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GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENCY

No. 95. 3 February 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 2 of 2000: Promotion of Access to Information Act. 2000.

(English text signed by the President.)
(Assented to 2 February 2000.)

ACT

To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected **therewith.**

PREAMBLE

RECOGNIZING THAT—

* the system of government in South Africa before 27 April 1994, amongst others, resulted in a secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations;
* section 8 of the Constitution provides for the horizontal application of the rights in the Bill of Rights to juristic persons to the extent required by the nature of the rights and the nature of those juristic persons;
* section 32(1)(a) of the Constitution provides that everyone has the right of access to any information held by the State;
* section 32(1)(h) of the Constitution provides for the horizontal application of the right of access to information held by another person to everyone when that information is required for the exercise or protection of any rights;
* and national legislation must be enacted to give effect to this right in section 32 of the Constitution:

AND BEARING IN MIND THAT—

* the State must respect, protect, promote and fulfil, at least, all the rights in the Bill of Rights which is the cornerstone of democracy in South Africa;
* the right of access to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;
* reasonable legislative measures may, in terms of section 32(2) of the Constitution, be provided to alleviate the administrative and financial burden on the State in giving effect to its obligation to promote and fulfil the right of access to information;

AND IN ORDER TO—

* foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information;
* actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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INTRODUCTORY PROVISIONS

CHAPTER 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Act, unless the context otherwise indicates—

"access fee" means a fee prescribed for the purposes of section 22(6) or 54(6), as the case may be;

"application" means an application to a court in terms of section *78;*

"constitution" means the Constitution of the Republic of South Africa, 1996 (Act No.1O8 of 1996);

"court" means—

(a) the Constitutional Court acting in terms of section 167(6)*(a)* of the Constitution; or

(b) (i) a High Court or another court of similar status; or

(ii) a Magistrate's Court, either generally or in respect of a specified class of decisions in terms of this Act, designated by the Minister, by notice in the *Gazette,* and presided over by a magistrate designated in writing by the Minister, after consultation with the Magistrates Commission,

within whose area of jurisdiction—

(aa) the decision of the information officer or relevant authority of a public body or the head of a private body has been taken;

(bb) the public body or private body concerned has its principal place of administration or business; or

(cc) the requester or third party concerned is domiciled or ordinarily resident;

"evaluative material" means an evaluation or opinion prepared for the purpose of determining—

(a) the suitability, eligibility or qualifications of the person to whom or which the evaluation or opinion relates—

(i) for employment or for appointment to office;

(ii) for promotion in employment or office or for continuance in employment or office;

(iii) for removal from employment or office; or

(iv) for the awarding of a scholarship, award, bursary, honour or similar benefit; or

(b) whether any scholarship, award, bursary, honour or similar benefit should be continued, modified, cancelled or renewed;

"head" of, or in relation to, a private body means—

(a) in the case of a natural person, that natural person or any person duly authorised by that natural person;

(b) in the case of a partnership, any partner of the partnership or any person duly authorised by the partnership;

(c) in the case of a juristic person—

(i) the chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or

(ii) the person who is acting as such or any person duly authorised by such acting person;

"health practitioner" means an individual who carries on, and is registered in terms of legislation to carry on, an occupation which involves the provision of care or treatment for the physical or mental health or for the well-being of individuals;

"Human Rights Commission" means the South African Human Rights Commission referred to in section 181(1)(b) of the Constitution;

"individual's next of kin" means—

(a) art individual to whom the individual was married immediately before the individual's death;

(b) an individual with whom the individual lived as if they were married immediately before the individual's death;

(c) a parent, child, brother or sister of the individual; or

(d) if—

(i) there is no next of kin referred to in paragraphs *(a), (b)* and (c); or

(ii) the requester concerned took all reasonable steps to locate such next of kin, but was unsuccessful,

an individual who is related to the individual in the second degree of affinity or consanguinity;

"information officer" of, or in relation to, a public body—

(a) in the case of a national department, provincial administration or organisational component—

(i) mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3 opposite the name of the relevant national department, provincial administration or organisational component or the person who is acting as such; or

(ii) not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department. provincial administration or organisational component, respectively;

(b) in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or the person who is acting as such; or

(c) in the case of any other public body, means the chief executive officer, or equivalent officer, of that public body or the person who is acting as such;

"internal appeal" means an internal appeal to the relevant authority in terms of section 74;

"international organisation" mess an international organisation—

(a) of states; or

(b) established by the governments of states;

"Minister" means the Cabinet member responsible for the administration of justice;

"notice" means notice in writing, and "notify" and "notified" have corresponding meanings;

"objects of this **Act"** means the objects of this Act referred to in section 9;

"official", in relation to a public or private body, means—

(a) any person in the employ (permanently or temporarily and full-time or part-time) of the public or private body, as the case may be, including the head of the body, in his or her capacity as such; or

(b) a member of the public or private body, in his or her capacity as such;

"person" means a natural person or a juristic person;

"personal information" means information about an identifiable individual, including, but not limited to—

(a) information relating to the race, gender, sex, pregnancy, marital status. national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, fingerprints or blood type of the individual;

(e) the personal opinions. views or preferences of the individual, except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual;

(f) correspondence sent by the individual that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the individual;

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but excludes information about an individual who has been dead for more than 20 years;

"personal requester" means a requester seeking access to a record containing personal information about the requester;

"prescribed" means prescribed by regulation in terms of section 92;

"private body" means—

(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;

"public safety or environmental risk" means harm or risk to the environment or the public (including individuals in their workplace) associated with—

(a) a product or service which is available to the public;

(b) a substance released into the environment, including, but not limited to, the workplace;

(c) a substance intended for human or animal consumption;

(d) a means of public transport; or

(e) an installation or manufacturing process or substance which is used in that installation or process;

"public body" means—

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

"record" of, or in relation to, a public or private body, means any recorded information—

(a) regardless of form or medium;

(b) in the possession or under the control of that public or private body, respectively; and

(c) whether or not it was created by that public or private body, respectively;

"relevant authority", in relation to—

(a) a public body referred to in paragraph *(a)* of the definition of "public body" in the national sphere of government, means—

(i) in the case of the Office of the Presidency, the person designated in writing by the President; or

(ii) in any other case, the Minister responsible for that public body or the person designated in writing by that Minister;

(b) a public body referred to in paragraph *(a)* of the definition of "public body" in the provincial sphere of government, means—

(i) in the case of the Office of a Premier, the person designated in writing by the Premier; or

(ii) in any other case, the member of the Executive Council responsible for that public body or the person designated in writing by that member, or

(c) a municipality, means—

(i) the mayor;

(ii) the speaker; or

(iii) any other person,

designated in writing by the Municipal Council of that municipality;

"request for access", in relation to—

(a) a public body, means a request for access to a record of a public body in terms of section 11; or

(b) a private body, means a request for access to a record of a private body in terms of section 50;

"requester", in relation to—

(a) a public body, means—

(i) any person (other than a public body contemplated in paragraph *(a)* or *(b)*(i) of the definition of "public body", or an official thereof) making a request for access to a record of that public body; or

(ii) a person acting on behalf of the person referred to in subparagraph (i);

(b) a private body, means—

(i) any person, including, but not limited to. a public body or an official thereof, making a request for access to a record of that private body; or

(ii) a person acting on behalf of the person contemplated in subparagraph (i);

"subversive or hostile activities" means—

(a) aggression against the Republic:

(b) sabotage or terrorism aimed at the people of the Republic or a strategic asset of the Republic, whether inside or outside the Republic;

(c) an activity aimed at changing the constitutional order of the Republic by the use of force or violence; or

(d) a foreign or hostile intelligence operation;

"third party", in relation to a request for access to—

(a) a record of a public body, means any person (including, but not limited to, the government of a foreign state, an international organisation or an organ of that government or organisation) other than—

(i) the requester concerned; and

(ii) a public body; or

(b) a record of a private body, means any person (including, but not limited to, a public body) other than the requester,

but, for the purposes of sections 34 and 63, the reference to "person" in paragraphs (u) and *(b)* must be construed as a reference to "natural person";

"this Act" includes any regulation made and in force in terms of section 92;

"transfer", in relation to a record, means transfer in terms of section 20(1) or (2), and "transferred" has a corresponding meaning;

"working days" means any days other than Saturdays, Sundays or public holidays, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

Interpretation of Act

2. (1) When interpreting a provision of this Act. every court must prefer any reasonable interpretation of the provision that is consistent with the objects of this Act over any alternative interpretation that is inconsistent with those objects.

(2) Section 12 must not be construed as excluding—

(a) the Cabinet and its committees; or

(b) an individual member of Parliament or of a provincial legislature,

from the operation of the definition of "requester" in relation to a private body in section 1, section 49 and all other provisions of this Act related thereto.

(3) For the purposes of this Act, the South African Revenue Service, established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), and referred to in section 35(1), is a public body.

CHAPTER 2
GENERAL APPLICATION PROVISIONS

Act applies to record whenever it came into existence

3. This Act applies to—

(a) a record of a public body; and

(b) a record of a private body,

regardless of when the record came into existence.

Records held by official or independent contractor of public or private body

4. For the purposes of this Act, but subject to section 12. a record in the possession or under the control of—

(a) an official of a public body or private body in his or her capacity as such: or

(b) an independent contractor engaged by a public body or private body in the capacity as such contractor,

is regarded as being a record of that public body or private body, respectively.

Application of other legislation prohibiting or restricting disclosure

5. This Act applies to the exclusion of any provision of other legislation that—

(a) prohibits or restricts the disclosure of a record of a public body or private body; and

(b) is materially inconsistent with an object. or a specific provision, of this Act.

Application of other legislation providing for access

6. Nothing in this Act prevents the giving of access to—

(a) a record of a public body in terms of any legislation referred to in Part 1 of the Schedule; or

(b) a record of a private body in terms of any legislation referred to in Part 2 of the Schedule.

Act not **applying to records required for criminal or civil proceedings after commencement of proceedings**

7. (1) This Act does not apply to a record of a public body or a private body if—

(a) that record is requested for the purpose of criminal or civil proceedings;

(b) so requested after the commencement of such criminal or civil proceedings, as the case may be; and

(c) the production of or access to that record for the purpose referred to in paragraph *(a) is* provided for in any other law.

