

## SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofd Street  
Braampark, Forum 3  
**Braamfontein**  
2017

Private Bag X 2700  
**Houghton**  
2041

Tel.: 011 877 3600  
Fax: 011 403 0668



# E

**Ref: GP/1516/0395**  
**13 May 2019**

**Vidhu Vedalankar**

**Chief Executive Officer and Information Officer, Legal Aid South Africa**

**Per email: ceo@legal-aid.co.za**

**Patrick Hundermark**

**Chief Legal Executive and Deputy Information Officer, Legal Aid South Africa**

**Per email: PatrickH@legal-aid.co.za**

### **RE: PAIA MANUAL AND INFORMATION REQUEST FROM ANTHONY BRINK**

Dear Ms Vedalankar and Mr Hundermark

The South African Human Rights Commission (SAHRC or Commission) has assisted Adv Anthony Brink in terms of the discretionary powers vested in the Commission by section 83(3) of the Promotion of Access to Information Act, 2 of 2000 (PAIA) at various times since 2010. The Commission is in receipt of a letter from Adv Brink, dated 12 April 2019, as well as an information request submitted by Adv Brink to LASA, also dated 12 April 2019. In terms of section 83(3)(c), the Commission is accordingly again rendering its assistance to Adv Brink to the extent 'reasonably possible' by making the following advisory recommendations to LASA as permitted by section 83(3)(d) of the PAIA.

#### **LASA PAIA Manual**

It has come to the Commission's attention that certain errors appear in LASA's PAIA Manual dated 26 May 2018:

(i) Under para 19, entitled 'Remedies available to the Requester in terms of the Act', erroneous references to a 30 day time period within which to lodge an application with a court must be replaced with the correct period of **180 days**. This change must be effected in paras 19.1; 19.2; 19.3 and 19.4. See further *Brümmer v Minister for Social Development and Others* 2009 (6) SA 323 (CC).

(ii) Under para 22.3, entitled 'Legal Records', requesters are advised to 'set out very clearly the reasons that such access is required so as to enable Legal Aid SA to evaluate such requests'. This statement should be

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deleted since it is contrary to section 11(3)(a) and (b) of the PAIA, which stipulates that a requester's right of access is not affected by the reasons for the request or the information officer's belief as to the requester's reasons for requesting access. If legally privileged records are requested from LASA, LASA must refuse any such request as mandated by section 40 of the PAIA, unless the person entitled to privilege has waived such privilege.

### Information request dated 12 April 2019

Having perused the information request dated 12 April 2019, the Commission makes the following advisory recommendations:

#### *(i) Reasons for request irrelevant and disclosure the rule*

The Commission emphasises the prescripts of section 11(3) of the PAIA, in that a requester's reasons for an information request submitted to a public body are irrelevant. As the Constitutional Court stated in *President of the Republic of South Africa v M & G Media Ltd* (2012 (2) SA 50 (CC)), 'the disclosure of information is the rule and exemption from disclosure is the exception'. The information request dated 12 April 2019 therefore bears to be considered on its own merits, and disclosure should only be denied where a valid ground for refusal (section 34-45 of the PAIA) exists. Any grounds for refusal must be interpreted narrowly, as held by the Constitutional Court.

#### *(ii) Period in which to respond*

Following telephonic conversations with two LASA representatives on Friday 10 May 2019, the Commission confirms that the 30 day response period only starts running from the date that the information request was actually received by LASA (section 25(1) of the PAIA).

#### *(iii) Part One of the information request*

The Commission is of the view that the information requested in para 1 may constitute records contemplated in section 36 or section 37 of the PAIA. This places a mandatory obligation on LASA's information officer to 'take all reasonable steps to inform a third party to whom or which the record related of the request' (section 47(1) of the PAIA). The Commission therefore urges LASA to initiate a third party notification procedure within 21 days of receipt of the request, and to provide all information set out in section 47(3) to relevant third parties. In terms of section 48

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of the PAIA, relevant third parties enjoy 21 days within which to make oral or written representations, or to provide written consent for the disclosure of the records.

The Commission furthermore advises that the records requested in para 2 be disclosed, unless LASA has identified a ground for refusal which would render disclosure harmful.

### *(iv) Part Two of the information request*

The Commission is of the view that the records requested in para 3 should be disclosed. The Commission is in possession of LASA's section 32 reports for the 2016/17 and 2017/18 financial years, and will disclose these to the requester since such information is publicly available.

### *(v) Part Three of the information request*

The Commission is unable to determine whether the information requested under Part Three has already been requested and/or disclosed under the Settlement Agreement dated 11 February 2016, or in any of the three subsequent information requests currently pending before the High Court. In determining whether the same records have been requested and/or disclosed in the past, LASA may have recourse to the Supreme Court of Appeal's judgment in *BHP Billiton PLC Inc v De Lange* (2013 (3) SA 571 (SCA)). To the extent that the Settlement Agreement governs any of the requested records, the terms of the Settlement Agreement should be adhered to.

The Commission trusts that the above is of assistance and avails itself to engage with LASA should LASA have any queries regarding the application of the PAIA.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Shanelle van der Berg".

Dr Shanelle van der Berg

**Deputy Information Officer**  
**South African Human Rights Commission**

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