

**BESPOKE EXECUTOR SERVICES
(BEXs)**



INFORMATION MANUAL IN TERMS OF SECTION 51 OF

PROMOTION OF ACCESS TO INFORMATION ACT (PAIA) - NUMBER 2 OF 2000

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Background to the Promotion of Access to Information Act (PAIA)

Section 32 of the Constitution states:

“Everyone has a right of access to any information held by the state and any information held by another person that is required for the exercise or protection of any rights.”

The Promotion of Access to Information Act, No. 2 of 2000 (PAIA) was enacted to give effect to the constitutional right of access to information. PAIA came into operation on 9 March 2001.

In terms of the Constitution and PAIA, all people in South Africa, including non-nationals, can request information from public and private bodies.

OBJECTIVES OF PAIA

- To promote transparency, accountability and effective governance of all public and private bodies
- To assist members of the public to effectively scrutinize and participate in decision making by public bodies
- To ensure that the state promotes a human rights culture and social justice
- To encourage openness
- To establish voluntary and mandatory mechanisms or procedures which give effect to the right of access to information in a speedy, inexpensive and effortless manner

Introduction to Bespoke Executor Services (BEXs)

BEXs was formed in 2017 with the main purpose of offering the public a viable and cost effective, Fiduciary Services alternative to mainstream Trust Companies and Banking institutions.

Its Head Office is situated in Cape Town and operates mainly in the Western Cape, Free State, Northern Cape and has a strategic association with an attorney in the East London area.

Purpose of this manual

1. The purpose of this manual is to facilitate a request to access information from BEXs by an interested party;
2. This manual does not purport to comprehensively set out the procedure provided for in the Act;

3. Parties requesting information are advised to familiarise themselves with the provisions of the Act before making any requests to BEXs in terms of the Act;
4. Whilst BEXs attempts to ensure the accuracy and legitimacy of all information in its possession, it cannot and will not make any representation and gives no undertaking or warranty that the information provided by it to a requester is complete or accurate, or that such information will meet the intended needs of the requesting party. Requesters and users of such information shall use such information entirely at their own risk, and the Company shall not be liable for any loss, expense, liability or claims, howsoever arising, resulting from the use of this manual or any information provided by BEXs or any error therein.

Contact Details

Head Office physical address:

96 Upper Maynard Street
Vredehoek
Cape Town 8001

admin@bexs.co.za

Directors

- Sean Beagley
seanb@bexs.co.za
Mobile: - 0834146981
- Elna van der Walt
elnav@bexs.co.za
Mobile: - 0833076317
- Antonio Rolo
tonyr@bexs.co.za
Mobile: - 0835641558

Information Officer

- Elna van der Walt
elnav@bexs.co.za
Mobile: - 0833076317

SA Human Rights Commission Guide

- The Promotion of Access to Information Act grants a requester access to records of a company if the record is required for the exercise or protection of any rights. If a public body lodges a request, the public body must be acting in the public interest. Requests in terms of the Act are required to be made in accordance with the prescribed procedures, at the rates provided.
- The South African Human Rights Commission has compiled a guide as required by section 10 of the PAI Act. The guide contains such information as may be reasonably expected by any person who wishes to exercise their rights as contemplated in the Act and it contains:-
 - Information on how to use and understand the Act
 - The objectives of the Act
 - Particulars of every public and private body
 - The manner and form of requests for information
 - Contents of the regulations as promulgated under the Act
 - The guide will be updated and published every two years
- The guide is available in all official languages

This Guide is available from the South African Human Rights Commission : PAIA unit,

Research and Documentation Department,

Postal Address: Private Bag 2700,

Houghton, 2041;

Telephone : +27 11 484 8300;

Fax : +27 11484 0582;

Website : www.sahrc.org.za;

e-mail: paia@sahrc.org.za.

Latest Notices in terms of Section 52(2)

To our knowledge, at this juncture no notices in terms of the above section have been published.

Records available upon application – Section 51(1)(d)

Upon application in the required format (see below) and the payment of the prescribed fee, qualifying information, of which the below information may be included, will be made available.

Records held by BEXs

- BEXs Company records
 - Minutes of meetings
 - Directors resolutions
 - Company Mandates
 - Shareholders agreements
 - Company incorporation documentation
- Client Records
 - Personal information enabling BEXs to offer Fiduciary Services
 - Client information provided by the client to a third party acting in association with BEXs
 - Client information supplied directly to BEXs by the client
- Intermediary Records
 - Personal information of our Financial Planning partners
- Private Body Records
 - Financial Records
 - Operational Records
 - Database
 - Sales and Marketing records
 - Information Technology Records
- Internal Correspondence
 - Statutory Records
 - Product and Services records
 - Internal processes
 - Internal policies and procedures

Records available without a formal request

Non-confidential information such as the company registration with CIPC is available from our Information Officer upon written request at admin@bexs.co.za without the formalities set out in the Act.

