,
be given access in any language the record exists in.

Reports to Human Rights Commission 50

27. The head of each governmental body must annually submit to the Human Rights
Commission a report stating in relation to the governmental body—
- (a) the number of requests for access received;

- (b) the number of requests for access granted in full;
- (c) the number of requests for access granted in terms of section 44;
- (d) the number of requests for access refused in full and refused partially and the number of times each provision of this Act relied on to refuse access was invoked to justify refusal in full and partial refusal; 5
- (e) the number of requests for correction and the number of cases in which a correction was made;
- (f) the number of cases in which the periods stipulated in sections 19(1) and 52(7), respectively, were extended in terms of section 21(1) and that section, read with section 52(6), respectively; 10
- (g) the number of urgent request applications and urgent appeal applications made and the number of cases in which those applications were granted;
- (h) the number of internal appeals lodged with the head of the body and the number of cases in which, as a result of an internal appeal, access was given to a record or a part thereof or a correction of inaccurate personal information was made; 15
- (i) the number of internal appeals which were lodged on the ground that—
 - (i) a request for access was regarded to have been refused in terms of section 22; and
 - (ii) a request for correction was regarded to have been refused in terms of section 52(8); 20
- (j) the number of applications to a High Court which were lodged on the ground that an internal appeal was regarded to have been dismissed in terms of section 70(7); and
- (k) such other matters as may be prescribed. 25

CHAPTER 2

FOUNDATIONS FOR REFUSAL OF ACCESS TO RECORDS

Mandatory and discretionary grounds for refusal

- 28. The information officer of a governmental body— 30
 - (a) must refuse a request for access to a record contemplated in section 29(1) or 31(1), unless the provisions of section 44(1) apply;
 - (b) may refuse a request for access to a record contemplated in—
 - (i) section 30(2), 33(a), 34(1)(c)(ii), (iii) or (vi) or (d) or 35, unless the provisions of section 44(1) apply; 35
 - (ii) section 32(1) or (3), 33(b), 34(1)(a), (b) or (c)(i), (iv) or (v), 36, 37(1), 38(1) or (2) or 39(1), unless the provisions of section 44(2) apply;
 - (iii) section 40, 41(1), 42(1) or 43.

Mandatory protection of privacy

- 29. (1) Subject to subsection (2), the information officer of a governmental body must refuse a request for access to a record of the body if its disclosure would constitute an invasion of the privacy of an identifiable person (including an individual who died less than 20 years before the request is received) other than the requester concerned or other person contemplated in section 13(5). 40
- (2) Subsection (1) does not apply to a record in so far as it consists of information— 45
 - (a) already publicly available;
 - (b) about a person that has, in accordance with section 46(b), consented to its disclosure to the requester concerned;
 - (c) about an individual's physical or mental health, or well-being, who is—
 - (i) under the age of 18 years; 50
 - (ii) under the care of the requester; and
 - (iii) is incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;
 - (d) about an individual who is deceased and the requester is, or is requesting with the written consent of, the individual's next of kin; or 55
 - (e) about an individual who is or was an official of a governmental body and

which relates to the position or functions of the individual, including, but not limited to—

- (i) the fact that the individual is or was an official of that governmental body;
- (ii) the title, work address, work phone number of the individual and other similar particulars of the individual; 5
- (iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual;
- (iv) the name of the individual on a record prepared by the individual in the course of employment. 10

(3) In subsection (2)(d) “individual’s next of kin” means—

- (a) an individual to whom the individual was married, with whom the individual lived as if they were married or with whom the individual cohabited, immediately before the individual’s death;
- (b) a parent, child, brother or sister of the individual; or 15
- (c) if—
 - (i) there is no next of kin referred to in paragraphs (a) and (b); or
 - (ii) the requester concerned took all reasonable steps to locate such next of kin, but was unsuccessful,
 an individual who is related to the individual in the second degree of affinity or consanguinity. 20

Health of requester

30. (1) In this section “health practitioner” means an individual who carries on, and is registered in terms of legislation to carry on, an occupation which involves the provision of care or treatment for the physical or mental health or for the well-being of individuals. 25

(2) The information officer of a governmental body may refuse a request for access to a record of the body about the requester’s physical or mental health, or well-being, which was provided by a health practitioner in his or her capacity as such if—

- (a) the disclosure of the record to that requester would be likely to cause serious harm to his or her physical or mental health, or well-being; and 30
- (b) the information officer has disclosed the record to, and consulted with, a health practitioner who—
 - (i) carries on an occupation of the same kind as the health practitioner who provided the record; and 35
 - (ii) has been nominated by the requester or his or her authorised representative; and
- (c) that health practitioner so consulted is of the opinion that the serious harm contemplated in paragraph (a) is likely to result.

(3) If the requester is— 40

- (a) under the age of 16 years, a person having parental responsibilities for the requester must make the nomination contemplated in subsection (2)(b)(ii); or
- (b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(4) If— 45

- (a) access has been given to a record of a governmental body containing information about the requester’s physical or mental health, or well-being, which was provided by, or originated from, a health practitioner;
- (b) that access was given without that health practitioner’s knowledge; and
- (c) that health practitioner can be located by taking all necessary steps, 50

the information officer concerned must notify that health practitioner that access has been so given.

Mandatory protection of third party commercial information

31. (1) Subject to subsection (2), the information officer of a governmental body must refuse a request for access to a record of the body if the record contains— 55

- (a) trade secrets of a third party;
 - (b) financial, commercial, scientific or technical information, other than trade secrets, supplied in confidence by a third party and treated consistently as confidential by that third party, the disclosure of which could reasonably be expected to cause harm to the commercial or financial interests of that third party; or 5
 - (c) information supplied by a third party the disclosure of which would be likely to put that third party at a disadvantage in contractual or other negotiations or cause it prejudice in commercial competition.
- (2) Subsection (1) does not apply to a record in so far as it consists of information— 10
- (a) already publicly available;
 - (b) about a third party who has, in accordance with section 46(b), consented to its disclosure to the requester concerned;
 - (c) about the safety of goods or services supplied by a third party, and the disclosure of the information would be likely to result in better informed choices by persons seeking to acquire those goods or services; or 15
 - (d) supplied to, or about the results of any test or other investigation carried out by, a governmental body regarding a public safety or environmental risk.
- (3) If a request for access to a record contemplated in subsection (2)(d) is granted, the information officer must at the same time as access to the record is given, direct the requester to the source of the original test or other investigation to enable the requester to obtain an explanation of the methods used in conducting the test or other investigation. 20

Records supplied in confidence

32. (1) Subject to subsection (2), the information officer of a governmental body may refuse a request for access to a record of that body containing information supplied in confidence to any governmental body by a third party if— 25
- (a) the disclosure of the record would be likely to prejudice the future supply of similar records, or records from the same source;
 - (b) the last-mentioned governmental body has no right to demand, or that third party has no obligation to supply, the record; and 30
 - (c) it is in the public interest that similar records, or records from the same source, should continue to be supplied.
- (2) Subsection (1) does not apply to a record— 35
- (a) if it has been supplied to the governmental body concerned for the purpose of—
 - (i) securing some advantage, grant, permit, contract or concession from any governmental body; or
 - (ii) persuading any governmental body not to take any action against the person that supplied the record or on whose or which behalf the record was supplied; 40
 - (b) in so far as it consists of information independently obtained by the body or already publicly available; or
 - (c) if the third party concerned has consented in writing to its disclosure to the requester concerned. 45
- (3) The information officer of a governmental body may refuse a request for access to a record of the body if the record—
- (a) is held by a governmental body for the purpose of enforcing legislation imposing a tax, duty or levy; and
 - (b) was supplied in confidence to a governmental body by a third party or another governmental body. 50

Safety of individuals and security of structures and systems

33. The information officer of a governmental body may refuse a request for access to a record of the body if its disclosure would be likely—
- (a) to endanger the life or physical safety of an individual; or 55

- (b) seriously to endanger the maintenance or enforcement of methods for the security of a particular building, installation or information storage, computer or communication system.

Law enforcement

34. (1) The information officer of a governmental body may refuse a request for access to a record of the body if— 5
- (a) the record contains methods, techniques, procedures or guidelines for—
 - (i) the prevention, detection, suppression or investigation of offences; or
 - (ii) the prosecution of alleged offenders,
 and the disclosure of those methods, techniques, procedures or guidelines would be likely to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence; 10
 - (b) the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the record would be likely— 15
 - (i) to impede that prosecution; or
 - (ii) to result in a miscarriage of justice in that prosecution;
 - (c) the disclosure of the record would be likely—
 - (i) to prejudice the investigation of any offence or possible offence which is about to commence or is in progress or, if it has been suspended or terminated, is likely to be resumed; 20
 - (ii) to reveal, or enable a person to ascertain, the identity of a confidential source of information in respect of a law enforcement matter;
 - (iii) to result in the intimidation or coercion of a witness, or a person who might be or has been called as a witness, in criminal or other proceedings to enforce the law, or to endanger the life or physical safety of that witness or person; 25
 - (iv) to result in the commission of an offence;
 - (v) subject to subsection (2), to facilitate escape from lawful detention; or
 - (vi) to deprive a person of a right to a fair trial or an impartial adjudication; 30
 or
 - (d) the record contains arrangements for the protection of an individual in accordance with a witness protection scheme.
- (2) Subsection (1)(c)(v) does not apply to a record in so far as it consists of information about the general conditions of detention of persons in custody. 35
- (3)(a) If a request for access to a record of a governmental body may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in any provision of subsection (1), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record. 40
- (b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 19(3), must—
- (i) state that fact;
 - (ii) identify the provision of subsection (1) in terms of which access would have been refused if the record had existed; 45
 - (iii) state the findings and the reasons for the refusal, as required by section 19(3)(a) and (b), in so far as they can be given without causing the harm contemplated in any provision of subsection (1); and
 - (iv) state that the requester concerned may lodge an internal appeal with the head of the governmental body concerned against the refusal as required by section 19(3)(c). 50

Privileged from production in legal proceedings

35. The information officer of a governmental body may refuse a request for access to

a record of the body if the record is privileged from production in legal proceedings unless—

- (a) the person entitled to the privilege has waived the privilege; or
- (b) the legal proceedings to which the record relates have been finally determined.

