READY YOURSELF TO COMPLY WITH THE PROMOTION OF ACCESS TO INFORMATION ACT

Category: Commercial Law,Privacy Law, Infosec, and POPIA,Technology Law
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Section 32(1) of the Constitution entrenches the fundamental right of access to information. This section provides a statutory right to request any record held by the state, as well as access to records held by public and private bodies.

The Promotion of Access to Information Act 2 of 2000 ("**PAIA**") enables people to gain access to information held by both public and private bodies. PAIA prescribes that every public and private body must publish an information manual to assist requesters who wish to access a record.

Although PAIA requires all private and public bodies to prepare a PAIA manual, a notice published on 11 December 2015 exempts certain private bodies from compiling the manual contemplated in section 51(1) for a period of five years. This exemption states that private companies with less than 50 employees or with a turnover of less than the amounts stipulated in the schedule in the notice will be exempt from compiling the PAIA manual until 31 December 2020. This notice has allowed specific private bodies to be exempt from complying, however, once this notice expires on 31 December 2020, all private bodies will need to submit their manual to the South African Human Rights Commission ("**the SAHRC**").

Since the commencement of PAIA, section 51 has been pending and has not fully come into effect. By 31 December 2020, however, all private entities should be fully compliant by drafting and submitting a PAIA manual.

There are penalties for non-compliance with PAIA outlined by section 90. If the head of private body wilfully, or in a grossly negligent manner fails to comply with the provisions of section 51, it is deemed to commit an offence and may be liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.

If you are currently exempt from compiling a PAIA manual but must comply with PAIA by 31 December 2020, contact us for good, clear, precise advice.