(2) Any record obtained in a manner that contravenes subsection(1) is not admissible as evidence in the criminal or civil proceedings referred to in that subsection unless the exclusion of such record by the court in question would, in its opinion, be detrimental to the interests of justice.

Part applicable when performing functions as **public** or private body

8.(1) For the purposes of this Act, a public body referred to in paragraph *(b)*(ii) of the definition of "public body" in section 1, or a private body—

(a) may be either a public body or a private body in relation to a record of that body; and

(b) may in one instance be a public body and in another instance be a private body, depending on whether that record relates to the exercise of a power or performance of a function as a public body or as a private body.

(2) A request for access to a record held for the purpose or with regard to the exercise of a power or the performance of a function—

(a) as a public body, must be made in terms of section 11; or

(b) as a private body, must be made in terms of section 50.

(3) The provisions of Parts 1,2,4,5,6 and 7 apply to a request for access to a record that relates to a power or function exercised or performed as a public body.

(4) The provisions of Parts 1,3,4; 5,6 and 7 apply to a request for access to a record that relates to a power or function exercised or performed as a private body.

CHAPTER 3
GENERAL INTRODUCTORY PROVISIONS

Objects of Act

9. The objects of this Act are—

(a) to give effect to the **constitutional right of access** to—

(i) **any information held by the State; and**

(ii) any information that is held by another person and that is required for the exercise or protection of any rights;

(b) to give effect to that right—

(i) subject to justifiable limitations, including, but not limited to, limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and

(ii) in a manner which balances that right with any other rights, including the rights in the Bill of Rights in Chapter 2 of the Constitution;

(c) to give effect to the constitutional obligations of the State of promoting a human rights culture and social justice, by including public bodies in the definition of "requester", allowing them, amongst others, to access informa-

tion from private bodies upon compliance with the four requirements in this Act, including an additional obligation for certain public bodies in certain instances to act in the public interest;

(d) to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public and private bodies as swiftly, inexpensively and effortlessly as reasonably possible; and

(e) generally, to promote transparency, accountability and effective governance of all public and private bodies by, including, but not limited to, empowering and educating everyone—

(i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

(ii) to understand the functions and operation of public bodies: and

(iii) to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

Guide on how to use Act

10. (1) The Human Rights Commission must. within 18 months after the commencement of this section, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.

(2) The guide must, without limiting the generality of subsection (1), include a description of—

(a) the objects of this Act;

(b) the postal and street address, phone and fax number and, if available, electronic mail address of—

(i) the information officer of every public body; and

(ii) every deputy information officer of every public body appointed in terms of section 17(1):

(c) such particulars of every private body as are practicable;

(d) the manner and form of a request for—

(i) access to a record of a public body contemplated in section 11; and

(ii) access to a record of a private body contemplated in section 50:

(e) the assistance available from the information officer of a public body in terms of this Act;

(f) the assistance available from the Human Rights Commission in terms of this Act;

(g) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act, including the manner of lodging—

(i) an internal appeal; and

(ii) an application with a court against a decision by the information *officer* of a public body, a decision on internal appeal or a decision of the head of a private body;

(h) the provisions of sections 14 and 51 requiring a public body and private body, respectively, to compile a manual, and how to obtain access to a manual;

(i) the provisions of sections 15 and 52 providing for the voluntary disclosure of categories of records by a public body and private body, respectively;

(j) the notices issued in terms of sections 22 and 54 regarding fees to be paid in relation to requests for access; and

(k) the regulations made in terms of section 92.

(3) The Human Rights Commission must, if necessary, update and publish the guide at intervals of not more than two years.

(4) The guide must be made available as prescribed.

PART 2
ACCESS TO RECORDS OF PUBLIC BODIES

CHAPTER 1
RIGHT OF ACCESS, AND SPECIFIC APPLICATION PROVISIONS

Right of access to records of public bodies

11. (1) A requester must be given access to a record of a public body if—

(a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and

(b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester.

(3) A requester's right of access contemplated in subsection (1) is, subject to this Act, not affected by—

(a) any reasons the requester gives for requesting access; or

(b) the information officer's belief as to what the requester's reasons are for requesting access.

Act not applying to certain public bodies or officials thereof

12. This Act does not apply to a record of—

(a) the Cabinet and its committees;

(b) the judicial functions of—

(i) a court referred to in section 166 of the Constitution;

(ii) a Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996); or

(iii) a judicial officer of such court or Special Tribunal; or

(c) an individual member of Parliament or of a provincial legislature in that capacity.

Body determined to be part of another public body

13. For the purpose of this Act, the Minister may, on his or her own accord or on the request of the relevant public body or bodies or a body referred to in paragraph (c), in the prescribed manner and by notice in the *Gazette*—

(a) determine that a public body is to be regarded as part of another public body;

(b) determine that a category of public bodies is to be regarded as one public body with such information officer as the Minister designates; and

(c) if there is doubt as to whether a body is a separate public body or forms part of a public body, determine that the body—

(i) is a separate public body; or

(ii) forms part of a public body.

CHAPTER 2

PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS

Manual on functions of, and index of records held by, **public** body

14. (1) Within six months after the commencement of this section or the coming into existence of a public body, the information officer of the public body concerned must compile in at least three official languages a manual containing—

(a) a description of its structure and functions;

(b) the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of the body and of every deputy information officer of the body appointed in terms of section 17(1);

(c) a description of the guide referred to in section 10, if available, and how to obtain access to it;

(d) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject;

(e) the latest notice, in terms of section 15(2), if any, regarding the categories of records of the body which are available without a person having to request access in terms of this Act;

(f) a description of the services available to members of the public from the body and how to gain access to those services;

(g) a description of any arrangement or provision for a person (other than a public body referred to in paragraph (a) or (b)(i) of the definition of "public body"

in section 1) by consultation, making representations or otherwise, to participate in or influence—

(i) the formulation of policy; or

(ii) the exercise of powers or performance of duties,

by the body;

(h) a description of all remedies available in respect of an act or a failure to act by the body; and

(i) such other information as may be prescribed.

(2) A public body must, if necessary, update and publish its manual referred to in subsection (1) at intervals of not more than one year.

(3) Each manual must be made available as prescribed.

(4)*(a)* If the functions of two or more public bodies are closely connected, the Minister may on request or of his or her own accord determine that the two or more bodies compile one manual only.

(b) The public bodies in question must share the cost of the compilation and making available of such manual as the Minister determines.

(5) For security, administrative or financial reasons, the Minister may, on request or of his or her own accord by notice in the *Gazette*, exempt any public body or category of public bodies from any provision of this section for such period as the Minister thinks fit.

Voluntary disclosure and automatic availability of certain records

15. (1) The information officer of a public body, referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body" in section 1, must, on a periodic basis not less frequently than once each year, submit to the Minister a description of—

(a) the categories of records of the public body that are automatically available without a person having to request access in terms of this Act, including such categories available—

(i) for inspection in terms of legislation other than this Act;

(ii) for purchase or copying from the body; and

(iii) from the body free of charge; and

(b) how to obtain access to such records.

(2) On a periodic basis not less frequently than once each year and at the cost of the relevant public body, the Minister must, by notice in the *Gazette*—

(a) publish every description submitted in terms of subsection (1); or

(b) update every description so published.

as the case may be.

(3) The only fee payable (if any) for access to a record included in a notice in terms of subsection (2) is a prescribed fee for reproduction.

(4) The information officer of a public body may delete any part of a record contemplated in subsection (1)(a) which, on a request for access, mayor must be refused in terms of Chapter 4 of this Part.

(5) Section 11 and any other provisions in this Act related to that section do not apply to any category of records included in a notice in terms of subsection (2).

Information in telephone directory

16. The Director-General of the national department responsible for government communications and information services must at that department's cost ensure the publication of the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of every public body in every telephone directory issued for general use by the public as are prescribed.

CHAPTER 3
MANNER OF A CCESS

Designation of deputy information officers, and delegation

17. (1) For the purposes of this Act, each public body must, subject to legislation governing the employment of personnel of the public body concerned, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records.

(2) The information officer of a public body has direction and control over every deputy information officer of that body.

(3) The information officer of a public body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body.

(4) In deciding whether to delegate a power or duty in terms of subsection (3), the information officer must give due consideration to the need to render the public body as accessible as reasonably possible for requesters of its records.

(5) Any power or duty delegated in terms of subsection (3) must be exercised or performed subject to such conditions as the person who made the delegation considers necessary.

(6) Any delegation in terms of subsection (3)—

(a) must be in writing;

(b) does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself; and

(c) may at any time be withdrawn or amended in writing by that person.

(7) Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegation in terms of subsection (3) is not affected by any subsequent withdrawal or amendment of that decision.

Form of requests

18. (1) A request for access must be made in the prescribed form to the information officer of the public body concerned at his or her address or fax number or electronic mail address.

(2) The form for a request of access prescribed for the purposes of subsection (1) must at least require the requester concerned—

(a) to provide sufficient particulars to enable an official of the public body concerned to identify—

(i) the record or records requested; and

(ii) the requester;

(b) to indicate which applicable form of access referred to in section 29(2) is required;

(c) to state whether the record concerned is preferred in a particular language;

(d) to specify a postal address or fax number of the requester in the Republic;

(e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and

(f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the information officer.

(3)*(a)* An individual who because of illiteracy or a disability is unable to make a request for access to a record of a public body in accordance with subsection (1), may make that request orally.

(b) The information officer of that body must reduce that oral request to writing in the prescribed form and provide a copy thereof to the requester.

Duty to assist requesters

19. (1) If a requester informs the information officer of—

(a) a public body that he or she wishes to make a request for access to a record of that public body; or

(b) a public body (other than a public body referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body" in section 1) that he or she wishes to make a request for access to a record of another public body,

the information officer must render such reasonable assistance, free of charge, as is necessary to enable that requester to comply with section 18(1).

(2) If a requester has made a request for access that does not comply with section 18(1), the information officer concerned may not refuse the request because of that non-compliance unless the information officer has—

(a) notified that requester of an intention to refuse the request and stated in the notice—

(i) the reasons for the contemplated refusal; and

(ii) that the information officer or another official identified by the information officer would assist that requester in order to make the request in a form that would remove the grounds for refusal;

(b) given the requester a reasonable opportunity to seek such assistance;

(c) as far as reasonably possible, furnished the requester with any information (including information about the records, other than information on the basis of which a request for access may or must be refused in terms of any provision of Chapter 4 of this Part, held by the body which are relevant to the request) that would assist the making of the request in that form; and

(d) given the requester a reasonable opportunity to confirm the request or alter it to comply with section 18(l).

