

PROMOTION OF ACCESS TO INFORMATION ACT MANUAL

MANUAL PREPARED IN TERMS OF SECTION 51 OF THE
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 (PAIA)

SECTION 51 MANUAL FOR AUSTEN SMITH

CONTENTS :

1. Contact details
2. The Guide published by the South African Human Rights Commission
3. Records which are automatically available without having to make a request in the prescribed form
4. Records held in terms of applicable legislation
5. Records held as a matter of standard practice
6. Making a request in terms of the Act
7. Prescribed fees
8. Remedies available to requesters if their request for information has been refused
9. Limitation on information that may be supplied
10. Availability of the manual
11. Prescribed Form C

INFORMATION REQUIRED UNDER SECTION 51(1) (a) OF THE ACT

1. CONTACT DETAILS :

Name of firm : Austen Smith

Postal address : P.O. Box 37
PIETERMARITZBURG
3200

Physical address : Walmsley House

191 Pietermaritz Street
PIETERMARITZBURG
3201

Telephone : 033 - 392 0500

Telefax : 033 - 392 0555

Website : www.austensmith.co.za

E-mail : mail@austensmith.co.za

Senior Partner : Richard Scott

E- Mail address of Managing Partner : kathrynrees@austensmith.co.za

2. DESCRIPTION OF GUIDE REFERRED TO IN SECTION 10: SECTION 51(1)(b)

A Guide has been compiled in terms of Section 10 of PAIA by the Human Rights Commission. It contains information required by a person wishing to exercise any right, contemplated by PAIA. It is available in all of the official languages.

The Guide is available for inspection, *inter alia*, at the office of the offices of the Human Rights Commission at 29 Princess of Wales Terrace, cnr York and St. Andrews Street, Parktown and on its website at www.sahrc.org.za or e-mail: info@sahrc.org.za

Information regarding section 51 manual or general queries on the Promotion of Access to Information can be forwarded to :

Mr David Malesa at : dmalesa@sahrc.org.za or Tel: 0118773678 or

Head Office
Braampark Forum 3
33 Hoofd Street
Braamfontein
Tel: 011 877 3600

KwaZulu-Natal
First Floor, 136 Victoria Embankment
Durban
Tel: 031 304 7323/4/5
Fax: 031 304 7323

Contact person
Mduduzi Sibisi: msibisi@sahrc.org.za

3. **THE LATEST NOTICE IN TERMS OF SECTION 52(2) (IF ANY):**

At this stage no notice(s) has/have been published on the categories of records that are automatically available without a person having to request access in terms of PAIA. However, the information available on the Austen Smith website is freely available without request.

4. **RECORDS HELD IN TERMS OF APPLICABLE LEGISLATION: SECTION 51(1)(d) :**

LABOUR RELATIONS ACT 66 OF 1995

EMPLOYMENT EQUITY ACT 55 OF 1998

Employment Equity Plan and Report and supporting documents

BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997

- Records containing at least the following information :

the employee's name and occupation, the time worked by each employee, the remuneration paid to each employee, the date of birth of any employee under 18 years of age; and any other prescribed information

COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASE ACT 130 OF 1993

- the register or other record of the earnings and other prescribed particulars of all employees, for example: wages paid, time worked and payment made for piece-work and overtime

UNEMPLOYMENT INSURANCE ACT 63 OF 2001

- Records detailing the contributions by contributors employed by the employer in respect of earnings paid, time worked, payments made for overtime

VALUE ADDED TAX ACT 89 OF 1991

- Books of account, documents recording the supply of goods to or by the vendor, invoices, tax invoices, credit and debit notes, bank statements, deposit slips, stock lists and paid cheques

INCOME TAX ACT 58 OF 1962

- All ledgers, cash books, journals, cheque books, bank statements, deposit slips, pay cheques, invoices, stock lists and all other books of account
- Signed copy of annual Financial Statements including annual accounts and auditor's report
- Investment schedules and documents
- Invoices — issued and received
- Register of fixed assets
- Supporting schedules to books of account
- Tax returns, schedules and assessments

SKILLS DEVELOPMENT ACT 9 OF 1999

- Annual training report and the annual training plan

OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993

- A copy of the Occupational Health and Safety Act 85 of 1993
- First aid certificate