Republic's defence and security, including intelligence matters 5

36. (1) The information officer of a governmental body may refuse a request for access to a record of the body if its disclosure would be likely substantially to harm the defence or security of the Republic by—

- (a) frustrating any measure for the prevention, detection or suppression of—
 - (i) aggression against the Republic; 10
 - (ii) sabotage or terrorism aimed at the people of the Republic or a strategic asset of the Republic, whether inside or outside the Republic;
 - (iii) an activity aimed at changing the constitutional order of the Republic by the use of force or violence; or
 - (iv) a foreign or hostile intelligence operation; 15
- (b) jeopardising the effectiveness of a governmental body, branch of that body or person responsible for the prevention, detection or suppression of an activity contemplated in paragraph (a)(i), (ii), (iii) or (iv) by disclosing its or his or her capabilities, deployment or performance;
- (c) jeopardising the effectiveness of— 20
 - (i) arms; or
 - (ii) other equipment, including, but not limited to, communication or cryptographic systems, used, or intended to be used, or being developed, designed, produced or investigated for preventing, detecting or suppressing an activity contemplated in paragraph (a)(i), (ii), (iii) or (iv) by disclosing their or its capabilities, quantity, deployment or performance; 25
- (d) jeopardising the effectiveness of methods or equipment for collecting, assessing or handling information used for the prevention, detection or suppression of an activity contemplated in paragraph (a)(i), (ii), (iii) or (iv); or 30
- (e) disclosing the identity of a confidential source of information used for the prevention, detection or suppression of an activity contemplated in paragraph (a)(i), (ii), (iii) or (iv).

(2)(a) If a request for access to a record of a governmental body may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in any provision of subsection (1), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record. 35

- (b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 19(3), must— 40
 - (i) state that fact;
 - (ii) identify the provision of subsection (1) in terms of which access would have been refused if the record had existed;
 - (iii) state the findings and the reasons for the refusal, as required by section 19(3)(a) and (b), in so far as they can be given without causing the harm contemplated in any provision of subsection (1); and 45
 - (iv) state that the requester may lodge an internal appeal with the head of the governmental body concerned against the refusal as required by section 19(3)(c).

International relations 50

37. (1) The information officer of a governmental body may refuse a request for access to a record of the body if its disclosure would be—

- (a) in contravention of an obligation imposed on the Republic by international law; or

- (b) subject to subsection (2), likely to cause substantial harm to the capacity of the Republic to maintain or conduct relations in the best interests of the Republic with another state or an international organisation.
- (2) Subsection (1)(b) does not apply to a record if it came into existence more than 20 years before the request. 5

Economic interests of Republic and commercial activities of governmental bodies

38. (1) The information officer of a governmental body may refuse a request for access to a record of the body if its disclosure would be likely substantially to jeopardise the financial welfare of the Republic or any part thereof or the ability of the government to manage the economy of the Republic or any part thereof effectively in the best interests of the Republic by prematurely disclosing— 10
- (a) a contemplated change in, or maintenance of, a policy substantially affecting the currency, coinage, legal tender, exchange rates or foreign investment;
 - (b) a contemplated change in or decision not to change— 15
 - (i) credit or interest rates;
 - (ii) customs or excise duties, taxes or any other source of revenue;
 - (iii) the regulation or supervision of financial institutions;
 - (iv) government borrowing; or
 - (v) the regulation of prices of goods or services, rents or wages, salaries or other incomes; or 20
 - (c) a contemplated—
 - (i) sale or acquisition of immovable or movable property; or
 - (ii) international trade agreement.
- (2) Subject to subsection (3), the information officer of a governmental body may refuse a request for access to a record of the body if the record contains— 25
- (a) trade secrets of the state or a governmental body;
 - (b) financial, commercial, scientific or technical information, other than trade secrets, held by a governmental body for the purpose of conducting a commercial activity which it is authorised by law to conduct and which it does conduct or is about to conduct, the disclosure of which could reasonably be expected to cause harm to the commercial or financial interests of the state or a governmental body; 30
 - (c) information the disclosure of which would be likely to put a governmental body at a disadvantage in contractual or other negotiations or cause it prejudice in commercial competition; 35
 - (d) the results of original research undertaken by an official of a governmental body the disclosure of which could reasonably be expected to deprive that governmental body or official of the benefit of first publication of those results; or
 - (e) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the state or a governmental body, except in so far as it is required to give access to a record to which access is granted in terms of this Act. 40
- (3) Subsection (2) does not apply to a record in so far as it consists of information— 45
- (a) already publicly available;
 - (b) about or owned by a governmental body which has consented in writing to its disclosure to the requester concerned;
 - (c) about the safety of goods or services supplied by a governmental body and the disclosure of the information would be likely to result in better informed choices by persons seeking to acquire those goods or services; or 50
 - (d) supplied to, or about the results of any test or other investigation carried out by, a governmental body regarding a public safety or environmental risk.

(4) If a request for access to a record contemplated in subsection (3)(d) is granted, the information officer must at the same time as access to the record is given, direct the requester to the source of original test or other investigation to enable the requester to obtain an explanation of the methods used in conducting the test or other investigation.

Operations of governmental bodies

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39. (1) Subject to subsections (3) and (4), the information officer of a governmental body may refuse a request for access to a record of the body—

(a) if the record contains an opinion, advice or recommendation obtained or prepared, or an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law and if— 10

(i) the knowledge that disclosure of the record were possible could reasonably be expected to frustrate the deliberative process in a governmental body or between governmental bodies by inhibiting the candid— 15

(aa) communication of that opinion, advice or recommendation; or

(bb) conduct of that consultation, discussion or deliberation; or

(ii) the disclosure of the record would, by premature disclosure of a policy or contemplated policy, be likely substantially to frustrate the success of that policy; 20

(b) if the disclosure of the record would be likely to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by a governmental body;

(c) if the record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise which was— 25

(i) made to the person who supplied the material; and

(ii) to the effect that the material or the identity of the person who supplied it, or both, would be held in confidence; or 30

(d) if the record contains a working draft or note of an official of a governmental body.

(2) In subsection (1)(c) “evaluative material” means an evaluation or opinion prepared—

(a) for the purpose of determining the suitability, eligibility or qualifications of the person to whom or which the evaluation or opinion relates— 35

(i) for employment or for appointment to office;

(ii) for promotion in employment or office or for continuance in employment or office;

(iii) for removal from employment or office; or 40

(iv) for the awarding of a scholarship, award, bursary, honour or similar benefit; or

(b) for the purpose of determining whether any scholarship, award, bursary, honour or similar benefit should be continued, modified, cancelled or renewed. 45

(3) Subsection (1) does not apply to a record in so far as it consists of an account of, or a statement of reasons for, a decision taken in the exercise of a power or performance of a duty conferred or imposed by law.

(4) Subsection (1)(a) does not apply to a record—

(a) if the record came into existence more than 15 years before the request concerned; or 50

(b) in so far as it consists of—

(i) factual material, including, but not limited to, any statistical data;

(ii) the analysis, interpretation or evaluation of, or any projection based on, factual material referred to in subparagraph (i); 55

(iii) a report on the performance or efficiency of a governmental body or any part thereof, or any programme, project or other activity under its supervision;

(iv) a report of a scientific or technical expert; or

(v) the results of, or report on, any test or other investigation regarding a public safety or environmental risk.

(5) If a request for access to a record contemplated in subsection (4)(b)(v) is granted, the information officer must at the same time as access to the record is given, direct the requester to the source of the original test or other investigation to enable the requester to obtain an explanation of the methods used in conducting the test or other investigation. 5

Frivolous or vexatious requests

40. The information officer of a governmental body may refuse a request for access to a record of the body if the request is manifestly frivolous or vexatious. 10

Records that cannot be found or do not exist

41. (1) The information officer of a governmental body may refuse a request for access to a record of the body if—

(a) a thorough search to find the record has been conducted, but it cannot be found; or 15

(b) there are reasonable grounds for believing that the record does not exist.

(2) If an information officer refuses a request for access to a record in terms of subsection (1), he or she must, in the notice referred to in section 19(1)(b), give a full account of all steps taken to find the record or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer. 20

Published records and records to be published

42. (1) Subject to this section, the information officer of a governmental body may refuse a request for access to a record of the body if—

(a) the record is to be published within 60 days after the receipt or transfer of the request or such further period as is reasonably necessary for printing and translating the record for the purpose of publishing it; 25

(b) the record can be copied at a library to which the public has access at a fee no greater than would be charged for access in terms of this Act;

(c) the record is available for purchase by the public in accordance with arrangements made by or on behalf of a governmental body at a fee no greater than would be charged for access in terms of this Act; 30

(d) the publication of the record is required by law, within 90 days after the receipt or transfer of the request; or

(e) the record has been prepared for submission to Parliament unless a period of 90 days after such preparation has expired and the record has not been so submitted. 35

(2) The information officer concerned must, in the notice referred to in section 19(1)(b), in the case of a refusal of a request for access in terms of—

(a) subsection (1)(a) or (d), state the date on which the record concerned is to be published; 40

(b) subsection (1)(b) and if such information is ordinarily available to the governmental body concerned, identify the title and publisher of the record and the library concerned nearest to the requester concerned;

(c) subsection (1)(c) and if such information is ordinarily available to the governmental body concerned, identify the title and publisher of the record and state where it can be purchased; or 45

(d) subsection (1)(e), state the date on which the record is to be submitted to Parliament.