(3) When computing any period referred to in section 25(l), the period commencing on the date on which notice is given in terms of subsection (2) and ending on the date on which the person confirms or alters the request for access concerned must be disregarded.

(4) If it is apparent on receipt of a request for access that it should have been made to another public body, the information officer of the public body concerned must—

(a) render such assistance as is necessary to enable [he person to make the request, to the information officer of the appropriate public body; or

(b) transfer the request in accordance with section 20 to the last-mentioned information officer.

whichever will result in the request being dealt with earlier.

Transfer of **requests**

20. (1) If a request for access is made to the information officer of a public body in respect of which—

(a) the record is not in the possession or under the control of that body but is in the possession of another public body;

(b) the record's subject matter is more closely connected with the functions of another public body than those of the public body of the information officer to whom the request is made; or

(c) the record contains commercial information contemplated in section 42 in which any other public body has a greater commercial interest,

the information officer to whom the request is made must as soon as reasonably possible, but in any event within 14 days after the request is received—

(i) transfer the request to the information officer of the other public body or, if there is in the case of paragraph *(c)* more than one other public body having a commercial interest. the other public body with the greatest commercial interest; and

(ii) if the public body of the information officer to whom the request is made is in possession of the record and considers it helpful to do so to enable the information officer of the other public body to deal with the request, send the record or a copy of the record to that information officer.

(2) If a request for access is made to the information officer of a public body in respect of which—

(a) the record is not in the possession or under the control of the public body of that information officer and the information officer does not know which public body has possession or control of the record:

(b) the record's subject matter is not closely connected to the functions of the public body of that information officer and the information officer does not know whether the record is more closely connected with the functions of another public body than those of the public body of the information officer to whom the request is made; and

(c) the record—

(i) was created by or for another public body: or

(ii) was not so created by or for any public body. but was received first by another public body,

the information officer to whom the request is made, must as soon as reasonably possible, but in any event within 14 days after the request is received, transfer the request to the information officer of the public body by or for which the record was created or which received it first. as the case may be.

(3) Subject to subsection (4). the information officer to whom a request for access is transferred, must give priority to that request in relation to other requests as if it were received by him or her on the date it was received by the information officer who transferred the request.

(4) If a request for access is transferred, any period referred to in section 25(1) must be computed from the date the request is received by the information officer to whom the request is transferred.

(5) Upon the transfer of a request for access, the information officer making the transfer must immediately notify the requester of—

(a) the transfer;

(b) the reasons for the transfer; and

(c) the period within which the request must be dealt with,

Preservation of records until final decision on request

21. If the information officer of a public body has received a request for access to a record of the body, that information officer must take the steps that are reasonably necessary to preserve the record, without deleting any information contained in it, until the information officer has notified the requester concerned of his or her decision in terms of section 25 and—

(a) the periods for lodging an internal appeal, an application with a court or an appeal against a decision of that court have expired; or

(b) that internal appeal, application or appeal against a decision of that court or other legal proceedings in connection with the request has been finally determined,

whichever is the later.

Fees

22. (1) The information officer of a public body to whom a request for access is made, must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request.

(2) If—

(a) the search for a record of a public body in respect of which a request for access by a requester, other than a personal requester, has been made; and

(b) the preparation of the record for disclosure (including any arrangements contemplated in section *29(2)(a)* and *(b)(i)* and (ii)*(aa)*),

would, in the opinion of the information officer of the body, require more than the hours prescribed for this purpose for requesters, the information officer must by notice require the requester, other than a personal requester, to pay as a deposit the prescribed portion (being not more than one third) of the access fee which would be payable if the request is granted.

(3) The notice referred to in subsection (1) or (2) must state—

(a) the amount of the deposit payable in terms of subsection (2), if applicable;

(b) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the tender or payment of the request fee in terms of subsection (1), or the tender or payment of a deposit in terms of subsection (2), as the case may be; and

(c) the procedure (including the period) for lodging the internal appeal or application, as the case may be.

(4) If a deposit has been paid in respect of a request for access which is refused, the information officer concerned must repay the deposit to the requester.

(5) The information officer of a public body must withhold a record until the requester concerned has paid the applicable fees (if any).

(6) A requester whose request for access to a record of a public body has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)*(a)* and (b), respectively, for any time reasonably required in excess of the prescribed hours to search for and prepare (including making any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure.

(7) Access fees prescribed for the purposes of subsection (6) must provide for a reasonable access fee for—

(a) the cost of making a copy of a record, or of a transcription of the content of a

record, as contemplated in section 29(2)(u) and (b)(i), (ii)*(bb)*, (iii) and (v) and, if applicable, the postal fee; and

(b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure to the requester.

(8) The Minister may, by notice in the *Gazette*—

(a) exempt any person or category of persons from paying any fee referred to in this section;

(b) determine that any fee referred to in this section is not to exceed a certain maximum amount;

(c) determine the manner in which any fee referred to in this section is to be calculated;

(d) determine that any fee referred to in this section does not apply to a category of records;

(e) exempt any person or record or category of persons or records for a stipulated period from any fee referred to in subsection (6); and

(f) determine that where the cost of collecting any fee referred to in this section exceeds the amount charged, such fee does not apply.

Records that cannot be found or do not exist

23. *(1)* If—

(a) all reasonable steps have been taken to find a record requested: and

(b) there are reasonable grounds for believing that the record—

(i) is in the public body's possession but cannot be found; or

(ii) does not exist,

the information officer of a public body must. by way of affidavit or affirmation. notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer.

(3) For the purposes of this Act, the notice in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record.

(4) If, after notice is given in terms of subsection (1), the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this Part.

Deferral of access

24. (1) If the information officer of a public body decides to grant a request for access to a record, but that record—

(a) is to be published within 90 days after the receipt or transfer of the request or such further period as is reasonably necessary for printing and translating the record for the purpose of publishing it:

(b) is required by law to be published but is yet to be published: or

(c) has been prepared for submission to any legislature or a particular person but is yet to be submitted.

the information officer may defer giving access to the record for a reasonable period.

(2) If **access to a** record is deferred in terms of subsection (1), the information officer must notify the requester concerned—

(a) that the requester may, within 30 days after that notice is given, make representations to the information officer why the record is required before such publication or submission; and

(b) of the likely period for which access is to be deferred.

(3) If a requester makes representations in terms of subsection (2)*(a)*, the information officer must, after due consideration of those representations, grant the request for access only if there are reasonable grounds for believing that the 'requester will suffer substantial prejudice if access to the record is deferred for the likely period referred to in subsection (2)*(b)*.

Decision on request and notice thereof

25. (1) The information officer to whom a request for access is made or transferred, must, subject to section 26 and Chapter 5 of this Part, as soon as reasonably possible, but in any event within 30 days, after the request is received—

(a) decide in accordance with this Act whether to grant the request; and

(b) notify the requester of the decision and, if the requester stated, as contemplated in section 18(2)(e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

(2) If the request for access is granted, the notice in terms of subsection (1)(b) must state—

(a) the access fee (if any) to be paid upon access;

(b) the form in which access will be given; and

(c) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the access fee to be paid or the form of access granted, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

(3) If the request for access is refused, the notice in terms of subsection (1)*(b)* must—

(a) state adequate reasons for the refusal, including the provisions of this Act relied upon;

(b) exclude, from such reasons, any reference to the content of the record; and

(c) state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal of the request, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

Extension of period to deal with request

26. (1) The information officer to whom a request for access has been made or transferred, may extend the period of 30 days referred to in section 25(1) (in this section referred to as the "original period") once for a further period of not more than 30 days, if—

(a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the public body concerned;

(b) the request requires a search for records in, or collection thereof from, an office of the public body not situated in the same town or city as the office of the information officer that cannot reasonably be completed within the original period;

(c) consultation among divisions of the public body or with another public body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;

(d) more than one of the circumstances contemplated in paragraphs (u), *(b)* and *(c)* exist in respect of the request making compliance with the original period not reasonably possible; or

(e) the requester consents in writing to such extension.

(2) If a period is extended in terms of subsection (l), the information officer must, as soon as reasonably possible, but in any event within 30 days, after the request is received or transferred, notify the requester of that extension.

(3) The notice in terms of subsection (2) must state—

(a) the period of the extension;

(b) adequate reasons for the extension, including the provisions of this Act relied upon; and

(c) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the extension, and the procedure (including the period) for lodging the internal appeal or application, as the case may be.

Deemed refusal of request

27, If an information officer fails to give the decision on a request for access to the requester concerned within the period contemplated in section 25(1), the information officer is, for the purposes of this Act, regarded as having refused the request.

Severability

28. (1) If a request for access is made to a record of a public body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part every part of the record which—

(a) does not contain: and

(b) can reasonably be severed from any part that contains,

any such information must, despite any other provision of this Act, be disclosed.

(2) If a request for access to—

(a) a part of a record is granted; and

(b) the other part of the record is refused,

as contemplated in subsection (1), the provisions of section 25(2), apply to paragraph *(a)* of this section and the provisions of section 25(3) to paragraph *(b)* of this section.

Access and forms of access

29. (1) If a requester has been given notice in terms of section 25(1) that his or her request for access has been granted, that requester must, subject to subsections (3) and (9) and section 3 1—

(a) if an access fee is payable, upon payment of that fee; or

(b) if no access fee is payable, immediately,

be given access in the applicable forms referred to in subsection (2) as the requester indicated in the request, and in the language contemplated in section 31.

(2) The forms of access to a record in respect of which a request of access has been granted. are the following:

(a) If the record is in written or printed form, by supplying a copy of the record or by making arrangements for the inspection of the record;

(b) if the record is not in written or printed form—

(i) in the case of a record from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily available to the public body concerned, by making arrangements to view those images or be supplied with copies or transcriptions of them;

(ii) in the case of a record in which words or information are recorded in such manner that they are capable of being reproduced in the form of sound by equipment which is ordinarily available to the public body concerned—

(aa) by making arrangements to hear those sounds; or

(bb) if the public body is capable of producing a written or printed transcription of those sounds by the use of equipment which is ordinarily available to it, by supplying such a transcription;

(iii) in the case of a record which is held on computer, or in electronic or machine-readable form, and from which the public body concerned is capable of producing a printed copy of—

(aa) the record, or a part of it; or

(bb) information derived from the record,

by using computer equipment and expertise ordinarily available to the public body, by supplying such a copy;

(iv) in the case of a record available or capable of being made available in computer readable form, by supplying a copy in that form; or

(v) in any other case. by supplying a copy of the record.

