



MANUAL

in terms of

THE PROMOTION OF ACCESS TO
INFORMATION ACT (No.2 of 2000)

(the “Act”)

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1. INTRODUCTION

The Promotion of Access to Information Act, No.2 of 2000 ("the Act") is an Act that was passed to give effect to the constitutional right held by South African citizens, of access to any information held by the State or by another person, which is required for the exercise or protection of any right. Where a request is made in terms of the Act, the body to which the request is made is obliged to give access to the requested information, except where the Act expressly provides that the information may or must not be released.

Therefore, the right of access to information and this Manual is only applicable to South African citizens, as defined in the Constitution of the Republic of South Africa Act 108 of 1996. It is important to note that the Act recognises certain limitations to the right of access to information, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality, and effective, efficient, and good governance, and in a manner which balances that right with any other rights, including such rights contained in the Bill of Rights in the Constitution.

2. PURPOSE

The purpose of this manual is to provide information that is needed by any person who wishes to exercise any right contemplated in the Promotion of Access to Information Act, No. 2 of 2000 (PAIA) and Protection of Personal Information Act, 2013 ("POPIA"). Any person, irrespective of citizenship, can apply for access to information under PAIA.

This manual will specifically assist a person, also called a data subject, on how to access his/her personal information in terms of section 23 of POPIA. Under POPIA, person or data subject has the right to –

- ❖ request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about them, and
- ❖ request from a responsible party the record or a description of the personal information about the data subject held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information;
- ❖ request a responsible party to –
 - correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading, or obtained unlawfully; or
 - destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain.

This manual will also assist any person on how to request access to records under PAIA. The manual will also assist requesters in:

- ❖ understanding PAIA, its benefits and background;
- ❖ learning the step-by-step process by which to make a request and additional tips for making that process easier;
- ❖ learning the types of information which can be requested using PAIA;
- ❖ understanding the process by which a requester can challenge a decision taken in relation to their request;
- ❖ being introduced to the changes that will occur to PAIA once POPIA is fully operational.

This manual will also assist people in understanding how to challenge the granting of access to their records or how to participate in the process of accessing their records.

3. SCOPE

The scope of this manual includes Walker Phillip (Pty) Ltd; its subsidiaries and associated companies. Hereinafter referred to as “Walker Phillip”

Person designated/duly authorised persons:

Directors: Mr Gavin Walker

Information Officer/CEO: Mr Gavin Walker

Deputy Information Officer: Mr Craig French

Physical Address: 11 Imam Haron Rd, Claremont, Cape Town, 7700

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4. THE HUMAN RIGHTS COMMISSION GUIDE

The South African Human Rights Commission is required in terms of the Act to compile a manual in every official language, containing information as may reasonably be required by a person who wishes to exercise any right contemplated in the Act, in a manner that is easily comprehensible to any such person. As at the date of publishing this manual, the manual had not yet been compiled. Any enquiries regarding the manual should be directed to:

Postal Address: The South African Human Rights Commission,
PAIA Unit
The Research and Documentation Department
Private Bag 2700
Houghton
2041

Telephone Number: (011) 877 3600
Fax Number: (011) 403 0668
E-mail Address: Paia@sahrc.org.za
Website: www.sahrc.org.za

5. CONTACT DETAILS OF THE REGULATOR

Information Officer

Chief Executive Officer: Mr. Mosalanyane Mosala
Contact Person: Ms. Pfano Nenweli
E-mail address: PNenweli@justice.gov.za
Deputy Information Officer: Ms. Varsha Sewlal
E-mail address: VarSewlal@justice.co.za

Physical Address:

JD House, 27 Stiemens Street
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Johannesburg
2001

Postal Address:

P.O. Box 31533
Braamfontein
Johannesburg
2001

Telephone: 010 023 5200

The Regulator has a very important role in relation to PAIA. The Regulator is mandated by PAIA, under Part 4, Chapter 1A and Part 5 and other sections, to:

- ❖ promote the right of access to information and assist the public in using PAIA where reasonably possible to do so,
- ❖ monitor and further the implementation of PAIA by public and private bodies (which includes promoting effective ways to make information timeously available),
- ❖ make recommendations to strengthen PAIA, and
- ❖ report annually to Parliament.