(3) If an information officer is considering to refuse a request for access to a record in terms of subsection (1)(a), (d) or (e), he or she must notify the requester concerned— 50

(a) of such consideration; and

(b) that the requester may, within 30 days after that notice is given, make representations to the information officer why the record is required before publication or submission to Parliament.

(4) If notice is given to a requester in terms of subsection (3), the information officer must, after due consideration of any representations made in response to the notice, grant the request, unless there are reasonable grounds for believing that the requester will suffer no substantial prejudice if access to the record is deferred until the record is published or submitted to Parliament. 5

(5) If the record in respect of which a request for access has been refused in terms of subsection (1)(a) is not published within 60 days after receipt or transfer of the request or such further period as is reasonably necessary for printing and translating the record for the purpose of publishing it, the requester must be given access to the record. 10

Records already open to public

43. The information officer of a governmental body may refuse a request for access to a record of the body if the record is open to public access in accordance with any other legislation, unless the Human Rights Commission determines that the manner in which access may be obtained and the fee payable for access in terms of the other legislation concerned is more onerous than the request fee and access fee payable in terms of this Act. 15

Mandatory disclosure in public interest

44. (1) Despite any other provision of this Act, but subject to Chapter 3 of this Part, the information officer of a governmental body must grant a request for access to a record contemplated in section 29(1), 30(2), 31(1), 33(a), 34(1)(c)(ii), (iii) or (vi) or (d) or 35 if—

- (a) disclosure of the record would reveal evidence of substantial— 25
 - (i) abuse of authority, illegality or neglect in the exercise of a power or performance of a duty of an official of a governmental body;
 - (ii) injustice to a person, including a deceased individual;
 - (iii) danger to the environment or the health or safety of an individual or the public; or 30
 - (iv) unauthorised use of the funds or other assets of a governmental body; and
- (b) giving due weight to the importance of open, accountable and participatory administration, the public interest in the disclosure of the record clearly outweighs the need for non-disclosure contemplated in the provision concerned. 35

(2) Despite any other provision of this Act, but subject to Chapter 3 of this Part, the information officer of a governmental body must grant a request for access to a record contemplated in section 32(1) or (3), 33(b), 34(1)(a), (b), (c)(i), (iv) or (v), 36(1), 37(1), 38(1) or (2) or 39(1), if giving due weight to the importance of open, accountable and participatory administration, the public interest in the disclosure of the record clearly outweighs the need for non-disclosure contemplated in the provision concerned. 40

CHAPTER 3

THIRD PARTY INTERVENTION

Notice to third parties

45. (1) If the information officer of a governmental body is considering a request for access to a record contemplated in section 29(1) or 31(1), the information officer must inform a third party to whom or which the record relates of the request, unless all necessary steps to locate that third party have been unsuccessful.

- (2) The information officer must inform a third party in terms of subsection (1)— 50
 - (a) as soon as reasonably possible, but in any event, within 21 days or, if an urgent request application has been granted, within five working days, after that request is received or transferred; and

- (b) by the fastest means reasonably possible.
- (3) When informing a third party in terms of subsection (1), the information officer must—
- (a) state that he or she is considering a request for access to a record contemplated in section 29(1) or 31(1), as the case may be, and describe the content of the record; 5
 - (b) furnish the name of the requester;
 - (c) in the case of a record contemplated in—
 - (i) section 29(1), describe the provisions of section 29; or 10
 - (ii) section 31(1), describe the provisions of section 31;
 - (d) in any case where the information officer believes that the provisions of section 44(1) might apply, describe those provisions, specify which of the circumstances referred to in section 44(1)(a)(i) to (iv) in the opinion of the information officer might apply and state the reasons why he or she is of the opinion that section 44(1) might apply; and 15
 - (e) state that the third party may, within 21 days or, if an urgent request application has been granted, within 10 working days, after the third party is informed—
 - (i) make written or oral representations to the information officer why the request for access should be refused; or 20
 - (ii) give written consent for the disclosure of the record to the requester.
- (4) If a third party is not informed in writing of a request for access in terms of subsection (1), the information officer must, on request, give a written notice stating the matters referred to in subsection (3) to the third party.

Representations by third parties 25

46. A third party that is informed in terms of section 45(1) of a request for access, may, within 21 days or, if an urgent request application has been granted, within 10 working days after the third party has been informed—

- (a) make written or oral representations to the information officer concerned why the request should be refused; or 30
- (b) give written consent for the disclosure of the record to the requester concerned.

Decision on representations for refusal and notice thereof

47. (1) The information officer of a governmental body must, as soon as reasonably possible, but in any event within 30 days or, if an urgent request application has been granted, within 15 working days, after every third party is informed as required by section 45— 35

- (a) decide, after giving due regard to any representations made by a third party in terms of section 46(a), whether to grant the request for access; and
- (b) notify the third party so informed and a third party not located as contemplated in section 45(1), but that can, after taking all necessary steps, be located before the decision is taken, of the decision. 40

(2) If a third party cannot be located as contemplated in section 45(1), any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 46(a) why the request should be refused. 45

(3) If the request for access is granted, the notice in terms of subsection (1)(b) must state—

- (a) the findings on all material questions of fact, referring to the material on which those findings were based; 50
- (b) the reasons for granting the request (including the provisions of this Act relied upon to justify the granting) in such manner as to enable the third party—
 - (i) to understand the justification for the granting of the request; and
 - (ii) to make an informed decision about whether to lodge an internal appeal

- with the head of the governmental body concerned or to utilise any other remedy in law available to the third party; and
- (c) that the third party may lodge an internal appeal against the decision with the head of the governmental body—
- (i) within 30 days; or 5
 - (ii) if an urgent request application has been granted, within 10 working days,
- after notice is given, and the procedure for lodging the internal appeal; and
- (d) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph (c)(i) or (ii), unless an internal appeal is lodged within that period. 10
- (4) If the information officer of a governmental 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—
- (a) 30 days; or 15
 - (b) if an urgent request application has been granted, 10 working days,
- after notice is given in terms of subsection (1)(b), unless an internal appeal with the head of the governmental body is lodged against the decision within the applicable period contemplated in paragraph (a) or (b) of this subsection.

PART 4

20

ACCESS TO, CORRECTION OF AND CONTROL OVER PERSONAL INFORMATION HELD BY PRIVATE AND GOVERNMENTAL BODIES

Application of Part

- 48.** This Part, except sections 50, 51 and 52, does not apply to personal information—
- (a) already publicly available; 25
 - (b) created or acquired and preserved solely for public reference or exhibition purposes in a library or museum;
 - (c) placed by or on behalf of a person other than a governmental body in—
 - (i) an archives repository established in terms of—
 - (aa) section 11(1) of the National Archives of South Africa Act, 1996 30
(Act No. 43 of 1996); or
 - (bb) an equivalent provision of provincial legislation regarding the custody of the records of governmental bodies in the relevant provincial sphere of government; or
 - (ii) a library or museum controlled by a governmental body; 35
 - (d) about an individual who is or was an official of a governmental body if the information relates to the position or functions of that official, including—
 - (i) the fact that the individual is or was an official of that governmental body;
 - (ii) the title, work address, work phone number and other similar particulars 40
of the individual;
 - (iii) the classification, remuneration and responsibilities of the position held or services performed by the individual; or
 - (iv) the name of the individual on a record prepared by the individual in the 45
course of such employment.

Use of Act for criminal or civil discovery of private bodies' records excluded

49. No request for access to a record of a private body may be made in terms of this Act for the purpose of criminal or civil discovery provided for in any other law.

Access to personal information held by private bodies

50. (1) Subject to section 49 and this section, a person (in this section referred to as “the requester”) must, on request (in this section referred to as “the request”), be given access to any record of a private body containing personal information about that person. 5
- (2) The request must—
- (a) be made orally or in writing to the head of the private body concerned at his or her address, fax number or electronic mail address;
 - (b) provide sufficient particulars to enable the head of the private body to identify the record requested; 10
 - (c) specify a postal address or phone number for the requester in the Republic; and
 - (d) state the capacity contemplated in subsection (3) in which the requester is making the request and include—
 - (i) the requester’s identity document or a certified copy thereof or any other reasonable proof of his or her identity; and 15
 - (ii) if the requester is not the person to whom or which the personal information relates, reasonable proof of the capacity in which the requester is making the request.
- (3) The request may be made— 20
- (a) by the person to whom or which the personal information in the record relates or that person’s authorised representative;
 - (b) if an individual contemplated in paragraph (a) is—
 - (i) under the age of 16 years, by a person having parental responsibility for the individual; 25
 - (ii) incapable of managing his or her affairs, by a person appointed by the court to manage those affairs; or
 - (iii) deceased, by the executor of his or her estate.
- (4) The head of the private body to whom the request is made, must, subject to subsection (6), give access to the record to the person as soon as reasonably possible, but in any event, within 30 days, after the request has been received. 30
- (5) If, in accordance with this section, access is given to a record containing personal information—
- (a) the head of the private body must inform the person concerned that a request for the correction of the information may be made in terms of section 51; and 35
 - (b) the form of access is as the head of the private body determines, provided that a copy of the record must, on request of the requester, be provided at a reasonable fee.
- (6)(a) Subject to this subsection, the provisions requiring or permitting the refusal or granting of a request for access to a record, or part thereof, of a governmental body contained in sections 23(1) and (2), 29, 30(1), (2) and (3), 31(1) and (2), 32, 33, 34 (except subsection (3)(b)(iv)), 35, 36 (except subsection (2)(b)(iv)), 37, 38(1), (2) and (3), 39(1) to (4), 40, 41, 42(1), (2) and (5) and 43 apply, with the changes required by the context, to the request. 40
- (b) Any reference in a provision contemplated in paragraph (a) to— 45
 - (i) the information officer of a governmental body;
 - (ii) a record of a governmental body; and
 - (iii) a notice in terms of section 19,
 must be construed as a reference to the head of a private body, a record of a private body and a notice in terms of paragraph (c) of this subsection, respectively. 50
- (c) If the request is refused in accordance with paragraph (a), the head of the private body must notify the requester of the refusal and the reasons for the refusal as soon as reasonably possible, but in any event, within 30 days, after the request has been received.
- (7) The head of a private body may, subject to the conditions determined by the head, delegate a power conferred or duty imposed on the head by this Part to any employee of the private body. 55