(3) If a requester-has requested access 'in a particular form, access must, subject to section 28, be given in that form, unless to do so would—

(a) interfere unreasonably with the effective administration of the public body concerned;

(b) be detrimental to the preservation of the record; or

(c) amount to an infringement of copyright not owned by the State or the public body concerned.

(4) If a requester has requested access in a particular form and for a reason referred to in subsection (3) access in that form is refused but access is given in another form, the fee charged may not exceed what would have been charged if that requester had been given access in the form requested.

(5) If a requester with a disability is prevented by that disability from reading, viewing or listening to the record concerned in the form in which it is held by the public body

concerned. the information officer of the body must. if that requester so requests. take reasonable steps to make the record available in a form in which it is capable of being read, viewed or heard by the requester.

(6) If a record is made available in accordance with subsection (5), the requester may not be required to pay an access fee which is more than the fee which he or she would have been required to pay but for the disability.

(7) If a record is made available in terms of this section to a requester for inspection, viewing or hearing, the requester may make copies of or transcribe the record using the requester's equipment, unless to do so would—

(a) interfere unreasonably with the effective administration of the public body concerned;

(b) be detrimental to the preservation of the record; or

(c) amount to an infringement of copyright not owned by the State or the public body concerned.

(8) If the supply to a requester of a copy of a record is required by this section, the copy must, if so requested, be supplied by posting it to him or her.

(9) If an internal appeal or an application to a court, as the case may be, is lodged against the granting of a request for access to a record, access to the record maybe given only when the decision to grant the request is finally confirmed.

Access to **health or other records**

30. (1) If the information officer who grants, in terms of section 11, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being—

(a) of the requester; or

(b) if the request has been made on behalf of the person to whom the record relates, of that person,

(in this section, the requester and person referred to paragraphs *(a)* and *(b),* respectively, are referred to as the "relevant person"), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the information officer may, before giving access in terms of section 29, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.

(2) If the relevant person is—

(a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or

(b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(3)*(a)* If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person would be likely to cause serious harm to his or her physical or mental health, or well-being, the information officer may only give access to the record if the requester proves to the satisfaction of the information officer that adequate provision is made for such counseling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.

(b) Before access to the record is so given to the requester, the person responsible for such counseling or arrangements must be given access to the record.

Language of access

31. A requester whose request for access to a record of a public body has been granted **must, if the** record—

(a) exists in the **language that the requester prefers,** be given access in that language; or

(b) does not exist in the language so preferred or the requester has no preference or has not indicated a preference, be given access in any language the record exists in.

Reports to Human Rights Commission

32. The information officer of each public body must annually submit to the Human Rights Commission a report stating in relation to the public body—

(a) the number of requests for access received;

(b) the number of requests for access granted in full:

(c) the number of requests for access granted in terms of section 46;

(d) the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partial;

(e) the number of cases in which the periods stipulated in section 25(1) were extended in terms of section 26(1);

(g) the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record;

(h) the number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27;

(i) the number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77(7); and

(j) such other matters as may be prescribed.

CHAPTER 4
GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

Interpretation

33. (1) The information officer of a public body—

(a) must refuse a request for access to a record contemplated in section 34(1). 35(1), 36(1), 37(l)(a), 38(a), 39(1)(u), 40 or 43(l); or

(b) may refuse a request for access to a record contemplated in section 37(1)(*b),* 38*(b),* 39(*1)(b),* 41(l)(a) **or** *(b),* 42(1) or (3), 43(2), 44(1) or (2) or 45,

unless the provisions of section 46 apply.

(2) A provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, may not be construed as—

(a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and

(b) not applying to a particular record by reason that another provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

Mandatory protection of privacy of third party who is natural person

34. (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) about an individual who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned;

(b) that was given to the public body by the individual to whom it relates and the individual was informed by or on behalf of the public body, before it is given, that the information belongs to a class of information that would or might be made available to the public:

(c) already publicly available;

(d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is—

(i) under the age of 18 years; or

(ii) incapable of understanding the nature of the request,

and if giving access would be in the individual's best interests;

(e) about an individual who is deceased and the requester is—

(i) the individual's next of kin: or

(ii) making the request with the written consent of the individual's next of kin; or

(f) about an individual who is or was an official of a public body and which relates to the position or functions of the individual, including, but not limited t *

(i) the fact that the individual is or was an official of that public body;

(ii) the **title,** work address, work phone number and other similar particulars of the individual;

(iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and

(iv) the name of the individual on a record prepared by the individual in the course of employment.

Mandatory protection of certain records of South African Revenue Service

35. (1) Subject to subsection (2), the information officer of the South African Revenue Service, referred to in section 2(3), must refuse a request for access to a record of that Service if it contains information which was obtained or is held by that Service for the purposes of enforcing legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the requester or the person on whose behalf the request is made.

Mandatory protection of commercial information of third party

36. (1) Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of the body if the record contains—

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

(c) information supplied in confidence by a third party the disclosure of which could reasonably be expected—

(i) to put that third party at a disadvantage in contractual or other negotiations; or

(ii) to prejudice that third party in commercial competition.

(2) A record may "not be refused in terms of subsection (1) insofar as it consists of information—

(a) already publicly available;

(b) about a third party who has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned; or

(c) about the results of any product or environmental testing or other investigation supplied by, earned out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purposes of subsection (2)(c), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

Mandatory protection of certain confidential information, and protection of certain other confidential information, of third party

37. (1) Subject to subsection (2), the information officer of a public body—

(a) must refuse a request for access to a record of the body if the disclosure of the record would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement; or

(b) may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party—

(i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and

(ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) already publicly available; or

(b) about the third party concerned that has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned.

Mandatory protection of safety of individuals, and protection of property

38. The information officer of a public body—

(a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual: or

(b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair—

(i) the security of—

(aa) a building, structure or system, including, but not limited to. a computer or communication system:

(bb) a means of transport; or

(cc) any other property; or

(ii) methods, systems, plans or procedures for the protection of—

(aa) an individual in accordance with a witness protection scheme;

(bb) the safety of the public, or any part of the public; or

(cc) the security of property contemplated in subparagraph (i)(aa), (bb) or (cc).

Mandatory protection of police dockets in bail proceedings, and protection of law enforcement and legal proceedings

39. (1) The information officer of a public body—

(a) must refuse a request for access to a record of the body if access to that record is prohibited in terms of section 60(14) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or

(b) may refuse a request for access to a record of the body if—

(i) the record contains methods, techniques, procedures or guidelines for—

(aa) the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law: or

(bb) the prosecution of alleged offenders.

and the disclosure of those methods, techniques, procedures or guidelines could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence;

(ii) the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the record could reasonably be expected—

(aa) to impede that prosecution: or

(bb) to result in a miscarriage of justice in that prosecution; or

(iii) the disclosure of the record could reasonably be expected—

(aa) to prejudice the investigation of a contravention or possible contravention of the law which is about to commence or is in progress or, if it has been suspended or terminated, is likely to be resumed;

(bb) to reveal, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;

(cc) to result in the intimidation or coercion of a witness. or a person who might be or has been called as a witness, in criminal proceedings or other proceedings to enforce the law;

(old) to facilitate the commission of a contravention of the law, including, but not limited to, subject to subsection (2), escape from lawful detention; or

(ee) to prejudice or impair the fairness of a trial or the impartiality of an adjudication,

(2) A record may not be refused in terms of subsection (1)(b)(iii)(dd) insofar as it consists of information about the general conditions of detention of persons in custody.

(3)*(a)* If a request for access to a record of a public body must or may be refused in terms of subsection (I)*(a)* or *(b)*, or could, if it existed. be so refused. and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in subsection (1)*(a)* or *(b)*. the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.

(b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 25(3) must—

(i) state that fact;

(ii) identify the provision of subsection (1)*(a)* or *(b)* in terms of which access would have been refused if the record had existed;

(iii) state adequate reasons for the refusal, as required by section 25(3), in so far as they can be given without causing the harm contemplated in any provision of subsection (1)*(a)* or *(b)*: and

(iv) state that the requester concerned may lodge an internal appeal or an application with a court. as the case may be, against the refusal as required by section 25(3).

Mandatory protection of records privileged from production in legal proceedings

40. The information officer of a public body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

Defence, security and international relations of Republic

41. (1) The information officer of a public body may refuse a request for access to a record of the body if its disclosure—

(a) could reasonably be expected to cause prejudice to—

(i) the defence of the Republic;

(ii) the security of the Republic; or

(iii) subject to subsection (3), the international relations of the Republic; or

(b) would reveal information—

(i) supplied in confidence by or on behalf of another state or an international organisation;

(ii) supplied by or on behalf of the Republic to another state or an international organisation in terms of an arrangement or international agreement, contemplated in section 231 of the Constitution, with that state or organisation which requires the information to be held in confidence; or

(iii) required to be held in confidence by an international agreement or customary international law contemplated in section 231 or 232, respectively, of the Constitution.

(2) A record contemplated in subsection (1), without limiting the generality of that subsection, includes a record containing in formation—

(a) relating to military tactics or strategy or military exercises or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression or curtailment of subversive or hostile activities;

(b) relating to the quantity, characteristics, capabilities, vulnerabilities or deployment of—

(i) weapons or any other equipment used for the detection, prevention, suppression or curtailment of subversive or hostile activities; or

(ii) anything being designed, developed, produced or considered for use as weapons or such other equipment;

(c) relating to the characteristics, capabilities, vulnerabilities, performance, potential, deployment or functions of—

(i) any military force, unit or personnel; or

(ii) any body or person responsible for the detection, prevention, suppression or curtailment of subversive or hostile activities;

(d) held for the purpose of intelligence relating to—

(i) the defence of the Republic;

(ii) the detection, prevention, suppression or curtailment of subversive or hostile activities; or

(iii) another state or an international organisation used by or on behalf of the Republic in the process of deliberation and consultation in the conduct of international affairs;

(e) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph *(d)*;

(f) on the identity of a confidential source and any other source of information referred to in paragraph *(d)*;

(g) on the positions adopted or to be adopted by the Republic, another state or an international organisation for the purpose of present or future international negotiations: or

(h) that constitutes diplomatic correspondence exchanged with another state or an international organisation or official correspondence exchanged with diplomatic missions or consular posts of the Republic.