Section 77C (1) and (2) of PAIA makes provision for the following powers, duties and functions of the Regulator, to –

- ❖ investigate a complaint made to the Regulator in the prescribed manner;
- ❖ refer the complaint to the Enforcement Committee established in terms of section 50 of the POPIA; or
- ❖ decide, in accordance with section 77D, to take no action on the complaint or, as the case may be, require no further action in respect of the complaint; and
- ❖ act, where appropriate, as conciliator in relation to such complaint in the prescribed manner.

The Regulator may, in terms of section 77H(1) of PAIA, and on its own initiative, or at the request by or on behalf of information officer or head of a private body or any other person conduct an assessment whether a public or private body generally, complies with the provisions of PAIA, insofar as its policies and implementation procedures are concerned.

The Regulator is empowered, in term of section 77F of PAIA, to use its best endeavours to secure a settlement of a complaint, if it appears from the complaint, or any written response made in relation thereto that it may be possible to settle the complaint. This means that the Regulator can only try to assist parties to settle their disputes, if there is a complaint lodged with the Regulator, unless it has decided on its own initiative to conduct an assessment.

6. APPLICABLE LEGISLATION

Refer Annexure 1

7. TYPES OF RECORDS

7.1 **RECORDS AVAILABLE IN TERMS OF ANY LEGISLATION**

All records kept and made available in terms of legislation applicable to the entity listed in this Manual and the Financial Services Industry in general, as it applies to the specific environment in which the entity operates, are available in accordance with said legislation.

7.2 **RECORDS AVAILABLE WITHOUT REQUESTING ACCESS IN TERMS OF THE ACT**

Walker Phillip may, when requested, submit to the Minister a description of categories of records, which are automatically available without a person having to request access in terms of the Act. The Minister must publish any description submitted in the Gazette.

7.3 **RECORDS AVAILABLE ON REQUEST**

We set out below the subjects and categories of records that are subject to access being denied as set out in the Act, available for the purpose of the Act.

Records are held on the following subjects:

- ❖ Administrative records;
- ❖ Human Resource/ Personnel records;
- ❖ Client-related records;
- ❖ Financial records; and
- ❖ Records in the possession of or pertaining to other parties.

8. GROUND REFUSAL OF ACCESS TO RECORDS

- ❖ Mandatory protection of the privacy of a third party who is a natural person, who would involve the unreasonable disclosure of personal information of that natural person;
- ❖ Mandatory protection of the commercial information of a third party, if the record contains:
 - Trade secrets of that third party;
 - Financial, Commercial, Scientific, or technical information which disclosure could likely cause harm to the financial or commercial interests of that third party; and
 - Information disclosed in confidence by a third party to Walker Phillip if the disclosure could put that third party at a disadvantage in negotiations or commercial competition.

- ❖ Mandatory protection of confidential information of third parties if it is protected in terms of any agreement or legislation;
- ❖ Mandatory protection of the safety of individuals and the protection of property;
- ❖ Mandatory protection of records which would be regarded as privileged in legal proceedings;
- ❖ The commercial activities of Walker Phillip, which may include:
 - Trade secrets of Walker Phillip; or
 - Information which, if disclosed, could put Walker Phillip at a disadvantage in negotiations or commercial competition.
- ❖ The research information of Walker Phillip or a third party, if it's disclosed, would reveal the identity of the institution, the researcher or the subject matter of the research and would place the research at a serious advantage; or
- ❖ Requests for information that are clearly frivolous or vexatious, or which involve an unreasonable diversion of resources shall be refused.

9. REQUEST PROCEDURE

The person requesting access to information held by Walker Phillip must compile the prescribed form, submit it to the Information Officer at the postal or physical address, or electronic mail address recorded in Part II and pay a request fee and a deposit, if applicable.

The prescribed form must be completed with enough particularity to at least enable the Information Officer to identify:

- ❖ The records requested;
- ❖ The identity number of the person requesting the records;
- ❖ The form of access required if the request is granted;
- ❖ The contact details of the person requesting the records;
- ❖ The right to exercise and/or to protect, and specify the reasons why the records required will enable the person to protect and/or exercise the right;
- ❖ The information the requestor wishes to be informed of decision of the request in a particular manner, the stated manner, and particulars to be so informed; and
- ❖ The request for information made on behalf of another person, submitted proof that the person submitting the request, has obtained the necessary authorisation to do so.