Correction of personal information held by private bodies

51. (1) A record may be corrected in terms of this section by amending, supplementing or, subject to subsection (8), deleting the inaccurate information.
- (2) If a person is given access to a record of a private body in terms of section 50, that person may request the correction of inaccurate personal information about that person in that record (in this section referred as “the request”). 5
- (3) Nothing in this section prevents a private body from correcting personal information in a record of that body in accordance with other law.
- (4) If any other law determines any requirement in respect of the correction of personal information in a record of a private body which is additional to, but consistent with, the provisions of this section, a correction requested in terms of this section must be made in accordance with this section and the requirement of that other law. 10
- (5) The request must—
- (a) be made orally or in writing to the head of the private body concerned at his or her address, fax number or electronic mail address; 15
 - (b) provide sufficient particulars to enable the head of the private body to identify the record which contains the information that the requester regards as inaccurate;
 - (c) specify the respect in which the requester regards the information as inaccurate and provide any information regarding the inaccuracy that is in the possession or under the control of the requester; and 20
 - (d) specify a postal address or fax number for the requester in the Republic.
- (6) The head of a private body to whom the request is made, must, as soon as reasonably possible, but in any event, within 30 days, decide on the request.
- (7) If the head of a private body decides that the information identified in the request is inaccurate, the head must, free of charge and within the period contemplated in subsection (6)— 25
- (a) correct the information and send a copy of the part of the record containing the correction to the requester; and
 - (b) determine, as far as reasonably possible, whether the inaccurate information is in any other record of the private body and, if it is, make the same correction on the other record. 30
- (8) If the head of a private body decides upon the request to delete information contained in any record, the head must, before making the deletion— 35
- (a) make a copy of the part of the record to be deleted;
 - (b) make a note on that copy of the deletion to be made in the original record; and
 - (c) retain that copy for as long as the record is retained.
- (9) If the head of a private body decides that the information referred to in a request for correction is not inaccurate and that the request is not irrelevant, frivolous or vexatious, the head must, free of charge and within the period contemplated in subsection (6)— 40
- (a) make a note in the record as near as reasonably possible to the point where the information appears—
 - (i) of the decision of the head that the information is not inaccurate;
 - (ii) that the accuracy of the information is disputed by the requester; and 45
 - (iii) that the request is attached to the record, and attach the request to the record; and
 - (b) notify the requester—
 - (i) of the decision that the information is not inaccurate; and
 - (ii) that a note was made on the record as required by paragraph (a), and send a copy of the note to the requester. 50
- (10) If a record has been corrected in terms of subsection (7), any disclosure or use of the record after such correction must be in its corrected form.
- (11) If a note has been made in a record as contemplated in subsection (9)(a), any disclosure of the information concerned in the record must include— 55
- (a) that note; and
 - (b) the relevant request attached thereto.

Correction of personal information held by governmental bodies

52. (1) A record may be corrected in terms of this section by amending, supplementing or, subject to subsection (10), deleting the inaccurate information.
- (2) If a person is given access to a record of a governmental body in terms of section 9, that person may request the correction of inaccurate personal information about that person in that record. 5
- (3) Nothing in this section prevents a governmental body from correcting personal information in a record of that body in accordance with other law.
- (4) If any other law determines any requirement in respect of the correction of personal information in a record of a governmental body which is additional to, but consistent with, the provisions of this section, a correction in terms of this section must be made in accordance with this section and the requirement of that other law. 10
- (5)(a) A request for correction must be made in the prescribed form or orally to the information officer of the governmental body concerned at his or her address, fax number or electronic mail address. 15
- (b) The form for a request for correction prescribed for the purposes of paragraph (a), must at least require from the requester—
- (i) to provide sufficient particulars to enable an official of the governmental body concerned to identify the record which contains the information that the requester regards as inaccurate; 20
 - (ii) to specify the respect in which the requester regards the information as inaccurate and to provide any information regarding the inaccuracy that is in the possession or under the control of the requester; and
 - (iii) to specify a postal address or fax number for the requester in the Republic. 25
- (6) Sections 13(4), 14, 15, 16, 20 and 21 apply with the changes required by the context to a request for correction. 25
- (7) The information officer to whom a request for correction is made or transferred, must, subject to sections 20 and 21(1), read with subsection (6), as soon as reasonably possible, but in any event within 30 days, after the request is received or transferred, decide on the request. 30
- (8) If the information officer fails to decide on a request for correction within the period contemplated in subsection (7), the information officer is, for the purposes of this Act, regarded to have refused the request.
- (9) If the information officer decides that the information identified in a request for correction is inaccurate, the information officer must, free of charge and within the period contemplated in subsection (7)— 35
- (a) correct the information and send a copy of the part of the record containing the correction to the requester;
 - (b) determine, as far as reasonably possible, whether the inaccurate information is in any other record of that governmental body and, if it is, make the same correction on the other record; 40
 - (c) determine, as far as reasonably possible, whether the inaccurate information has been supplied by that governmental body to any other governmental body or person and notify any such other governmental body or person of the correction that was made; and 45
 - (d) send to the requester a copy of each notice which the information officer gives in terms of paragraph (c).
- (10) If the information officer decides upon a request for correction to delete information contained in any record, he or she must, before making the deletion— 50
- (a) make a copy of the part of the record to be deleted;
 - (b) make a note on that copy of the fact of the deletion to be made in the original record; and
 - (c) retain that copy for as long as the record is retained.
- (11) A governmental body which has been notified in terms of subsection (9)(c) that such governmental body has been supplied with inaccurate information must, as soon as reasonably possible, but in any event within 30 days, after being so notified, if the body— 55
- (a) accepts that the information is inaccurate, correct that information and notify the person to whom or which the information relates that the correction has been made; or 60

(b) is of the opinion that the information is not inaccurate, make a note and notify the requester as contemplated in subsection (12)(a) and (b).

(12) If the information officer decides that the information identified in a request for correction is not inaccurate and that the request is not irrelevant, frivolous or vexatious, the information officer must, free of charge and within the period contemplated in subsection (7)— 5

(a) make a note in the relevant record as near as reasonably possible to the point where the information appears—

(i) of the decision of the information officer that the information is not inaccurate; 10

(ii) that the accuracy of the information is disputed by the requester concerned; and

(iii) that the request is attached to the record, and attach the request to the record;

(b) notify the requester— 15

(i) of the decision that the information is not inaccurate;

(ii) that a note was made on the record as required by paragraph (a);

(iii) that he or she may lodge an internal appeal with the head of the governmental body against the decision that the information is not inaccurate, and of the procedure (including the period) for lodging the internal appeal, 20

and send a copy of the note to the requester;

(c) take reasonable steps to enable the requester to provide a statement of any further reasons why the requester considers the information to be inaccurate; and 25

(d) unless there are reasonable grounds for considering the statement irrelevant, defamatory or unnecessarily voluminous, attach the statement so provided to the record.

(13) If a record containing personal information has been corrected in terms of subsection (9) or (11), any disclosure or use of the record after such correction must be in its corrected form. 30

(14) If a note has been made in a record as contemplated in subsection (11)(b) or (12)(a), any disclosure of the information concerned in the record must include—

(a) that note;

(b) the request for correction concerned, if applicable; and 35

(c) any statement attached as contemplated in subsection (12)(d), if applicable.

Use of personal information by private bodies

53. Subject to section 59, a private body may not use a record of the private body containing personal information, except—

(a) if the person to whom or which the information relates has consented to its use in accordance with section 58; 40

(b) for the purpose for which the information was obtained or compiled or for a purpose consistent with that purpose; or

(c) for a purpose for which the information may be disclosed to the private body in terms of section 55 or 56. 45

Use of personal information by governmental bodies

54. Subject to section 59, a governmental body may not use a record of the governmental body containing personal information, except—

(a) if the person to whom or which the information relates has consented to its use in accordance with section 58; 50

(b) for the purpose for which the information was obtained or compiled or for a purpose consistent with that purpose; or

(c) for a purpose for which the information may be disclosed to the governmental body in terms of section 55 or 56.