Records available in terms of other Legislation

- Administration of Estate Act 66 of 1965
- Wills Act 57 of 1953
- Trust Property Control Act 57 of 1988
- Companies Act 71 of 2008 (As amended)
- Copyright Act 98 of 1978

- Income Tax Act 95 of 1967
- Revenue Laws Amendment Act 60 of 2008
- Value Added Tax Act 89 of 1991
- Financial Intelligence Centre Act 38 of 2001

Manner of access and request procedure - Sections 53 to 61

- A request for access to BEXs records must be made in the prescribed form (see below) at our address:-

Head Office physical address:

96 Upper Maynard Street
Vredehoek
Cape Town 8001

or

electronic mail address

admin@bexs.co.za

- The form for a request for access prescribed for the purposes of subsection (1) can be downloaded from ours and the Department of Justice website.

BEXs website link: -

<https://bexs.co.za/legal-stuff>

Department of Justice website: -

http://www.justice.gov.za/forms/paia/J750_paia_Form%20A.pdf

- The prescribed form must be fully completed, incomplete forms will be rejected.
- The prescribed form must be accompanied by proof of payment of the request fee (see fee below) and addressed to the BEXs Information Officer at the e-mail address above.
- The requester is obliged to record what type of access is required.
- The requester must provide BEXs with a postal address or e-mail address in the Republic.
- Payment for the request must be made before any request is considered.
- If the requester is unable to complete the form due to illiteracy or disability, he/she may make their request orally through the BEXs Information Officer.
- BEXs will process the request within 30 (thirty) days, unless the requester states specific reasons to the satisfaction of the BEXs Information Officer that circumstances dictate that this period cannot be complied with.
- BEXs will advise the requester in writing whether the request has been granted or denied.

- If the request is being made on behalf of another party, then the requester will need to provide proof of that capacity.

Refusal to access information

Section 62 of PAI sets out when a private body may refuse access to information, a provision of this Chapter in terms of which a request for access to a record may or may not be refused and must not be construed as: -

- a) limited in its application in any way by any other provision of this Chapter
- b) not applying to a particular record by reason that another provision of this Chapter and, also applies to that record.

Section 63 Mandatory protection of privacy of third party who is natural person

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-
 - a. under the age of 18 years; or
 - b. 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-
 - a. the individual's next of kin; or
 - b. 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-
 - a. the fact that the individual is or was an official of that private body;

- b. the title, work address, work phone number and other similar particulars of the individual;
- c. the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and
- d. the name of the individual on a record prepared by the individual in the course of employment.

Section 64 Mandatory protection of commercial information of third party

(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-

- trade secrets of a third party;
- 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
- 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 third party who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;
- the results of any product or environmental testing or other investigation supplied by a third party or the results of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

[Para. (b) substituted by s. 42 of Act 42 of 2001 .]

(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.

Section 65 Mandatory protection of certain confidential information of third party

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.

Section 66 Mandatory protection of safety of individuals, and protection of property

The head of a private body

- 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
- may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair-
 - (a) the security of-
 1. a building, structure or system, including, but not limited to, a computer or communication system;
 2. a means of transport; or
 3. any other property; or
 - (b) methods, systems, plans or procedures for the protection of-
 1. an individual in accordance with a witness protection scheme;
 2. the safety of the public, or any part of the public; or
 3. the security of property contemplated in subparagraph (a) (1), (2) or (3).

Section 67 Mandatory protection of records privileged from production in legal proceedings

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.

Section 68 Commercial information of private body

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

- 2) 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 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 the private body or the results of any such testing or investigation carried out by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.

[Sub-s. (2) substituted by s. 43 of Act 42 of 2001 .]

(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.

Section 69 Mandatory protection of research information of third party, and protection of research information of private body

- 1) 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 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.

Section 70 Mandatory disclosure in public interest

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.

Deemed refusal of request

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

Remedies available to requester when BEXs declines access

BEXs does not have an internal appeal procedure in place and neither is it anticipated in the foreseeable future.

A requester who is aggrieved by the refusal from the BEXs Information Officer, to access information may within 30 (thirty) days approach the relevant court for a review of the decision.

For the purposes of this act the courts that have jurisdiction over these applications are as follows:-

- The Constitutional Court;
- The High Court or equivalent;
- A Magistrate's Court duly designated by the minister of Justice and Constitutional Development.