Walker Phillip will process the request, unless the requestor has stated special reasons which would satisfy the Information Officer that circumstances dictate that the above time periods are not complied with.

The requestor will be informed in writing whether access has been granted or denied. If, in addition, the requestor requires the reasons for the decision in any other manner, he must state the manner and the particulars so required.

If an individual is unable to complete the prescribed form because of illiteracy or disability, such a person may make the request orally.

The requestor must pay the prescribed fee before any further processing can take place.

10. PRESCRIBED FEES

The following applies to requests (other than personal requests):

- ❖ A requestor is required to pay the prescribed fees (R50.00) before a request will be processed;
- ❖ If the preparation of the record requested requires more than the prescribed six (6) hours, a deposit shall be paid (of not more than one third of the access fee which would be payable of the request were granted);
- ❖ A requestor may lodge an application with a court against the tender/payment of the request fee and/or deposit;
- ❖ Records may be withheld until the fees have been paid.
- ❖ The fee structure is available on the website of the South African Human Rights Commission at www.sahrc.org.za , or the website of The Department of Justice and Constitutional Development (under regulations) at www.justice.gov.za

11. DECISION

Walker Phillip will, within 30 days of receipt of the request, decide whether to grant or decline the request and give notice with reasons (if required) to that effect.

The 30-day period which Walker Phillip has to decide whether to grant or refuse the request, may be extended for a further period of not more than 30 days if the request is for a large number of information, or the request requires a search for information held at another office of Walker Phillip and the information cannot reasonable be obtained within the original 30-day period. The Information Officer will notify the requestor in writing should an extension be sought.

12. REMEDIES

Internal Remedies:

Walker Phillip does not have internal appeal procedures. Therefore, the decision made by the Information Officer is final. Requestors who are dissatisfied with a decision of the Information Officer will have to exercise external remedies at their disposal.

External Remedies:

A requestor or a third party, who is dissatisfied with an Information Officer's refusal to disclose information, or the disclosed information may within 30 days of notification of the decision, apply to the Constitutional Court, the High Court, or another court of similar status for relief.

13. ANNEXURE 1: STATUTORY RECORDS

The organization maintains statutory records and information that must be requested in terms of PAIA:

Memorandum of Incorporation
Minutes of Board of Directors meetings
Records relating to the appointment of directors/ auditor/secretary/public officer and other officers
Share Register and other statutory registers
Annual Financial Statements
Tax Returns
Accounting Records
Banking Records
Asset Register
Rental Agreements
Invoices
PAYE Records
Documents issued to employees for income tax purposes
Records of payments made to SARS on behalf of employees
Regional Services Levies
Skills Development Levies
UIF
Employment contracts
Employment Equity
Plan Medical Aid records
Pension Fund records
Disciplinary records
Salary records
Disciplinary code
Leave records
Training records
Training Manuals

FORM OF A REQUEST FOR INFORMATION (Section 51(1)(e))

A requestor must use the prescribed form "Form C" (available for download on the Department of Justice and Constitutional Development "DOJ" website) to request access to the information as per 13. Annexure 1 above.

Form C can be downloaded from the following URL:

https://www.justice.gov.za/forms/paia/J752_paia_Form%20C.pdf

The request must be addressed to the responsible person as indicated in section 2.

The requestor must provide sufficient detail on Form C to enable the contact person of the company to establish who is requesting the said information as well as what information is being requested and in what format.

The requester must provide sufficient detail in respect of his/her contact details and if the requester wishes to be informed of the decision of the company in any manner (in addition to written) the manner and particulars thereof.

Lastly, the right which the requester is seeking to exercise or protect with an explanation of the reason the record is required to exercise or protect the right.

After the company has decided on the request, the requester must be notified in the required form.

If the request is granted then a further access fee must be paid for the search, reproduction, preparation and for any time that has exceeded the prescribed hour to search and prepare the record for disclosure.