Disclosure of personal information by private bodies 55

55. Subject to section 59, a private body may not disclose a record of the private body containing personal information, except—

- (a) in accordance with section 50 of this Act or any other law that authorises its disclosure;
- (b) if the person to whom or which the information relates has consented to its disclosure in accordance with section 58;
- (c) for the purpose for which the information was obtained or compiled or for a purpose consistent with that purpose; 5
- (d) for the purpose of complying with—
 - (i) a subpoena, warrant issued or order made by a court or person authorised to compel the production of information; or
 - (ii) rules of court relating to the production of information; 10
- (e) for the purpose of avoiding prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution and punishment of an offence;
- (f) for the purpose of averting or lessening an imminent and serious threat to the health or safety of an individual or the public; 15
- (g) for the purpose of the performance of a contract to which the person to whom or which the information relates is a party; or
- (h) for any prescribed purpose which would not pose a threat to the privacy of the person to whom or which the information relates and—
 - (i) to which the person on invitation of the private body did not object; or 20
 - (ii) which is necessary for pursuing the legitimate interests of the private body.

Disclosure of personal information by governmental bodies

- 56.** Subject to section 59, a governmental body may not disclose a record of the governmental body containing personal information, except— 25
- (a) in accordance with Part 3 of this Act or any other law that authorises its disclosure;
 - (b) if the person to whom or which the information relates has consented to its disclosure in accordance with section 58;
 - (c) for the purpose for which the information was obtained or compiled or for a consistent purpose; 30
 - (d) for the purpose of complying with—
 - (i) a subpoena, warrant issued or order made by a court or person authorised to compel the production of information; or
 - (ii) the rules of court relating to the production of information; 35
 - (e) for the purpose of avoiding prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution and punishment of an offence;
 - (f) for the purpose of averting or lessening an imminent and serious threat to the health or safety of an individual or the public; 40
 - (g) to a prosecuting authority for the purposes of criminal proceedings or to a legal practitioner representing the state, the Government of the Republic, any functionary thereof or a governmental body in civil proceedings for the purposes of those civil proceedings;
 - (h) to a governmental body, on the written request of that body, for the purposes of enforcing the law or carrying out an investigation in terms of the law, if the request specifies the purpose and describes the information to be disclosed; 45
 - (i) in terms of an agreement between the Government of the Republic or an organ thereof and the government of a foreign state, an international organisation or an organ of that government or organisation, for the purposes of administering or enforcing the law or carrying out an investigation in terms of the law; 50
 - (j) to an official of a governmental body for the purpose of an internal audit or to the Auditor-General or an official from his or her office for the purpose of audit or to a person appointed to carry out an audit in respect of a governmental body; 55
 - (k) to an archives repository in accordance with—

- (i) section 11 of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996); or
- (ii) an equivalent provision of a provincial law regarding the custody of records of governmental bodies in the relevant provincial sphere of government; 5
- (l) to any person for research or statistical purposes if—
 - (i) there are reasonable grounds for believing that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the person to whom or which it relates; and 10
 - (ii) the information officer of the governmental body obtains from the person a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the person to whom or which it relates;
- (m) to a governmental body for the purposes of locating a person— 15
 - (i) to collect a debt owing to the state or a governmental body by that person; or
 - (ii) to make a payment owing to that person by the state or a governmental body;
- (n) to a person other than a governmental body for the purpose of locating another person in order to make a payment owing to that other person; 20
- (o) for the purpose of the performance of a contract to which the person to whom or which the information relates, is a party; or
- (p) for any prescribed purpose which would not pose a threat to the privacy of the person to whom or which the information relates and— 25
 - (i) to which the person on invitation of the governmental body did not object; or
 - (ii) which is necessary for pursuing the legitimate interests of the private body.

Consistent purpose 30

57. If personal information has been collected directly from the person to whom or which the information relates, the purpose of a use or disclosure of that information is a consistent purpose in terms of sections 53(b), 54(b), 55(c) and 56(c) only if the person might reasonably have expected such a use or disclosure.

Consent to use or disclose personal information 35

58. (1) The consent of a person for the use or disclosure of personal information in a record of a private or governmental body contemplated in section 53(a), 54(a), 55(b) or 56(b)—

- (a) must be obtained by the prescribed person in the prescribed form and manner; and 40
- (b) may be withdrawn by the person giving that consent as prescribed.
- (2) Regulations made for the purposes of subsection (1) may—
 - (a) differentiate between different—
 - (i) categories of private bodies; and
 - (ii) categories of governmental bodies; and 45
 - (b) provide for the consent for a specific purpose or a category of purposes.

Use and disclosure of personal information held before commencement

59. (1) If a record containing personal information is in the possession or under the control of—

- (a) a private body from a date before the commencement of sections 53 and 55, those sections do not apply to that record of the private body for a prescribed period from that commencement; 50

- (b) a governmental body before the commencement of sections 54 and 56, those sections do not apply to that record of the governmental body for a prescribed period from that commencement.
- (2) If, at the end of the prescribed period referred to in subsection (1)(a) or (b), as the case may be, the prescribed steps have been taken to obtain the consent contemplated in section 53(a), 54(a), 55(b) or 56(b), as the case may be, of the person to whom or which the personal information in the record contemplated in subsection (1)(a) or (b), as the case may be, relates, that person is regarded to have given that consent whether or not the person in fact gave consent. 5
- (3) Any consent regarded to have been given in terms of subsection (2) may be withdrawn as prescribed. 10
- (4) Regulations made for the purposes of subsection (1) or (3) may—
- (a) differentiate between different—
- (i) categories of private bodies; and
- (ii) categories of governmental bodies; and 15
- (b) provide for the consent for a specific purpose or a category of purposes.

Register of uses and disclosures not in governmental body's manual

- 60.** (1) If the use or purpose of personal information in a personal information bank of a governmental body is not included in the statements of uses and purposes set out in accordance with section 6(2)(d)(ii)(bb) in the manual of the body published in terms of section 6, the head of that body must— 20
- (a) keep a register of—
- (i) any use by the body of that personal information; and
- (ii) any use or purpose for which that personal information is disclosed by the body; and 25
- (b) attach that register to that personal information.
- (2) For the purposes of this Act, a register attached in terms of subsection (1)(b) is regarded to form part of the personal information to which it is attached.
- (3) If the personal information in a personal information bank of a governmental body is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the body but the use is not included in the statement of compatible uses set out in accordance with section 6(2)(d)(ii)(bb) in the manual of the body, the head of the body must ensure that the use is included in the next manual to be published. 30

Collection of personal information by governmental bodies 35

- 61.** (1) No personal information may be collected by a governmental body unless such collection is—
- (a) required or permitted in terms of legislation; or
- (b) required for carrying out the functions of that body.
- (2) A governmental body must, if reasonably possible, collect personal information which is intended to be or may be used in taking any decision which affects a person's right or determines its content, directly from that person unless— 40
- (a) the person authorises otherwise; or
- (b) personal information contained in a record may be disclosed to the body in terms of section 56. 45
- (3) If a governmental body collects personal information directly from a person, the body must inform the person of—
- (a) the fact that, and the purpose for which, the information is being collected;
- (b) the name and address of the body that—
- (i) is collecting the information; and 50
- (ii) will hold the information;
- (c) if the collection of the information is required or permitted in terms of legislation—

- (i) the relevant provisions of that legislation; and
 - (ii) whether the supply of the information by the person is voluntary or compulsory;
 - (d) the rights of access to, and correction of, personal information referred to in sections 9 and 52, respectively. 5
- (4) Subsections (2) and (3) do not apply if compliance therewith could reasonably be expected to defeat the purpose, or prejudice the use, for which the information is being collected.

Retention, accuracy and disposal of personal information by governmental bodies

- 62.** (1) Personal information which has been used by a governmental body to make a decision which affects a person's right, or determines its content, must be retained by the head of that body for such prescribed period after it was so used as is necessary to ensure that the person to whom or which it relates has a reasonable opportunity to obtain access to that information. 10
- (2) The head of a governmental body must take all reasonable steps to ensure that personal information which is used by the body to make a decision which affects a person's right, or determines its content, is as accurate, up-to-date and complete as possible and that— 15
- (a) the confidentiality of that information is protected; and
 - (b) that information is secured against unauthorised access. 20
- (3) The head of a governmental body must dispose of personal information in a record of the body as prescribed.

PART 5

PROTECTION OF WHISTLE-BLOWERS

Exclusion of liability if disclosing contravention of law, corruption or maladministration 25

- 63.** (1) No person is civilly or criminally liable or may be subjected to disciplinary action in any court or administrative or other tribunal on account of having disclosed any information, if—
- (a) the person in good faith and reasonably believed at the time of the disclosure that he or she was disclosing evidence of a contravention of the law, corruption, dishonesty or serious maladministration in a governmental body or on the part of an official of the body (in this Part referred to as an "impropriety"); and 30
 - (b) the disclosure was made in accordance with subsection (3). 35
- (2) Without limiting the generality of subsection (1)(a) "impropriety" includes—
- (a) an abuse of power by a governmental body or an official thereof;
 - (b) an improper or unauthorised use of the funds or other assets of the state or a governmental body;
 - (c) negligent administration resulting or likely to result in a substantial— 40
 - (i) waste of public resources; or
 - (ii) danger to the health or safety of an individual or the public; or
 - (d) an offence referred to in section 1 of the Corruption Act, 1992 (Act No. 94 of 1992).
- (3) Subsection (1) applies only if the person concerned— 45
- (a) disclosed the information concerned to—
 - (i) a committee of Parliament or of a provincial legislature;
 - (ii) the Public Protector;
 - (iii) the Human Rights Commission;
 - (iv) the Auditor-General; 50
 - (v) any Attorney-General or his or her successor; or

- (vi) more than one of the bodies or persons referred to in subparagraph (i) to (v); or
 - (b) disclosed the information concerned to one or more news media and on clear and convincing grounds (of which he or she bears the burden of proof) believed at the time of the disclosure—
 - (i) that disclosure was necessary to avert an imminent and serious threat to the safety or health of an individual or the public, to ensure that the impropriety concerned was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
 - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; or
 - (c) disclosed the information concerned substantially in accordance with any applicable external or internal procedure (other than the procedures contemplated in paragraph (a) or (b)) for reporting or otherwise remedying the impropriety concerned.
- (4) Subsection (1) applies whether or not the person disclosing the information concerned has used or exhausted any other applicable external or internal procedure to report or otherwise remedy the impropriety concerned.

