

## **Private bodies PAIA (Promotion of Access to Information Act) manuals required by 31 December 2011**

The Promotion of Access to Information Act, 2000 became effective on 9 March 2001, with the exception of sections 10, 14, 15 and 51, which became effective on 15 February 2002.

All the public and private bodies are required in terms of sections 14 and 51 of the Promotion of Access to Information Act (PAIA) to compile manuals on how to access their records.

### **Private Bodies**

A private body is defined as follows:

- “(a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity;*  
*(b) a partnership which carries or has carried on any trade, business or profession; or*  
*(c) any former or existing juristic person; but excludes a public body”*

This would therefore include all businesses, small to large as well as individuals and partnerships carrying on business.

In terms of s51 of PAIA, the head of a private body must:

1. compile a manual as required by section 51,
2. submit the manual to the South African Human Rights Commission (SAHRC),
3. update the any material changes on the manual on a regular basis;
4. make the manual available as prescribed by the Act at the company offices and on their website;
5. must annex a request form to the manual and also make a request form available on the website and at the company premises and access points.

The head of the private body may also publish the manual in the Government Gazette.

The manuals must contain the following information:

- postal and street address, phone and fax number and if available the e-mail address of the head of the private body
- the description of the guide compiled by the SAHRC and how to access it;
- the latest notice regarding the categories of records of the body which are available without a person having to request access in terms of PAIA;
- a description of the records which the private body keeps in compliance with any other legislation;
- enough information to assist you in making a request for access to a record held by a private body;
- a description of the subjects on which the private body holds records, and the categories of records held on each subject;

It is possible for security, administrative or financial reasons, that the Minister may, on request and by notice in the Government Gazette exempt any private body or category of private bodies from compiling a manual for such period.

### **Temporary exemption of certain private bodies**

The Minister of Justice has by Government Notice No. 27988, published on 31 August 2005, exempted:

- all private bodies, except companies not being private companies as contemplated in Section 20 of the Companies Act, 1973 from compiling manuals contemplated in section 51(1) of the PAIA for a period of four months from 1 September 2005 to 31 December 2005, and
- all private bodies except any company
  - a) not being a private company as contemplated in Section 20 of the Companies Act, 1973
  - b) being a private company as contemplated in Section 20 of the Companies Act, 1973 and which
    - i. operate within any sectors mentioned in Column 1 of Schedule 1 below, and
    - ii. has 50 or more employees, or
    - iii. has a total turnover that is equal or more than the applicable amount mentioned in Column 2 of Schedule 1 below,from compiling the manual contemplated in section 51(1) of the Promotion of Access to Information Act for a period of five years from 1 January 2006 to 31 December 2011.

This exemption therefore applied to all private companies EXCEPT where they were involved in any of the sectors mentioned in Schedule 1, and they had 50 or more employees or had a turnover above the amounts in Schedule 1, Column 2.

Therefore it is imperative for private businesses, which were previously exempted, to note that the deadline for the completion of these manuals is **31 December 2011**.

### **Public Bodies**

A public body is defined as follows:

*“(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere; or*

*(b) any other functionary or institution when –*

*(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or*

*(ii) exercising a public power or performing a public function in terms of any other legislation”*

Public bodies must after six (6) months of the commencement of section 14 or the coming into existence of the body compile a manual stating the following:

- structure and function of the body;
- postal and street address, phone and fax number and, if available, the electronic mail address of the information officer and every deputy information officer of the public body;
- a description of the guide compiled by SAHRC and how to access it;
- a description of available records generated by the company stating those which are automatically available and those that are available on request;
- Information to facilitate access to records;
- description of services available and how to gain access to them;
- description of an arrangement for a person to either consult, make representation or participate in formulation of policy;
- action to be taken if the information officer refuses to give access to information.

The public body's manual must be prepared in three of the official languages. All public bodies also have to where necessary update and publish their manuals at intervals of not more than one year.

All public bodies must make their manuals available in the following manner:

- making a copy available at every office,
- placing the manual on the website,
- making a copy available to the South African Human Rights Council (SAHRC).

### **Conclusion**

Therefore all private bodies and public bodies have to review their submitted PAIA manuals and update where necessary. Private bodies, which were exempted, must now also submit their manuals by 31 December 2011. We would recommend that all companies resubmit their manuals if they submitted the previous manual prior to December 2007, even if there is no changes to the manual. Further to you submitting an e-mail copy to the SAHRC you must also submit a hard copy of your manual signed by your Information Officer and publish the manual on the company's website.

**SCHEDULE 1**

<b>Column 1</b>	<b>Column 2</b>
Agriculture	R2 million
Mining and Quarrying	R7 million
Manufacturing	R10 million
Electricity, Gas and Water	R10 million
Construction	R 5 million
Retail and Motor Trade and Repair Services	R15 million
Wholesale Trade, Commercial Agents and Allied Services	R25 million
Catering, Accommodation and other Trade	R5 million
Transport, Storage and Communications	R10 million
Finance and Business Services	R10 million
Community, Special and Personal Services	R5 million