THE ATTORNEYS ACT 53 OF 1979

- Accounting records including particulars and information of any money received, held or paid by or on account of any person, of any money invested in a trust savings or other interest-bearing account) and of any interest on money so invested which is paid over or credited. These records include :
 - money invested in a trust savings or other interest-bearing account
 - interest on money so invested;
 - any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which such practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator
- Fidelity Fund Certificates

KWAZULU-NATAL LAW SOCIETY RULES

- Such accounting records which are necessary to present fairly and in accordance with generally accepted accounting practice the state of affairs of the firm and to explain the transactions and financial position of the firm, including:
 - Records showing its assets and liabilities
 - Records containing entries from day to day of all monies received and paid by it on its own account
 - Records containing particulars and information of all monies received, held by and paid by it for and on account of any person
 - All monies invested in terms of section 78(2) and (2A)
 - Any interest referred to in section 78 (3) of the Act which is paid over or credited to it.
 - Any interest credited to or in respect of any separate trust savings or other interest bearing account
- After termination or performance of mandate the following documents must be kept:
 - All amounts received by the firm in connection with the matter concerned properly explained
 - All disbursements and other payments made by it in connection with the matter
 - All fees and other charges charged to or raised against the client and where any fee represents an agreed fee, a statement that such fee was agreed upon and the amounts so agreed upon
- The amount owing to or by the client
- Accountant's report
- Trust account records reflecting:

- Payments of all monies entrusted to the firm by a client for investment pursuant to the mandate granted by the client.
- Payments of all monies invested by the firm on behalf of the client
- Payments of all amounts, both capital and income, derived from investments and received for the client's account;
- All payments made by it to the client in respect of the client's investments
- All charges paid to the firm in respect of services rendered by it to the client pursuant to the client's mandate.

FINANCIAL INTELLIGENCE CENTRE ACT 38 OF 2001

- FIC Act and regulations and exemptions
- Prevention of Organised Crime Act 121 of 1998
- Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004
- FICA Manual and internal rules and training documentation
- Records required to be kept for a period of 5 years from conclusion of the transaction in terms of the FICA

FINANCIAL SERVICES BOARD ACT 97 OF 1990

- FSP Licence
- Returns and supporting documents

5. SUBJECTS AND CATEGORIES OF RECORDS HELD BY AUSTEN SMITH (SECTION 51(1)(e)) :

A. ADMINISTRATION

- Minutes of Partners' meetings
- Minutes of staff meetings

- Staff manual
- Internal process manuals
- Library : books and electronic publications, legislation, Court rules and judgments
- Marketing : brochures and promotional material
- IT manuals and software agreements and licences and contracts
- Supplier contracts

B. FINANCIAL RECORDS

- Annual Financial Statements
- Management accounts
- Tax Returns
- Accounting Records
- Banking Records and Statements
- Paid Cheques
- Electronic banking records and instructions
- Invoices
- VAT returns

C. INCOME TAX RECORDS

- PAYE Records
- Documents issued to employees for income tax purposes
- All Other statutory requirements :
 - VAT
 - Skills Development Levies
 - UIF
 - Workmen's Compensation

D. PERSONNEL DOCUMENTS AND RECORDS

- Employment contracts
- Medical Aid records
- Provident Fund records
- Disciplinary records
- Remuneration records
- Leave records
- Recruitment records

E. CLIENT RECORDS AND DOCUMENTS

- Client files

- Wills
- Protocols
- Title deeds, ante-nuptial contracts, policies

6. **DETAIL ON HOW TO MAKE A REQUEST FOR ACCESS – SECTION 51(e) :**

1. The requester must complete Form C (annexed hereto) and submit this form together with a request fee, to the Managing Partner.
2. The form must be submitted to the Managing Partner at her address, fax number, or e-mail address
3. The form must :

provide sufficient particulars to enable the Managing Partner to identify the record/s requested and to identify the requester,

indicate which form of access is required,

specify a postal address, fax number or e-mail address of the requester,

identify the right that 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,

if the request is made on behalf of another person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the head of the private body

Fees:

A requester who seeks access to a record containing personal information about that requester is not required to pay the request fee. Every other requester, who is not a personal requester, must pay the required request fee:

The head of the private body must notify the requester (other than a personal requester) by notice, requiring the requester to pay the prescribed fee (if any) before further processing the request.

The fee that the requester must pay to a private body is R50. The requester may lodge an application to the court against the tender or payment of the request fee.

After the head of the private body has made a decision on the request, the requester must be notified in the required form.