Exclusion of liability if disclosing information after publication

64. No person is civilly or criminally liable or may be subjected to disciplinary action in any court or administrative or other tribunal on account of having disclosed any information if, before the time of the disclosure of the information, it had become available to the public, whether in the Republic or elsewhere.

Protection against reprisals

- 65.** (1) Any person who made, or indicated that he or she intends making, a disclosure contemplated in section 63 or who refused to participate in an impropriety, may not as a result thereof or partly as a result thereof—
- (a) in respect of his or her employment, profession or office—
 - (i) be dismissed, suspended, demoted, harassed or intimidated;
 - (ii) be transferred against his or her will;
 - (iii) be refused transfer or promotion;
 - (iv) be subjected to a term or condition of employment or retirement which is altered or kept unaltered to his or her disadvantage;
 - (v) be otherwise detrimentally affected in respect of that employment, profession or office, including, but not limited to, employment opportunities and work security;
 - (b) be denied appointment or election to any employment, profession or office; or
 - (c) be threatened with an action referred to in paragraph (a) or (b).
- (2) If it is proved, in any criminal or civil proceedings or disciplinary action before a court or administrative or other tribunal with respect to an alleged contravention or threatened contravention of subsection (1), that an action contemplated in subsection (1)(a), (b) or (c) took place within two years after a disclosure, indication of an intention to disclose or refusal contemplated in subsection (1), it must be presumed, unless the contrary is proved, that such action took place as a result, or partly as a result, of that disclosure, indication of an intention to disclose or refusal.
- (3) Subsection (1) applies whether or not the person who disclosed the information concerned has used or exhausted any other applicable external or internal procedure to report or otherwise remedy the impropriety concerned.

- (4) A provision in a contract of employment or other agreement whereby any provision of this section is excluded, is void.
- (5) An official of a governmental body who has made a disclosure contemplated in section 63 must, on his or her request and if reasonably possible, be transferred from the post or position occupied by him or her at the time of the disclosure to— 5
- (a) another post or position in the same division or another division of that governmental body; or
 - (b) another governmental body.
- (6) The terms and conditions of employment of a person transferred in terms of subsection (5) may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer. 10

Notice to officials of provisions of Part and other complaint procedure

- 66.** The head of a governmental body must give to every official of the body a copy of a notice prepared by the Human Rights Commission, which explains—
- (a) the provisions of this Part and section 85(b) and all external and internal procedures (other than the procedure contemplated in section 63) available to an official of the body who wishes to report or otherwise remedy an impropriety or, when those provisions or procedures are amended, that amendment; 15
 - (b) that, if a contravention or threatened contravention of a provision of this Part in relation to a person is alleged, that the person may lodge an application with a High Court for appropriate relief, and the procedure (including the period) for lodging that application. 20

PART 6

APPEALS AGAINST DECISIONS 25

CHAPTER 1

INTERNAL APPEALS

Right of internal appeal to head of governmental body

- 67.** (1) A person may lodge an internal appeal against any decision of the information officer of a governmental body in relation to that person with the head of the body. 30
- (2) Subsection (1) may not be construed to limit any other right a person has in terms of the law to remedy a matter in respect of which an internal appeal may be lodged.

Manner of internal appeal, and appeal fees

- 68.** (1) An internal appeal—
- (a) must be lodged in the prescribed form— 35
 - (i) within 60 days;
 - (ii) if notice to a third party is required by section 47(1)(b), within 30 days; or
 - (iii) if the internal appeal is against the granting of a request for access and an urgent request application has been granted in respect of the request, 40
 - within 10 working days,
 - after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision was taken;
 - (b) must be delivered or sent to the information officer of the governmental body concerned at his or her address, fax number or electronic mail address; 45

- (c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant;
- (d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed; 5
- (e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (4); and
- (f) must specify a postal address or fax number and, if the internal appeal includes an urgent appeal application, a phone number for the appellant in the Republic. 10

(2) A person who wishes to lodge an internal appeal, but, because of illiteracy, poor literacy or physical disability, is unable to comply with subsection (1), may request the Human Rights Commission to assist him or her to so comply.

(3)(a) If an internal appeal is lodged after the expiry of the period referred to in subsection (1), the head of the governmental body concerned must, upon good cause being shown, allow the late lodging of the internal appeal. 15

(b) If that head disallows the late lodging of the internal appeal, he or she must give notice of that decision to the person that lodged the internal appeal.

(4)(a) A commercial requester lodging an internal appeal against the refusal of his or her request for access must pay the prescribed appeal fee. 20

(b) If the prescribed appeal fee is payable in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.

(5) As soon as reasonably possible, but in any event, within 10 working days, or, if an urgent appeal application has been granted, immediately, after receipt of an internal appeal in accordance with subsection (1), the information officer of the governmental body concerned must submit to the head of that body— 25

(a) the internal appeal together with his or her reasons for the decision concerned; and

(b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified in terms of section 45(1) of the request. 30

Notice to and representations by other interested persons

69. (1) If the head of a governmental body is considering an internal appeal against the refusal of a request for access to a record contemplated in section 29(1) or 31(1), the head must inform the third party to whom or which the record relates of the internal appeal, unless all necessary steps to locate the third party have been unsuccessful. 35

(2) The head must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event, within 30 days or, if an urgent appeal application has been granted, within five working days, after the receipt of the internal appeal; and 40

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the head concerned must— 45

(a) state that he or she is considering an internal appeal against the refusal of a request for access to a record contemplated in section 29(1) or 31(1), as the case may be, and describe the content of the record;

(b) furnish the name of the appellant;

(c) in the case of a record contemplated in— 50

(i) section 29(1), describe the provisions of section 29; or

(ii) section 31(1), describe the provisions of section 31;

(d) in any case where that head believes that the provisions of section 44(1) might apply, describe those provisions, specify which of the circumstances referred to in section 44(1)(a)(i) to (iv) in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 44(1) might apply; and 55

(e) state that the third party may, within 21 days or, if an urgent appeal application

has been granted, within 10 working days, after the third party is informed, make written representations to that head why the request for access should not be granted.

(4) If a third party is not informed in writing of an internal appeal in terms of subsection (1), the head of the governmental body concerned must, on request, give a written notice stating the matters referred to in subsection (3) to the third party. 5

(5) A third party that is informed of an internal appeal in terms of subsection (1), may—

(a) within 21 days; or

(b) if an urgent appeal application has been granted, within 10 working days, after the third party has been informed, make written representations to the head of the governmental body concerned why the request for access should not be granted. 10

(6) If the head of a governmental body is considering an internal appeal against the granting of a request for access, the head must give notice of the internal appeal to the requester. 15

(7) The head must—

(a) notify a third party in terms of subsection (6) as soon as reasonably possible, but in any event, within 30 days or, if an urgent appeal application has been granted, within five working days, after the receipt of the internal appeal; and

(b) state in that notice that the third party may within 21 days after notice is given, make written representations to that head why that request should be granted. 20

(8) A requester to whom or which notice is given in terms of subsection (6) may within 21 days after that notice is given, make written representations to the head of the governmental body why the request for access should be granted.

Decision on internal appeal and notice thereof 25

70. (1) The decision on an internal appeal must be made with due regard to—

(a) the particulars stated in the internal appeal in terms of section 68(1)(c);

(b) any reasons submitted by the information officer in terms of 68(5)(a);

(c) any representations made in terms of section 69(5) or (8); and

(d) if a third party cannot be located as contemplated in section 69(1), the fact that the third party did not have the opportunity to make representations in terms of section 69(5) why the internal appeal should be dismissed. 30

(2) When deciding on the internal appeal the head of the governmental body concerned may confirm the decision appealed against or substitute a new decision for it.

(3) The head of the governmental body concerned must, subject to section 71, decide on the internal appeal— 35

(a) as soon as reasonably possible, but in any event, within 30 days after the internal appeal is received by the information officer of the body;

(b) if a third party is informed in terms of section 69(1), as soon as reasonably possible, but in any event— 40

(i) within 30 days; or

(ii) if an urgent appeal application has been granted, within 15 working days after the third party has been informed;

(c) if notice is given in terms of section 69(6)—

(i) within five working days after the requester concerned has made written representations in terms of section 69(8); or 45

(ii) in any other case within 30 days after notice is so given.