(3) A record may not be refused in terms of subsection (1)*(a)*(iii) if it came into existence more than 20 years before the request.

(4)*(a)* If a request for access to a record of a public body may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in any provision of subsection (1), the information officer concerned may refuse to confirm or deny the existence or non-existence of the record.

(b) If the information officer so refuses to confirm or deny the existence or non-existence of the record, the notice referred to in section 25(3) must—

(i) state that fact;

(ii) identify the provision of subsection (1) in terms of which access would have been refused if the record had existed;

(iii) state adequate reasons for the refusal, as required by section 25(3), in so far as they can be given without causing the harm contemplated in subsection (1); and

(iv) state that the requester may lodge an internal appeal or an application with a court, as the case may be, against the refusal as required by section 25(3).

Economic interests and financial welfare of Republic and commercial activities of public bodies

42. (1) The information officer of a public body may refuse a request for access to a record of the body if its disclosure would be likely to materially jeopardise the economic interests or financial welfare of [he Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic.

(2) The information referred to in subsection (1) includes, without limiting the generality of that subsection, information about—

(a) a contemplated change in, or maintenance of, a policy substantially affecting the currency, coinage, legal tender, exchange rates or foreign investment:

(b) a contemplated change in or decision not to change—

(i) credit or interest rates;

(ii) customs or excise duties, taxes or any other source of revenue:

(iii) the regulation or supervision of financial institutions:

(iv) government borrowing; or

(v) the regulation of prices of goods or services, rents or wages, salaries or other incomes; or

(c) a contemplated—

(i) sale "or acquisition of immovable or movable property; or

(ii) international trade agreement.

(3) Subject to subsection (5), the information officer of a public body may refuse a request for access to a record of the body if the record—

(a) contains trade secrets of the State or a public body;

(b) contains financial, commercial, scientific or technical information. other than trade secrets, the disclosure of which would be likely to cause harm to the commercial or financial interests of the State or a public body:

(c) contains information, the disclosure of which could reasonably be expected—

(i) to put a public body at a disadvantage in contractual or other negotiations; or

(ii) to prejudice a public body in commercial competition; or

(d) is a computer program, as defined in section 1 (1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the State or a public body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.

(4) The information referred to in subsection (2)(c)(i) includes, without limiting the generality of that subsection, information about an agreement, or contemplated agreement, to transfer any interest in or right to shares in the capital of a public body to any person which is not a public body referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body".

(5) A record may not be refused in terms of subsection (3) insofar as it consists of information—

(a) already publicly available;

(b) about or owned by a public body, other than the public body to which the request is made, which has consented in writing to its disclosure to the requester concerned; or

(c) about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a public body, and its disclosure would reveal a serious public safety or environmental risk.

(6) For the purposes of subsection (5)(c), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

(7) If a request for access to a record contemplated in subsection (5)*(c)* is granted and the testing or other investigation was carried out by or on behalf of the public body from which the record is requested, the information officer must at the same time as access to the record is given, provide the requester with a written explanation of the methods used in conducting the testing or other investigation.

Mandatory protection of research information of third party, and protection of research information of public body

43. (1) The information officer of a public body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose—

(a) the third party;

(b) a person that is or will be carrying out the research on behalf of the third party; or

(c) the subject matter of the research,

to serious disadvantage.

(2) The information officer of a public body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a public body, the disclosure of which would be likely to expose—

(a) the public body;

(b) a person that is or will be carrying out the research on behalf of the public body; or

(c) the subject matter of the research,

to serious disadvantage.

Operations of public bodies

44. (1) Subject to subsections (3) and (4), the information officer of a public body may refuse a request for access to a record of the body—

(a) if the record contains—

(i) an opinion, advice, report or recommendation obtained or prepared; or

(ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting,

for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; or

(b) if—

(i) the disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid—

(aa) communication of an opinion, advice, report or recommendation; or

(bb) conduct of a consultation, discussion or deliberation; or

(ii) the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

(2) Subject to subsection (4), the information officer of a public body may refuse a request for access to a record of the body if—

(a) the disclosure of the record could reasonably be expected to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by a public body;

(b) the record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise which was—

(i) made to the person who supplied the material; and

(ii) to the effect that the material or the identity of the person who supplied it, or both, would be held in confidence; or

(c) the record contains a preliminary, working or other draft of an official of a public body.

(3) A record may not be refused in terms of subsection (1) if the record came into existence more than 20 years before the request concerned.

(4) A record may not be refused in terms of subsection (1) or (2) insofar as it consists of an account of, or a statement of reasons required to be given in accordance with section 5 of the Promotion of Administrative Justice Act. 2000.

Manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

45. The information officer of a public body may refuse a request for access to a record of the body if—

(a) the request is manifestly frivolous or vexatious: or

(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

Mandatory disclosure in public interest

46. Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1). 36(l), 37(l)(a) or *(b)*, 38*(a)* or *(b)*, 39(1)*(a)* or *(b)*, 40, 41(l)(a) or *(b)*, 42(1) or (3). 43(1) or (2), 44(1) or (2) or 45, if—

(a) the disclosure of the record would reveal evidence of—

(i) a substantial contravention of, or failure to comply with. the law; or

(ii) an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

CHAPTER 5

THIRD PARTY NOTIFICATION AND INTERVENTION

Notice to third parties

47. (1) The information officer of a public body considering a request for access to a record that might be a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1) must take all reasonable steps to inform a third party to whom or which the record relates of the request.

(2) The information officer must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event, within 21 days after that request is received or transferred: and

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the information officer must—

(a) state that he or she is considering a request for access to a record that might be a record contemplated in section 34(1), 35(l), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record;

(b) furnish the name of the requester;

(c) describe the provisions of section 34(1), 35(1), 36(1), 37(1) or 43(1). as the case may be;

(d) in any case where the information officer believes that the provisions of section 46 might apply. describe those provisions, specify which of the circumstances referred to in section 46(u) in the opinion of the information officer might apply and state the reasons why he or she is of the opinion that section 46 might apply; and

(e) state that the third party may, within 21 days after the third party is informed—

(i) make written or oral representations to the information officer why the request for access should be refused; or

(ii) give written consent for the disclosure of the record to the requester.

(4) If a third party is not informed orally of a request for access in terms of subsection (1), the information officer must give a written notice stating the matters referred to in subsection (3) to the third party.

Representations and consent by third parties

48. (1) A third party that is informed in terms of section 47(1) of a request for access, may, within 21 days after the third party has been informed—

(a) make written or oral representations to the information officer concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

(2) A third party that obtains knowledge about a request for access other than in terms of section 47(1) may—

(a) make written or oral representations to the information officer concerned why the request should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

Decision on representations for refusal and notice thereof

49. (1) The information officer of a public body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 47—

(a) decide, after giving due regard to any representations made by a third party in terms of section 48, whether to grant the request for access; and

(b) notify the third party so informed and a third party not informed in terms of section 47(1), but that made representations in terms of section 48 or is located before the decision is taken, of the decision.

(2) If, after all reasonable steps have been taken as required by section 47(l), a third party is not informed of the request in question and the third party did not make any representations in terms of section 48, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 48 why the request should be refused.

(3) If the request for access is granted, the notice in terms of subsection (1)(b) must state—

(a) adequate reasons for granting the request, including the provisions of this Act relied upon;

(b) that the third party may lodge an internal appeal or an application, as the case may be, against the decision within 30 days after notice is given, and the procedure for lodging the internal appeal or application, as the case may be; and

(c) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph *(b),* unless such internal appeal or application with a court is lodged within that period.

(4) If the information officer of a public body decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record concerned after the expiry of 30 days after notice is given in terms of subsection (1)(b), unless an internal appeal or an application with a court, as the case may be, is lodged against the decision within that period.

PART 3
ACCESS TO RECORDS OF PRIVATE BODIES

CHAPTER 1
RIGHT OF ACCESS

Right of access to records of private bodies

50. (1) A requester must be given access to any record of a private body if—

(a) that record is required for the exercise or protection of any rights;

(b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and

(c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

(2) In addition to the requirements referred to in subsection (1), when a public body, referred to in paragraph *(a)* or *(b)*(i) of the definition of "public body" in section 1, requests access to a record of a private body for the exercise or protection of any rights, other than its rights, it must be acting in the public interest.

(3) A request contemplated in subsection (1) includes a request for access to a record containing personal information about the requester or the person on whose behalf the request is made.

CHAPTER 2
PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS

Manual

51. (1) Within six months after the commencement of this section or the coming into existence of the private body concerned, the head of a private body must compile a manual containing—

(a) the postal and street address, phone and fax number and, if available, electronic mail address of the head of the body;

(b) a description of the guide referred to in section 10, if available, and how to obtain access to it;

(c) the latest notice in terms of section 52(2), if any, regarding the categories of record of the body which are available without a person having to request access in terms of this Act;

(d) a description of the records of the body which are available in accordance with any other legislation;

(e) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject; and

(f) such other information as maybe prescribed.

(2) The head of a private body must on a regular basis update the manual referred to in subsection (l).

(3) Each manual must be made available as prescribed.

(4) For security, administrative or financial reasons, the Minister may, on request or of his or her own accord, by notice in the Gazette, exempt any private body or category of private bodies from any provision of this section for such period as the Minister thinks fit.

Voluntary disclosure and automatic availability of certain records

52. (1) The head of a private body may, on a voluntary and periodic basis. submit to the Minister a description of—

(a) the categories of records of the private body that are automatically available without a person having to request access in terms of this Act, including such categories available—

(i) for inspection in terms of legislation other than this Act:

(ii) for purchase or copying from the private body;

(iii) from the private body free of charge; and

(b) how to obtain access to such records.

(2) If appropriate the Minister must, on a periodic basis and by notice in the *Gazette*—

(a) publish any description so submitted: and

(b) update any description so published.