Types of Requesters

The act determines a requester as any person who makes a request to BEXs, and there are two types of requesters: -

- Personal requester – a person who requests information on himself

- Other requester – a person (not a personal requester) who requests information on a third party. In this case BEXs is obliged to follow the process as set out in Section 71 of the Act. See Third Party Notification and Intervention below.

Third Party Notification and Intervention Sections 71 to 73

Section 71 Notice to third parties

(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.

Section 72 Representations and consent by third parties

(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.

Section 73 Decision on representations for refusal and notice thereof

- (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;
 - 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; and
 - c) 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, and if the request is-
 - i. granted, notify the requester in accordance with section 56 (2); or
 - ii. refused, notify the requester in accordance with section 56 (3). [Sub-s. (1) substituted by s. 44 of Act 42 of 2001 .]
- (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 (1) (b), unless an application with a court is lodged against the decision within that period.

Prescribed Fees and payment procedure

The act provides for two types of fees: -

- Request fee – a non-refundable administration fee, which is to be paid by all requesters before the request is considered;
- Access Fee – payable if access is granted. This fee includes the cost of BEXs obtaining, preparing and delivering the record to the requester.

Procedure: -

- Upon receipt of the request the BEXs Information Officer shall notify the requester to pay the prescribed fee, before processing the request;
- Should the BEXs Information Officer, after due examination of the request, deem that the preparation time will exceed the time set out in the act, he/she may call for a deposit of the prescribed fee to be paid;
- The BEXs Information Officer can withhold the information until the prescribed fees have been paid.

Exemption: -

The Minister may, by notice in the Gazette: -

- Exempt any person or category of persons from paying any fee referred to in this section;
- Determine that any fee referred to in this section is not to exceed a certain maximum amount;
- Determine the manner in which any fee referred to in this section is to be calculated;
- Determine that any fee referred to in this section does not apply to a category of records;
- Exempt any person or record or category of persons or records for a stipulated period from any fee referred to in subsection (6); and
- Determine that where the cost of collecting any fee referred to in this section exceeds the amount charged, such fee does not apply.

Request Fee: -

An upfront fee of R75,00 is payable for any request for accessible information on a person other than the requester, before any request is considered.

Access Fee: -

Access of Information Fee	Fees payable
A4 page photocopy per page or part thereof	R1,10
Printed copy per A4 page	R0,75
Search for a record which needs to be disclosed	R30/hour
Copies of visual images	R60,00
Actual postage or courier charges which will be communicated to requester before transmission.	

Reproduction fee: -

Access of Information Fee	Fees payable
A4 page photocopy per page or part thereof	R1,10
Printed copy per A4 page	R0,75
Search for a record which needs to be disclosed	R30/hour
Copies of visual images	R60,00
Transcript of audio record per A4 page	R20,00
A copy of an audio record	R30,00
Actual postage or courier charges which will be communicated to requester before transmission.	

Payment Details: -

All fees must be deposited into the Bespoke Executor Services (BEXs) banking account at: -

Bank: - Nedbank
 Branch: - Durbanville
 Account Number: - 1152591401
 Branch Code: - 10371000

All fees are in terms of the act and are subject to change, requesters will be advised of any changes to the fee at the time of applying for access to information.

Decision

- BEXs will, within 30 (thirty) days of receipt of the request give the requester notice of its decision to grant or decline the request. If the request is declined and if required by the act, BEXs may provide reasons for declining such request;
- Should the requested information not be immediately available and BEXs deems that it will not be able to access this information within the 30 days mentioned above, it may extend the period for a further 30 days under advice to the requester.
- If the records cannot be found or do not exist, and if: -
 - all reasonable steps have been taken to find the requested record; and
 - there are reasonable grounds for believing that the record-
 - is in BEXs's possession but cannot be found; or
 - does not exist,

BEXs will, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.

- The affidavit or affirmation will 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 BEXs.
- For the purposes of this Act, this notice made in terms of subsection (1) is to be regarded as a decision to refuse a request for access to the record concerned.
- 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 the Act.

Severability

➤ If a request for access is made for a BEXs record 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.

c) 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 subsection and the provisions of section 56 (3) apply to paragraph (b) of this subsection.

Availability and updating of the Manual [Section 51(3)]:

This manual has been prepared in terms of regulation number R.187 dated 15 February 2002. This manual will be updated from time to time.

The manual is available on the website and a hard copy at our registered Head Office mentioned in our Contact Details above.

Prescribed Form C – Request for access to record of private body

Click on the link below.

<https://bexs.co.za/sites/default/files/Request for Information under PAIA form-1.pdf>