(4) The head of the governmental body must, immediately after the decision on an internal appeal—

(a) give notice of the decision to— 50

(i) the appellant;

(ii) every third party informed as required by section 69(1); and

(iii) the requester notified as required by section 69(6); and

(b) if reasonably possible, inform the appellant about the decision in any other manner stated in terms of section 68(1)(d). 55

- (5) The notice in terms of subsection (4)(a) must state—
- (a) the findings on all material questions of fact, referring to the material on which those findings were based;
 - (b) the reasons for the decision (including the provision of this Act relied upon to justify the decision) in such manner as to enable the appellant, third party or requester, as the case may be—
 - (i) to understand the justification for the decision; and
 - (ii) to make an informed decision about whether to lodge an application with a High Court or to utilise any other remedy in law available to him or her, with respect to the decision on internal appeal; and
 - (c) that the appellant, third party or requester, as the case may be, may lodge an application with a High Court against the decision on internal appeal—
 - (i) within 60 days;
 - (ii) if notice to a third party is required by subsection (4)(a)(ii), within 30 days; or
 - (iii) if that application is against the granting of a request for access on internal appeal and an urgent appeal application has been granted in respect of the internal appeal, within 10 working days, after notice is given, and the procedure for lodging the application; and
 - (d) if the head of the governmental body concerned decides on internal appeal to grant a request for access and notice to a third party—
 - (i) is not required by subsection (4)(a)(ii), that access to the record will forthwith be given; or
 - (ii) is so required, that access to the record will be given after the expiry of the applicable period for lodging an application with a High Court against the decision on internal appeal referred to in paragraph (c), unless that application is lodged before the end of that applicable period.
- (6) If the head of the governmental body decides on internal appeal to grant a request for access and notice to a third party—
- (a) is not required by subsection (4)(a)(ii), the information officer of the body must forthwith give the requester concerned access to the record concerned; or
 - (b) is so required, the information officer must, after the expiry of—
 - (i) 30 days; or
 - (ii) if an urgent appeal application has been granted in respect of the internal appeal, 10 working days,
 after the notice is given to every third party concerned, give the requester access to the record concerned, unless an application with a High Court is lodged against the decision on internal appeal before the end of the applicable period referred to in subsection (5)(c) for lodging that application.
- (7) If the head of a governmental body fails to decide on an internal appeal within the period contemplated in subsection (3), that head is, for the purposes of this Act, regarded to have dismissed the internal appeal.

Urgent internal appeals

71. (1) A requester who wishes—

- (a) his or her internal appeal against the refusal of a request for access to be decided urgently must include an application to that effect in the internal appeal; or
- (b) an internal appeal against the granting of his or her request for access to be decided urgently must lodge an application to that effect with the information officer concerned,

and in that application give reasons for the urgency.

(2) If an urgent appeal application is included in an internal appeal or is lodged with an information officer of a governmental body, the head of that body must, subject to section 69, immediately or, if that is not reasonably possible, as soon as reasonably possible, but in any event, within five working days, after the receipt of that urgent appeal application, decide on the internal appeal and give notice of the decision as required by section 70(4), unless there are reasonable grounds for believing that—

- (a) the nature of the reasons for the urgency furnished by the applicant is such that the applicant will suffer no prejudice if the internal appeal is decided upon within the period contemplated in section 70(3); or
 - (b) it is impractical to decide on the internal appeal within five working days after that urgent appeal application has been received. 5
- (3) If the head of a governmental body refuses an urgent appeal application on the grounds referred to in subsection (2)(a) or (b), the head must immediately or, if that is not reasonably possible, as soon as reasonably possible, but in any event, within five working days, after that urgent appeal application has been received, notify the applicant of the refusal. 10
- (4) The notice in terms of subsection (3) must state—
- (a) the findings on all material questions of fact, referring to the material on which those findings were based;
 - (b) the reasons for the refusal (including the provision of this Act relied upon to justify the refusal) in such manner as to enable the applicant— 15
 - (i) to understand the justification for the refusal; and
 - (ii) to make an informed decision about whether to lodge an application with a High Court or to utilise any other remedy in law available to the applicant, with respect to the refusal; and
 - (c) that the applicant may lodge an application with a High Court against the refusal of the urgent appeal application, and the procedure (including the period) for lodging that application with a High Court. 20
- (5) If the notice in terms of subsection (2) or (3) of a decision is not given by fax, the applicant concerned must be informed by phone of the decision.

CHAPTER 2 25

APPLICATIONS TO HIGH COURT

Non-exclusion of other remedies

72. This Chapter may not be construed to exclude or limit any other right a person has in terms of the law to remedy a matter in respect of which an application may be lodged with a High Court in terms of this Chapter. 30

Manner of applications to High Court

- 73.** (1) An application in terms of this Chapter must be lodged—
- (a) with a High Court having jurisdiction in terms of section 76; and
 - (b) subject to this Chapter, in accordance with the rules regarding an urgent application by way of notice on motion applicable to that High Court. 35
- (2) For the purposes of those rules of the High Court concerned, all applications are regarded to be urgent without any supporting documents required to set out the reasons for the urgency and why the applicant could not be afforded substantial redress at a hearing in due course.
- (3) If the interests of justice so require, a High Court having jurisdiction may extend 40 the period within which an application may be lodged.

Applications regarding decisions of information officers or heads of governmental bodies

- 74.** (1) A person—
- (a) that has been unsuccessful in an urgent request application, an internal appeal 45 to the head of a governmental body or an urgent appeal application; or
 - (b) aggrieved by a decision of the head of a governmental body to disallow the late lodging of an internal appeal in terms of section 68(3),
- may appeal against the decision by way of an application.
- (2) If an application referred to in subsection (1) is against the granting of a request for 50 access on internal appeal that application must be lodged—
- (a) within 30 days; or

(b) if an urgent appeal application has been granted in respect of the internal appeal, within 10 working days, after the third party concerned has been notified of the decision to grant the request on internal appeal.

(3) The Human Rights Commission may appeal by way of an application against a decision of— 5

- (a) the information officer of a governmental body; or
- (b) the head of a governmental body on internal appeal.

(4) A third party notified of a decision of the head of a governmental body to disclose information regarding a serious public safety or environmental risk in terms of section 8(5)(a), may appeal by way of an application against the decision within 10 working days after the third party concerned has been notified of the decision. 10

Applications regarding contraventions of Part 5

75. If a contravention or threatened contravention of a provision of Part 5 is alleged in relation to a person, that person may lodge an application for appropriate relief. 15

Jurisdiction of High Court

76. A High Court has jurisdiction in respect of—

- (a) a decision of the information officer or head of a governmental body contemplated in section 74 which has its office or, if the body has more than one office, its main office; 20
- (b) a person that lodges an application in terms of section 74(1) or (4) or 75 and resides, carries on a business or is employed;
- (c) an alleged contravention referred to in section 75 which has occurred or is about to occur,

in the area of jurisdiction of the High Court. 25

Assistance of Human Rights Commission

77. (1) An individual who wishes to lodge an application, but, because of illiteracy, poor literacy or a physical disability, is unable to comply with this Chapter, may request the Human Rights Commission to assist him or her to so comply.

(2) If the Human Rights Commission is of the opinion that an important matter of principle is involved, the Commission may appear before a High Court as a party to an application. 30

(3) The Human Rights Commission may, on request, appoint a person to represent an individual who has lodged an application in terms of section 74(1) or 75.

Production of records of governmental bodies to High Court 35

78. (1) Despite any other provisions of this Act, any court hearing an application or an appeal against a decision on an application may examine any record of a governmental body to which this Act applies, and no such record may be withheld from that court on any grounds.

(2) Such court may, subject to subsection (3), not disclose to any person, including the parties to the proceedings concerned— 40

- (a) any record of a governmental body which is required or permitted in terms of this Act to be withheld from disclosure; or
- (b) if the information officer of a governmental body, or the head of that body on internal appeal, in refusing to grant access to a record in terms of section 34(2) or 36(2), refuses to confirm or deny the existence or non-existence of the record, any information as to whether the record exists. 45

(3) If such court considers it in the interest of justice, it may order the disclosure of such record or such information to any party to the proceedings concerned, and may, if it considers it necessary, order such party not to disclose such record or such information to another person. 50

Burden of proof

79. In any legal proceedings the burden of establishing that—

- (a) the refusal of a request for access; or
- (b) any decision taken in terms of section 17(2), 18(1), 20, 21(1), 25(3), 52(12)(d), 65(5) or 71,

is justified in terms of this Act is on the party claiming that it is so justified.

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Decision on application

80. (1) After due consideration of all written and oral evidence before a High Court in respect of an application, the Court may make any order or other decision which it considers just.

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(2) An order or other decision in terms of subsection (1) includes, but is not limited to, an order or other decision—

- (a) which confirms, amends or sets aside the decision which is the subject of the application concerned;
- (b) which requires from the information officer or head of a governmental body to take such action as the High Court considers necessary within a period mentioned in the order;
- (c) if the application is against the refusal of an urgent request application or urgent appeal application, on the request for access to a record in respect of which that application was made;
- (d) which grants an interdict, interim or specific relief, a declaratory order or compensation.

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(3) In deciding in terms of subsection (1) which order or other decision is just, the High Court concerned must have due regard to the desirability of a speedy and inexpensive resolution of the application concerned.