(3) The only fee payable (if any) for access to a record described in a list so published is a prescribed fee for reproduction,

(4) The head of a private body may delete any part of a record contemplated in subsection (1)(a) which, on a request for access, may or must be refused in terms of Chapter 4 of this Part.

(5) Section 50 and any other provisions in this Act related to that section do not apply to any category of records included in a notice in terms of subsection (2).

CHAPTER 3
MANNER OF ACCESS

Form of request

53. (1) A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.

(2) The form for a request for access prescribed for the purposes of subsection (1) must at least require the requester concerned—

(a) to provide sufficient particulars to enable the head of the private body concerned to identify—

(i) the record or records requested; and

(ii) the requester;

(b) to indicate which form of access is required;

(c) to specify a postal address or fax number of the requester in the Republic;

(d) to identify the right the requester is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or protection of that right;

(e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and

(f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the head.

Fees

54. (1) The head of a private body to whom a request for access is made must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing the request.

(2) If—

(a) the search for a record of a private body in respect of which a request for access by a requester, other than a personal requester, has been made; and

(b) the preparation of the record for disclosure (including any arrangements contemplated in section *29(2)(a)* and *(b)*(i) and (ii)*(aa)*),

would, in the opinion of the head of the private body concerned, require more than the hours prescribed for this purpose for requesters, the head must by notice require the requester, other than a personal requester, to pay as a deposit the prescribed portion (being not more than one third) of the access fee which would be payable if the request is granted.

(3) The notice referred to in subsection (1) or (2) must state—

(a) the amount of the deposit payable in terms of subsection (2), if applicable;

(b) that the requester may lodge an application with a court against the tender or payment of the request fee in terms of subsection (1), or the tender or payment of a deposit in terms of subsection (2), as the case may be; and

(c) the procedure (including the period) for lodging the application.

(4) If a deposit has been paid in respect of a request for access which is refused, the head of the private body concerned must repay the deposit to the requester.

(5) The head of a private body may withhold a record until the requester concerned has paid the applicable fees (if any).

(6) A requester whose request for access to a record of a private body has been granted must pay an access fee for reproduction and for search and preparation contemplated in subsection (7)*(a)* and *(b)*, respectively, for any time reasonably required in excess of the

prescribed hours to search for and prepare (including making any arrangements contemplated in section *29(2)(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure.

(7) Access fees prescribed for the purposes of subsection (6) must provide for a reasonable access fee for—

(a) the cost of making a copy of a record, or of a transcription of the content of a record, as contemplated in section *29(2)(a)* and (b)(i), (ii)*(bb)*, (iii) and (v) and, if applicable, the postal fee; and

(b) the time reasonably required to search for the record and prepare (including making any arrangements contemplated in section 29(2)*(a)* and *(b)*(i) and (ii)*(aa)*) the record for disclosure to the requester.

(8) The Minister may, by notice in the *Gazette*—

(a) exempt any person or category of persons from paying any fee referred to in this section;

(b) determine that any fee referred to in this section is not to exceed a certain maximum amount;

(c) determine the manner in which any fee referred to in this section is to be calculated;

(d) determine that any fee referred to in this section does not apply to a category of records;

(e) exempt any person or record or category of persons or records for a stipulated period from any fee referred to in subsection (6); and

(f) determine that where the cost of collecting any fee referred to in this section exceeds the amount charged, such fee does not apply.

Records that cannot be found or do not exist

55. (1) If—

(a) all reasonable steps have been taken to find a record requested: and

(b) there are reasonable grounds for believing that the record—

(i) is in the private body's possession but cannot be found: or

(ii) does not exist.

the head of a private body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists. as the case may be, including all communications with every person who conducted the search on behalf of the head.

(3) For the purposes of this Act, the notice in terms of subsection(l) is to be regarded as a decision to refuse a request for access to the record concerned.

(4) If, after notice is given in terms of subsection (1), the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal contemplated in Chapter 4 of this Part.

Decision on request and notice thereof

56. (1) Subject to Chapter 5 of this Part, the head of the private body to whom the request is made must, as soon as reasonably possible, but in any event within 30 days. after the request has been received or after the particulars required in terms of section 53(2) have been received—

(a) decide in accordance with this Act whether to grant the request; and

(b) notify the requester of the decision and, if the requester stated, as contemplated in section 53(2)*(e)*, that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.

(2) If the request for access is granted, the notice in terms of subsection (1)(b) must state—

(a) the access fee (if any) to be paid upon access:

(b) the form in which access will be given; and

(c) that the requester may lodge an application with a court against the access fee to be paid or the form of access granted, and the procedure for lodging the application,

(3) If the request for access is refused, the notice in terms of subsection(1)(b) must—

(a) state adequate reasons for the refusal, including the provisions of this Act relied on:

(b) exclude, from any such reasons, any reference to the content of the record; and

(c) state that the requester may lodge an application with a court against the refusal of the request, and the procedure (including the period) for lodging the application.

Extension of period to deal with request

57. (1) The head of a private body to whom a request for access has been made, may extend the period of 30 days referred to in section 56(1) (in this section referred to as the "original period") once for a further period of not more than 30 days, if—

(a) the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the private body concerned;

(b) the request requires a search for records in, or collection thereof from, an office of the private body not situated in the same town or city as the office of the head that cannot reasonably be completed within the original period;

(c) consultation among divisions of the private body or with another private body is necessary or desirable to decide upon the request that cannot reasonably be completed within the original period;

(d) more than one of the circumstances contemplated in paragraphs *(a), (b)* and *(c)* exist in respect of the request making compliance with the original period not reasonably possible; or

(e) the requester consents in writing to such extension.

(2) If a period is extended in terms of subsection (1), the head of the private body must, as soon as reasonably possible, but in any event within 30 days, after the request is received, notify the requester of that extension, the period of the extension and the reasons for the extension.

(3) The notice in terms of subsection (2) must state—

(a) the period of the extension;

(b) adequate reasons for the extension, including the provisions of this Act relied upon; and

(c) that the requester may lodge an application with a court against the extension, and the procedure (including the period) for lodging the application.

Deemed refusal of request

58. If the head of a private body fails to give the decision on a request for access to the requester concerned within the period contemplated in section *56(1),* the head of the private body is, for the purposes of this Act, regarded as having refused the request.

Severability

59. (1) If a request for access is made to a record of a private body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part, every part of the record which—

(a) does not contain; and

(b) can reasonably be severed from any part that contains,

any such information must, despite arty other provision of this Act, be disclosed.

(2) If a request for access to—

(a) a part of a record is granted; and

(b) the other part of the record is refused,

as contemplated in subsection (1), the provisions of section 56(2) apply to paragraph (a) of this section and the provisions of section 56(3) to paragraph *(b)* of this section.

Form of access

60. If access is granted to a record of a private body, the head of that body must, as soon as reasonably possible after notification in terms of section 56, but subject to section 57, give access in—

(a) such form as the requester reasonably requires; or

(b) if no specific form of access is required by the requester, such form as the head reasonably determines.

Access to **health or other records**

61. (1) If the head of a private body who grants, in terms of section 50, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being—

(a) of the requester; or

(b) if the request has been made on behalf of the person to whom the record relates, of that person,

(in this section, the requester and person referred to paragraphs *(a)* and (b), respectively, are referred to as the "relevant person"), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the information officer may, before giving access in terms of section 60, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.

(2) If the relevant person is—

(a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or

(b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(3)(a) If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person, would be likely to cause serious harm to his or her physical or mental health, or well-being, the head may only give access to the record if the requester proves to the satisfaction of the head that adequate provision is made for such counseling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.

(b) Before access to the record is so given to the requester, the person responsible for such counseling or arrangements must be *given* access to the record.

CHAPTER 4
GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

Interpretation

62. A provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, must not be construed as—

(a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and

(b) not applying to a particular record by reason that another provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

Mandatory protection of privacy of third party who is natural person

63. (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information—

(a) about an individual who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;

(b) already publicly available;

(c) that was given to the private body by the individual to whom it relates and the individual was informed by or on behalf of the private body, before it is given, that the information belongs to a class of information that would or might be made available to the public;

(d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is—

(i) under the age of 18 years; or

(ii) incapable of understanding the nature of the request,

and if giving access would be in the individual's best interests;

(e) about an individual who is deceased and the requester is—

(i) the individuals next of kin; or
(ii) making the request with the written consent of the individual's next of kin; or

(f) about an individual who is or was an official of a private body and which relates to the position or functions of the individual, including, but not limited to—
(i) the fact that the individual is or was an official of that private body;
(ii) the title, work address, work phone number and other similar particulars of the individual;
(iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and
(iv) the name of the individual on a record prepared by the individual in the course of employment.

Mandatory protection of commercial information of third party

64. (1) **Subject to subsection (2), the head of a private** body must refuse a request for access to a record of the body if the record contains—

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or

(c) information supplied in confidence by a third **party,** the disclosure of which could reasonably be expected—
(i) to put that third party at a disadvantage in contractual or other negotiations; or
(ii) to prejudice that third party in commercial competition.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about—

(a) a third party who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;

(b) the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purposes of subsection *(2)(b),* the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

Mandatory protection of certain confidential information of third party

65. The head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

Mandatory protection of safety of individuals, and protection of property

66. The head of a private body—

(a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or

(b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair—
(i) the security of—
(aa) a building, structure or system, including, but not limited to, a computer or communication system;
(bb) a means of transport; or
(cc) any other property; or
(ii) methods, systems, plans or procedures for the protection of—
(au) an individual in accordance with a witness protection scheme;
(bb) the safety of the public, or any part of the public; or

(cc) the security of property contemplated in subparagraph (i)*(aa)*,*(bb)* or *(cc)*.

Mandatory protection of records privileged from production in legal proceedings

67. The head of a private body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

Commercial information of private body

68. *(1)* Subject to subsection (2), the head of a private body may refuse a request for access to a record of the body if the record—

(a) contains trade secrets of the private body;

(b) contains financial, commercial, scientific or technical information, other than trade secrets, of the private body, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body;

(c) contains information, the disclosure of which could reasonably be expected—

(i) to put the private body at a disadvantage in contractual or other negotiations; or

(ii) to prejudice the body in commercial competition; or

(d) is a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the private body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.

(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purposes of subsection (2), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

Mandatory protection of research information of third party, and protection of research information of private body

69. (1) The head of a private body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose—

(a) the third party;

(b) a person that is or will be carrying out the research on behalf of the third party; or

(c) the subject matter of the research,

to serious disadvantage.

