UPDATE: NEW PAIA REGULATIONS

Category: Commercial Law,Privacy Law, Infosec, and POPIA,Technology Law
written by PPM Attorneys | September 3, 2021



On the 27 August 2021, the Department of Justice published new regulations relating to the Promotion of Access to Information Act ("**PAIA**"). The new regulations impose additional obligations on Information Officers. Additional obligations are as follows:

PAIA GUIDE

Entities that are required to have a PAIA manual must ensure that they keep a copy of the Section 10 guide in at least 2 of the official languages at their registered office for inspection during normal hours. The Section 10 guide is the guide published by the South African Human Rights Commission which explains to any person how to exercise their rights under PAIA. It will be updated from time to time by the Information Regulator.

Furthermore, the PAIA guide must be made available to a requester upon written request on a form corresponding to Form 1 to the regulations.

Fees may not be charged for a copy of the PAIA guide or inspection of the guide and requests for a copy of the PAIA guide may not be refused.

AUTOMATICALLY AVAILABLE RECORDS

Public bodies must ensure that automatically available records in terms of Section 15(1)(a) of PAIA must be available to a requester without having to request access thereto.

The description of such records must be made available to the Information Regulator, on the website of the public body, and at the head office for inspection during normal office hours. The obligation to keep such records is compulsory for public bodies, but not for private bodies.

The regulations states that records of a private body that are voluntarily disclosed and automatically available may be made available to a requester without making a formal request. This means that a private organization must evaluate whether it is practical to keep such records in light of their business operations. If the private body decides to do so, it must be kept updated to reflect amendments, and be made available to the Information Regulator, on the website of the private body, and for inspection at the registered head office during normal office hours.

ASSISTANCE TO REQUESTERS

An Information Officer must assist a requester making any request.

If a request was made orally as a result of the requester's illiteracy or disability, then the Information Officer must complete the necessary forms on behalf of the requester and provide a copy to the requester.

CLARITY ON FEES

The new regulations also specifies that if in the opinion of the Information Officer, a search or preparation of a record would require more than six hours, the Information Officer can require the requester to pay a deposit or portion of the access fee.

The regulations also provides that an Information Officer who willfully or in a grossly negligent manner charges a fee other than the fees prescribed in the regulations, is guilty of an offence and can be liable to a fine or imprisonment for a period not exceeding two years.

The fees that are normally payable under PAIA has also increased.

NEW FORMS

The regulations also contain new prescribed forms and a new schedule of fees that will apply when requesters make PAIA requests.

Forms that are filled electronically or signed electronically should be accepted in accordance with the provisions of the Electronic Communications and Transactions Act.

We advise our clients to comply with the new regulations and update their PAIA manuals accordingly. A copy of the new regulations and the forms can be accessed here.