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Costs

81. A High Court may make such order as to costs of an application before the Court as it considers appropriate.

PART 7**MISCELLANEOUS PROVISIONS**

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Additional functions of Human Rights Commission

82. (1) The Human Rights Commission must—

- (a) annually review this Act and other legislation and the common law having a bearing on the accountability and openness of governmental bodies as well as private bodies which exercise substantial influence over the nature of the South African society;
- (b) make recommendations for—
 - (i) the development, improvement, modernisation, reform or amendment of this Act or other legislation or common law contemplated in paragraph (a);
 - (ii) the compliance with any constitutional requirements about access to information; and
 - (iii) procedures in terms of which governmental bodies make information electronically available;
- (c) monitor the administration of this Act;
- (d) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act;
- (e) encourage governmental and private bodies to participate in the development and conduct of programmes referred to in paragraph (d) and to undertake such programmes themselves;
- (f) promote timely and effective dissemination of accurate information by governmental bodies about their activities;

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- (g) publish and make available a guide on how to use this Act as contemplated in section 5;
 - (h) if reasonably possible—
 - (i) assist any person as required by this Act; and
 - (ii) generally, on request, assist any person wishing to exercise a right contemplated in this Act; 5
 - (i) make the determinations as contemplated in section 43;
 - (j) supply the notice as contemplated in section 66; and
 - (k) submit reports to the National Assembly as contemplated in section 83.
- (2) The Human Rights Commission has all such powers as are reasonably necessary or expedient to enable it to perform its duties referred to in subsection (1), including, but not limited to, the power to— 10
- (a) recommend to a governmental or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable; 15
 - (b) train information officers of governmental bodies;
 - (c) consult with and receive reports from governmental and private bodies on the problems encountered in complying with this Act;
 - (d) obtain advice from, consult with, or receive and consider proposals or recommendations from, any governmental or private body, official of such a body or member of the public in connection with the Commission's functions in terms of this Act; 20
 - (e) receive money from any source to perform its functions in terms of this Act;
 - (f) make donations to any private body participating in the development or conduct of, or undertaking, educational programmes as contemplated in subsection (1)(e); 25
 - (g) for the purposes of section 83(c)(xii), request the Public Protector to submit to the Commission information with respect to—
 - (i) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act; 30
 - (ii) the nature and outcome of those complaints; and
 - (h) generally, inquire into any matter, including any legislation, the common law and any practice and procedure, connected with the objects of this Act.
- (3) An official of a governmental body must afford the Human Rights Commission reasonable assistance for the effective performance of its functions in terms of this Act. 35

Report to National Assembly by Human Rights Commission

- 83.** The Human Rights Commission must include in its annual report to the National Assembly referred to in section 181(5) of the Constitution—
- (a) any recommendation in terms of section 82(1)(b);
 - (b) a statement of all money received from any source referred to in section 82(2)(e); 40
 - (c) in relation to each governmental body, particulars of—
 - (i) the number of requests for access received;
 - (ii) the number of requests for access granted in full;
 - (iii) the number of requests for access granted in terms of section 44; 45
 - (iv) the number of requests for access refused in full and refused partially and the number of times each provision of this Act relied on to refuse access was invoked to justify refusal in full and partial refusal;
 - (v) the number of requests for correction and the number of cases in which a correction was made; 50
 - (vi) the number of cases in which the periods stipulated in sections 19(1) and 52(7), respectively, were extended in terms of section 21(1) and that section, read with section 52(6), respectively;
 - (vii) the number of urgent request applications and urgent appeal applications, and the number of cases in which those applications were granted; 55
 - (viii) the number of internal appeals lodged with the head of the body and the number of cases in which, as a result of an internal appeal, access was

- given to a record or a part thereof and a correction of inaccurate personal information was made;
- (ix) the number of internal appeals which were lodged on the ground that—
 - (aa) a request for access was regarded to have been refused in terms of section 22; 5
 - (bb) a request for correction was regarded to have been refused in terms of section 52(8);
 - (x) the number of applications made to every High Court and the outcome thereof and the number of decisions of every High Court appealed against and the outcome thereof; 10
 - (xi) the number of applications to every High Court which were lodged on the ground that an internal appeal was regarded to have been dismissed in terms of section 70(7);
 - (xii) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act and the nature and outcome thereof; and 15
 - (xiii) such other matters as may be prescribed.

Expenditure of Human Rights Commission in terms of Act

- 84.** Any expenditure in connection with the performance of the Human Rights Commission's functions in terms of this Act must be defrayed subject to— 20
- (a) requests being received with the changes required by the context in the form prescribed for the budgetary processes of departments of State; and
 - (b) the Exchequer Act, 1975 (Act No. 66 of 1975), and the regulations and instructions thereunder, and the Auditor-General Act, 1995 (Act No. 12 of 1995). 25

Offences

- 85.** A person who—
- (a) wilfully fails to comply with an undertaking contemplated in section 56(l)(ii); or
 - (b) discloses information about an impropriety contemplated in section 63(1)(a) knowing it to be false or not knowing or believing the information to be true; or
 - (c) discloses a record of a governmental body, which record is classified in terms of the regulations made in terms of section 86(1)(c) and has been unlawfully obtained, 35
- commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

Regulations

- 86.** The Minister of Justice may, after consultation with the Human Rights Commission and with the approval of Parliament, by notice in the *Gazette* make 40 regulations regarding—
- (a) any matter which is required or permitted by this Act to be prescribed;
 - (b) any notice required by this Act;
 - (c) the classification of records of governmental bodies;
 - (d) any administrative or procedural matter necessary to give effect to the 45 provisions of this Act.

Short title and commencement

- 87.** (1) This Act is the Open Democracy Act, 1998, and takes effect on a date determined by the President by proclamation in the *Gazette*.
- (2) Different dates may be so determined in respect of different provisions of this Act. 50

MEMORANDUM ON THE OBJECTS OF THE OPEN DEMOCRACY BILL, 1998

Constitutional right of access to information

1.1 Section 32(1) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), provides as follows:

- “(1) Everyone has the right of access to—
- (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.”.

1.2 Section 32(2) of the Constitution, read with item 23(1) of Schedule 6 thereto, requires the enactment of national legislation to give effect to this right within three years of the commencement of the Constitution, that is before 4 February 2000. Item 23(2) of Schedule 6 to the Constitution provides that until such legislation is enacted section 32(1) must be regarded to read as follows (which is similar to the corresponding right in terms of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993)):

- “(1) Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights.”.

1.3 The right of access to information referred to in section 32(1) of the Constitution, being part of the Bill of Rights, may only be *limited* in accordance with the limitations provisions for the Bill of Rights in the Constitution, namely sections 32(2) and 36.

Principal objects of Bill

2.1 The principal objects of the Bill are—

- (a) to give effect to the right referred to in section 32(1)(a) of the Constitution, and to partially give effect to the right mentioned in section 32(1)(b) of the Constitution and to section 195(3), read with section 195(1)(g), of the Constitution; and
- (b) generally, to promote transparency and accountability by all organs of state by—
 - (i) providing the public with timely, accessible and accurate information; and
 - (ii) empowering the public to effectively scrutinise, and participate in, governmental decision making that affects them.

2.2 To attain these principal objects, the Bill includes specific provision for—

- (a) public access, on request, to information held by the state, subject to exemptions necessary to protect good governance, personal privacy and commercial confidentiality;
- (b) the disclosure of information obtained in accordance with the Bill;
- (c) governmental bodies to make information available that will assist the public in understanding the functions of governmental bodies, their operation and the criteria employed in making decisions;
- (d) access by persons to information about themselves held by private bodies, the correction of personal information held by the state or private persons as well as the regulation of the use and disclosure of such personal information;
- (e) the protection of persons disclosing evidence of contraventions of the law, serious maladministration or corruption in governmental bodies; and
- (f) enforcement mechanisms in respect of the rights contemplated in the Bill in the form of internal appeals as well as applications lodged with a High Court.

Full effect to section 32(1)(b) of Constitution

3. A right of access to any information held by another person and which is required for exercising or protecting any rights which is protected as a fundamental right in a constitution is a new notion in law, not only in South Africa but also elsewhere. Consequently, it is considered desirable for the Human Rights Commission to

investigate and consult as widely as possible on this matter in order to make recommendations regarding legislation which would give *full* effect to this right as required by section 32(1)(b), read with section 32(2), of the Constitution.

Existing legislation inconsistent with Bill

4. No express provision is made in the Bill for amendments to existing legislation inconsistent with the Bill or the provisions of the Constitution regarding access to information. Clause 2 of the Bill contains a general override, stipulating that the provisions of the Bill (if it becomes law and takes effect) prevail over all other legislation in case of conflict. The Constitution, being the supreme law, will in any case prevail over any conflicting legislation. The eventual amendment or repeal of these inconsistent provisions in existing legislation, although not absolutely necessary, is desirable for the sake of clarity. To this end each functionary administering such inconsistent legislation should make proposals to the appropriate legislative authorities for the necessary adjustments.

Duty of confidentiality of officials

5. If the Bill becomes law and takes effect, one of its significant effects on existing legislation would be the repeal of any duty of confidentiality imposed on a government official by other legislation where information is disclosed in accordance with the Bill.

Parliamentary procedure

6.1 Section 76(3)(d) of the Constitution provides that a Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) thereof if it provides for legislation envisaged in section 195(3) and (4) of the Constitution. Section 195(3), read with section 195(1), of the Constitution provides that national legislation must *inter alia* ensure the promotion of the following principles:

- (a) Transparency must be fostered by providing the public with timely, accessible and accurate information;
- (b) Public administration must be accountable; and
- (c) The public must be encouraged to participate in policy making.

These principles apply to administration in every sphere of government and to organs of state and public enterprises (section 195(2) of the Constitution).

6.2 Given that the Bill provides for legislation envisaged in the said section 195(3), the State Law Advisers are of the opinion that the Bill must be dealt with by Parliament in accordance with the procedure established by section 76(1) or (2) of the Constitution.

Consultation

7.1 The following bodies/persons were consulted:

- * Ministries and Government Departments/Offices (including the Premiers of provinces, the Public Protector, Attorneys-General, South African Police Service, South African National Defence Force and National Intelligence Agency)
- * Chief Justice of the then appellate division of the Supreme Court and Judges President of the then provincial divisions of the Supreme Court
- * Open Democracy Advisory Forum (constituted of more than 60 organisations mainly representing civil society)
- * Various public enterprises and non-governmental bodies

7.2 In order to comply with section 154(2) of the Constitution a draft of the Bill was published in the *Gazette* in October 1997 for information and comment.