(2) The head of a private body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of the private body, the disclosure of which would be likely to expose—

(a) the private body;

(b) a person that is or will be carrying out the research on behalf of the private body; or

(c) the subject matter of the research,

to serious disadvantage.

Mandatory disclosure in public interest

70. Despite any other provision of this Chapter, the head of a private body must grant a request for access to a record of the body contemplated in section 63(1), 64(1), 65, 66*(a)* or *(b)*, 67, 68(1) or 69(1) or (2) if—

(a) the disclosure of the record would reveal evidence of—

(i) a substantial contravention of, or failure to comply with, the law; or

(ii) imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

CHAPTER 5
THIRD PARTY NOTIFICATION AND INTERVENTION

Notice to third parties

71. (1) The head of a private body considering a request for access to a record that might be a record contemplated in section 63(1), 64(1), 65 or 69(1), must take all reasonable steps to inform a third party to whom or which the record relates of the request.

(2) The head must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event within 21 days after that request is received; and

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the head must—

(a) state that he or she is considering a request for access to a record that might be a record contemplated in section 63(1), 64(1), 65 or 69(1), as the case may be, and describe the content of the record;

(b) furnish the name of the requester;

(c) describe the provisions of section 63(1), 64(1), 65 or 69(1), as the case may be;

(d) in any case where the head believes that the provisions of section 70 might apply, describe those provisions, specify which of the circumstances referred to in section 70*(a)* in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 70 might apply; and

(e) state that the third party may, within 21 days after the third party is informed—

(i) make written or oral representations to the head why the request for access should be refused; or

(ii) give written consent for the disclosure of the record to the requester.

(4) If a third party is informed orally of a request for access in terms of subsection (1), the head must give a written notice stating the matters referred to in subsection (3) to the third party.

Representations and consent by third parties

72. (1) A third party that is informed in terms of section 71(1) of a request for access, may, within 21 days after being so informed—

(a) make written or oral representations to the head concerned why the request should be refused; or

(b) *give* written consent for the disclosure of the record to the requester concerned.

(2) A third party that obtains knowledge about a request for access other than in terms of section 71(1) may—

(a) make written or oral representations to the head concerned why the request should be refused; or

(b) *give* written consent for the disclosure of the record to the requester concerned.

Decision on representations for refusal and notice thereof

73. (1) The head of a private body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 71—

(a) decide, after giving due regard to any representations made by a third party in terms of section 72, whether to grant the request for access; and

(b) notify the third party so informed and a third party not informed in terms of section 71, but that made representations in terms of section 72 or is located before the decision is taken, of the decision.

(2) If, after all reasonable steps have been taken as required by section 71, a third party is not informed of a request, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations in terms of section 72 why the request should be refused.

(3) If the request is granted, the notice in terms of subsection (1)*(b)* must state—

(a) adequate reasons for granting the request, including the provisions of this Act relied upon to justify the granting;

(b) that the third party may lodge an application with a court against the decision of the head within 30 days after notice is given, and the procedure for lodging the application; and

(c) that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph *(b)*, unless an application with a court is lodged within that period.

(4) If the head of the private body decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record concerned after the expiry of 30 days after notice is given in terms of subsection (l)(b), unless an application with a court is lodged against the decision within that period.

PART 4
APPEALS AGAINST DECISIONS

CHAPTER 1
INTERNAL APPEALS AGAINST DECISIONS OF INFORMATION OFFICERS OF CERTAIN PUBLIC BODIES

Right of internal appeal to relevant authority

74. (1) A requester may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph *(a)* of the definition of "public body" in section 1—

(a) to refuse a request for access; or

(b) taken in terms of section 22, 26(1) or 29(3),

in relation to that requester with the relevant authority.

(2) A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph *(a)* of the definition of "public body" in section 1 to grant a request for access.

Manner of internal appeal, and appeal fees

75. (1) An internal appeal—

(a) must be lodged in the prescribed form—

(i) within 60 days;

(ii) if notice to a third party is required by section 49(l)(b), within 30 days after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision was taken;

(b) must be delivered or sent to the information officer of the public body concerned at his or her address, fax number or electronic mail address;

(c) must identify the subject of the internal appeal and state the reasons for the internal appeal and may include any other relevant information known to the appellant;

(d) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, must state that manner and provide the necessary particulars to be so informed;

(e) if applicable, must be accompanied by the prescribed appeal fee referred to in subsection (3); and

(f) must specify a postal address or fax number.

(2)*(a)* If an internal appeal is lodged after the expiry of the period referred to in subsection (1)(a), the relevant authority must, upon good cause shown, allow the late lodging of the internal appeal.

(b) If that relevant authority disallows the late lodging of the internal appeal, he or she must give notice of that decision to the person that lodged the internal appeal.

(3)*(a)* A requester lodging an internal appeal against the refusal of his or her request for access must pay the prescribed appeal fee (if any).

(b) If the prescribed appeal fee is payable in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.

(4) As soon as reasonably possible, but in any event within 10 working days after receipt of an internal appeal in accordance with subsection(1), the information officer of the public body concerned must submit to the relevant authority—

(a) the internal appeal together with his or her reasons for the decision concerned: and

(b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified in terms of section 47(1) of the request.

Notice to and representations by other interested persons

76. (1) If a relevant authority is considering an internal appeal against the refusal of a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1), the authority must inform the third party to whom or which the record relates of the internal appeal, unless all necessary steps to locate the third party have been unsuccessful.

(2) The relevant authority must inform a third party in terms of subsection (1)—

(a) as soon as reasonably possible, but in any event within 30 days after the receipt of the internal appeal; and

(b) by the fastest means reasonably possible.

(3) When informing a third party in terms of subsection (1), the relevant authority must—

(a) state that he or she is considering an internal appeal against the refusal of a request for access to a record contemplated in section 34(1), 35(1), 36(1), 37(1) or 43(1), as the case may be, and describe the content of the record and the provisions of section 34(l), 35(l), 36(l), 37(1) or 43(l), as the case may be;

(b) furnish the name of the appellant;

(c) in any case where that authority believes that the provisions of section 46 might apply, describe those provisions, specify which of the circumstances referred to in section 46(a) in the opinion of the head might apply and state the reasons why he or she is of the opinion that section 46 might apply; and

(d) state that the third party may, within 21 days after the third party is informed, make written representations to that authority why the request for access should not be granted.

(4) If a third party is informed orally of an internal appeal in terms of subsection (1), the relevant authority must, on request, give a written notice stating the matters referred to in subsection (3) to the third party.

(5) A third party that is informed of an internal appeal in terms of subsection(1), may within 21 days after the third party has been informed, make written representations to the relevant authority why the request for access should not be granted.

(6) A third party that obtains knowledge about an internal appeal other than in terms of subsection (1) may—

(a) make written or oral representations to the relevant authority why the request for access should be refused; or

(b) give written consent for the disclosure of the record to the requester concerned.

(7) If the relevant authority is considering an internal appeal against the granting of a request for access, the authority must give notice of the internal appeal to the requester concerned.

(8) The relevant authority must—

(a) notify the requester concerned in terms of subsection (7) as soon as reasonably possible, but in any event within 30 days after the receipt of the internal appeal; and

(b) state in that notice that the third party may within21 days after notice is given, make written representations to that authority why that request should be granted.

(9) A requester to whom or which notice is given in terms of subsection (7) may within 21 days after that notice is given, make written representations to the relevant authority why the request for access should be granted.

Decision on internal appeal and notice thereof

77. (1) The decision on an internal appeal must be made with due regard to—

(a) the particulars stated in the internal appeal in terms of section 75(1)(c);

(b) any reasons submitted by the information officer in terms of section 75(4)(a);
(c) any representations made in terms of section 76(5), (6) or (9); and
(d) if a third party cannot be located as contemplated in section 76(1), the fact that the third party did not have the opportunity to make representations in terms of section 76(5) why the internal appeal should be dismissed.

(2) When deciding on the internal appeal the relevant authority may confirm the decision appealed against or substitute a new decision for it.

(3) The relevant authority must decide on the internal appeal—

(a) as soon as reasonably possible, but in any event within 30 days after the internal appeal is received by the information officer of the body;
(b) if a third party is informed in terms of section 76(1), as soon as reasonably possible, but in any event within 30 days; or
(c) if notice is given in terms of section 76(7)—
(i) within five working days after the requester concerned has made written representations in terms of section 76(9); or
(ii) in any other case within 30 days after notice is so given.

(4) The relevant authority must, immediately after the decision on an internal appeal—

(a) give notice of the decision to—
(i) the appellant;
(ii) every third party informed as required by section 76(1); and
(iii) the requester notified as required by section 76(7); and
(b) if reasonably possible, inform the appellant about the decision in any other manner stated in terms of section 75(1)(d).

(5) The notice in terms of subsection (4)*(a)* must—

(a) state adequate reasons for the decision, including the provision of this Act relied upon;
(b) exclude, from such reasons, any reference to the content of the record:
(c) state that the appellant, third party or requester, as the case may be, may lodge an application with a court against the decision on internal appeal—
(i) within 60 days; or
(ii) if notice to a third party is required by subsection (4)*(a)*(ii), within 30 days,
after notice is given, and the procedure for lodging the application; and
(d) if the relevant authority decides on internal appeal to grant a request for access and notice to a third party—
(i) is not required by subsection (4)*(a)*(ii), that access to the record will forthwith be given; or
(ii) is so required, that access to the record will be given after the expiry of the applicable period for lodging an application with a court against the decision on internal appeal referred to in paragraph (c), unless that application is lodged before the end of that applicable period.

(6) If the relevant authority decides on internal appeal to grant a request for access and notice to a third party—

(a) is not required by subsection (4)*(a)*(ii), the information officer of the body must forthwith give the requester concerned access to the record concerned; or
(b) is so required. the information officer must, after the expiry of 30 days after the notice is given to every third party concerned, give the requester access to the record concerned, unless an application with a court is lodged against the decision on internal appeal before the end of the period contemplated in subsection (5)*(c)*(ii) for lodging that application.

(7) If the relevant authority fails to give notice of the decision on an internal appeal to the appellant within the period contemplated in subsection (3), that authority is, for the purposes of this Act, regarded as having dismissed the internal appeal.

CHAPTER 2
APPLICATIONS TO COURT

Applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies

78. (1) A requester or third party referred to in section 74 may only apply to a court for appropriate relief in terms of section 82 after that requester or third party has

exhausted the internal appeal procedure against a decision of the information officer of a public body provided for in section 74.

(2) A requester—

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75(2);

(c) aggrieved by a decision of the information officer of a public body referred to in paragraph *(b)* of the definition of "public body" in section 1—

(i) to refuse a request for access; or

(ii) taken in terms of section **22, 26(1)** or *29(3);* or

(d) aggrieved by a decision of the head of a private body—

(i) to refuse a request for access; or

(ii) taken in terms of section 54, 57(1) or 60,

may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

(3) A third party—

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the information officer of a public body referred to in paragraph *(b)* of the definition of "public body" in section 1 to grant a request for access; or

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body,

may, by way of an application, within 30 days apply to a court for appropriate relief in terms of section 82.

Procedure

79. (1) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must within 12 months after the commencement of this section, make and implement rules of procedure for—

(a) a court in respect of applications in terms of section 78; and

(b) a court to receive representations *ex parte* referred to in section 80(3)(a).

(2) Before the implementation of the rules of procedure in terms of subsection (1)(a), an application in terms of section 78 may only be lodged with a High Court or another court of similar status.

(3) Any rule made in terms of subsection (1) must, before publication in the *Gazette,* be approved by Parliament.

Disclosure of records to, and non-disclosure by, court

80. (1) Despite this Act and any other law, any court hearing an application, or an appeal against a decision on that application, may examine any record of a public or private body to which this Act applies, and no such record may be withheld from the court on any grounds.

(2) Any court contemplated in subsection (1) may not disclose to any person, including the parties to the proceedings concerned, other than the public or private body referred to in subsection (1)—

(a) any record of a public or private body which, on a request for access, may or must be refused in terms of this Act; or

(b) if the information officer of a public body, or the relevant authority of that body on internal appeal, in refusing to grant access to a record in terms of section 39(3) or 41(4), refuses to confirm or deny the existence or non-existence of the record, any information as to whether the record exists.

(3) Any court contemplated in subsection (1) may—

(a) receive representations *ex parte;*

(b) conduct hearings in camera; and

(c) prohibit the publication of such information in relation to the proceedings as the court determines, including information in relation to the parties to the proceedings and the contents of orders made by the court in the proceedings.

Proceedings are civil

81. (1) For the purposes of this Chapter proceedings on application in terms of section 78 are civil proceedings.

(2) The roles of evidence applicable in civil proceedings apply to proceedings on application in terms of section 78.

(3) The burden of establishing that—

(a) the refusal of a request for access; or

(b) any decision taken in terms of section 22, 26(1), 29(3), 54, 57(1) or 60,

complies with the provisions of this Act rests on the party claiming that it so complies.

Decision on application

82. The court hearing an application may grant any order that is just and equitable. including orders—

(a) confirming, amending or setting aside the decision which is the subject of the application concerned;

(b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order:

(c) granting an interdict, interim or specific relief, a declaratory order or compensation; or

(d) as to costs.

PART 5
HUMAN RIGHTS COMMISSION

Additional functions of Human Rights Commission

83. (1) The Human Rights Commission must—

(a) compile and make available a guide on how to use this Act as contemplated in section 10; and

(b) submit reports to the National Assembly as contemplated in section 84.

(2) The Human Rights Commission must, to the extent that financial and other resources are available—

(a) develop and conduct educational programmed to advance the understanding of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act;

(b) encourage public and private bodies to participate in the development and conduct of programmed referred to in paragraph (a) and to undertake such programmed themselves; and

(c) promote timely and effective dissemination of accurate information by public bodies about their activities.

(3) The Human Rights Commission may—

(a) make recommendations for—

(i) the development, improvement, modernisation. reform or amendment of this Act or other legislation or common law having a bearing on access to information held by public and private bodies, respectively; and

(ii) procedures in terms of which public and private bodies make information electronically available;

(b) monitor the implementation of this Act;

(c) if reasonably possible, on request, assist any person wishing to exercise a right contemplated in this Act;

(d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable;

(e) train information officers of public bodies;

(f) consult with and receive reports from public and private bodies on the problems encountered in complying with this Act;

(g) obtain advice from, consult with, or receive and consider proposals or recommendations from, any public or private body, official of such a body or member of the public in connection with the Commission's functions in terms of this Act;

(h) for the purposes of section 84(b)(x), request the Public Protector to submit to the Commission information with respect to—

(i) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act;

(ii) the nature and outcome of those complaints; and

(i) generally, inquire into any matter, including any legislation, the common law and any practice and procedure, connected with the objects of this Act.

(4) For the purpose of the annual report referred to in section 84 and if so requested by the Human Rights Commission, the head of a private body may furnish to that Commission information about requests for access to records of the body.

(5) If appropriate, and if financial and other resources are available, an official of a public body must afford the Human Rights Commission reasonable assistance for the effective performance of its functions in terms of this Act.

Report to National Assembly by Human Rights Commission

84. The Human Rights Commission must include in its annual report to the National Assembly referred to in section 181(5) of the Constitution—

(a) any recommendation in terms of section 83(3)(a); and

(b) in relation to each public body, particulars of—

(i) the number of requests for access received;

(ii) the number of requests for access granted in full;

(iii) the number of requests for access granted in terms of section 46;

(iv) the number of requests for access refused in full and refused partially and the number of times each provision of this Act was relied on to refuse access in full or partially;

(v) the number of cases in which the periods stipulated in section 25(l) were extended in terms of section 26(1);

(vi) the number of internal appeals lodged with the relevant authority and the number of cases in which, as a result of an internal appeal, access was given to a record or a part thereof;

(vii) the number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27;

(viii) the number of applications made to every court and the outcome thereof and the number of decisions of every court appealed. against and the outcome thereof;

(ix) the number of applications to every court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77(7);

(x) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act and the nature and outcome thereof; and

(xi) such other matters as may be prescribed.

Expenditure of Human Rights Commission in terms of Act

85. Any expenditure, in connection with the performance of the Human Rights Commission's functions in terms of this Act, must be defrayed from moneys appropriated by Parliament to that *Commission* for that purpose.

PART 6
TRANSITIONAL PROVISIONS

Application of other legislation providing for access

86. (1) The Minister must, within 12 months after the commencement of section 6, introduce a Bill in Parliament proposing the amendment of—

(a) Part 1 of the Schedule to include the provisions.@ld@& which provide for or promote access to a record of a public body; and

(b) Part 2 of the Schedule to include the provisions of legislation which provide for or promote access to a record of a private body.

(2) Until the amendment of this Act contemplated in subsection (1) takes effect, any other legislation not referred to in the Schedule which provides for access to a record of

a public body or a private body in a manner which, including, but not limited to, the payment of fees, is not materially more onerous than the manner in which access maybe obtained in terms of Part 2 or 3 of this Act, respectively, access may be given in terms of that legislation.

Extended periods for dealing with requests during first two years

87. (1) For—

(a) 12 months from the date that Part 2 takes effect in respect of a public body, the reference to—

(i) 30 days in section 25(1) and any other reference to that period in other provisions of this Act;

(ii) 30 days in section 49(1) and any other reference to that period in other provisions of this Act,

must be construed as a reference to 90 days in respect of that public body; and

(b) 12 months following the 12 months referred to in paragraph *(a)*, the reference to—

(i) 30 days in section 25(1) and any other reference to that period in other provisions of this Act;

(ii) 30 days in section 49(1) and any other reference to that period in other provisions of this Act,

must be construed as a reference to 60 days in respect of the public body concerned.

(2) The periods of 90 days and 60 days referred to in subsection (1)(a) and *(b)*, respectively, may not be extended in terms of section 26.

(3) Parliament must, after a period of 12 months, but within a period of 18 months. after the commencement of this section, review the operation of this section.

Correction of personal information

88. If no provision for the correction of personal information in a record of a public or private body exists, that public or private body must take reasonable steps to establish adequate and appropriate internal measures providing for such correction until legislation providing for such correction takes effect.

PART 7
GENERAL PROVISIONS

Liability

89. No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act.

Offences

90. A person who with intent to deny a right of access in terms of this Act—

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Amendment of Public Protector Act 23 of 1994

91. Section 6 of the Public Protector Act, 1994 (Act No. 23 of 1994), is hereby amended—

(a) by the substitution in paragraph *(c)* of subsection (4) for the expression "authority." of the expression "authority; and"; and

(b) by the addition to subsection (4) of the following paragraph:

"*(d)* on his or her own initiative, on receipt of a complaint or on request relating to the operation or administration of the Promotion of Access to Information Act, 2000, endeavour, in his or her sole discretion. to resolve any dispute by—

(i) mediation, conciliation or negotiation;
(ii) advising, where necessary, any complainant regarding appropriate remedies; or
(iii) any other means that may be expedient in the circumstances.

Regulations

92. (1) The Minister may, by notice in the *Gazette,* make regulations regarding—
(a) any matter which is required or permitted by this Act to be prescribed; ,
(b) any matter relating to the fees contemplated in sections 22 and 54;
(c) any notice required by this Act;
(d) uniform criteria to be applied by the information officer of a public body when deciding which categories of records are to be made available in terms of section 15; and
(e) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) Any regulation in terms of subsection (1) must, before publication in the *Gazette,* be submitted to Parliament.

(3) Any regulation in terms of subsection (1) which—
(a) relates to fees; or
(b) may result in financial expenditure for the State,
must be made by the Minister acting in consultation with the Minister of Finance,

Short title and commencement

93. (1) This Act is the Promotion of Access to Information Act, 2000, and takes effect on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be so determined in respect of—
(a) different provisions of this Act;
(b) different categories of public bodies, including, but not limited to, different public bodies contemplated in—
(i) paragraph *(a);*
(ii) paragraph (b)(i); and
(iii) paragraph *(b)*(ii),
of the definition of "public body" in section 1; and
(c) different categories of private bodies.

SCHEDULE

Part 1

(Section 6(a))

Number and year of law	Short title	Section
Act 107 of 1998	National Environmental Management Act, 1998	Section 31(1)

Part 2

(Section 6(b))

Number and year of law	**Short title**	**Section**
Act 107 of 1998	National Environmental Management Act, 1998	Section 31(2)