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

7. PRESCRIBED FEES IN RESPECT OF REQUESTS FOR INFORMATION :

1. The fee for a copy of the manual as contemplated in regulation 9(2)(c) is R1.10 for every photocopy of an A4 size page or part thereof.
2. The fees for reproduction referred to in regulation 11(1) are as follows:

(a)		For every photocopy of an A4-size page or part thereof	R1.10
(b)		For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	R0.75
(c)		For a copy in a computer-readable form on - compact disc	R70.00
(d)	(i)	For a transcription of visual images, for an A4-size page or part thereof	R40.00
	(ii)	For a copy of visual images	R60.00
(e)	(i)	For a transcription of an audio record, for an A4-size page or part thereof	R20.00
	(ii)	For a copy of an audio record	R30.00
3. The request fee payable by a requester, other than a personal requester, referred to in regulation 11(2) is R50,00
4. The access fees payable by a requester referred to in regulation 11(3) are as follows:

(a)		For every photocopy of an A4-size page or part thereof	R1.10
(b)		For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	R0.75
(c)		For a copy in a computer-readable form on - compact disc	R70.00
(d)	(i)	For a transcription of visual images, for an A4-size page or part thereof	R40.00

	(ii)	For a copy of visual images	R60.00
(e)	(i)	For a transcription of an audio record, for an A4-size page or part thereof	R20.00
	(ii)	For a copy of an audio record	R30.00
(f)		To search for and prepare the record for disclosure for each hour or part of an hour reasonably required for such search and preparation.	R30.00

5. For purposes of section 54(2) of the Act, the following applies:

- (a) Six hours as the hours to be exceeded before a deposit is payable; and
- (b) One third of the access fee is payable as a deposit by the requester.

6. The actual postage is payable when a copy of a record must be posted to a requester.

8. REMEDIES AVAILABLE TO REQUESTERS IF THEIR REQUEST FOR INFORMATION HAS BEEN REFUSED :

Where a requester or a third party is aggrieved by a decision of the head of a private body to refuse a request for access, or by a decision taken in terms of section 54 relating to fees payable for and in connection with access to records of a private body, section 57 (1) relating to the extension to deal with the request, or section 60 relating to the form of access, the requester may within 30 days, and by way of an application, apply to the High Court for appropriate relief. The court will then review the request and decide whether in fact the head of the private body should give you the information you requested or not.

9. LIMITATION ON INFORMATION THAT MAY BE SUPPLIED :

A request for information may be declined where it is found at the sole discretion of the firm that a disclosure of such information will infringe on a person's right to privacy.

10. AVAILABILITY OF THE MANUAL :

The manual is available for inspection at the offices of Austen Smith free of charge; and copies are available with the SAHRC, in the Gazette and on the Austen Smith website which is www.austensmith.co.za

FORM C

REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY
(Section 53(1) of the Promotion of Access to Information Act, 2000
(Act No. 2 of 2000)

[Regulation 10]

A. Particulars of private body

The Head:

B. Particulars of person requesting access to the record

- | | |
|-----|---|
| (a) | The particulars of the person who requests access to the record must be given below. |
| (b) | The address and/or fax number in the Republic to which the information is to be sent must be given. |
| (c) | Proof of the capacity in which the request is made, if applicable, must be attached. |

Full names and surname:

Identity number:

Postal address:

Fax number:

Telephone number:

E-mail address:

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed <i>ONLY</i> if a request for information is made on behalf of another person.
--

Full names and surname:

Identity number:

D. Particulars of record

- | | |
|-----|--|
| (a) | Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. |
| (b) | If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios. |

- 1 Description of record or relevant part of the record:
- 2 Reference number, if available:
- 3 Any further particulars of record:

E. Fees

- (a) A request for access to a record, other *than* a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be *notified of* the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends *on* the form *in which* access is required and the reasonable time *required* to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability:	Form in which record is required
Mark the appropriate box with an X.	
<p>NOTES:</p> <ul style="list-style-type: none"> (a) Compliance with your request in the specified form may depend on the form in which the record is available. (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form. (c) The fee payable for access for the record, if any, will be determined partly by the form in which access is requested. 	

1. If the record is in written or printed form:					
	copy of record*		inspection of record		
2. If record consists of visual images this includes photographs, slides, video recordings, computer-generated images, sketches, etc)					
	view the images		copy of the images"		
			transcription of the images*		
3. If record consists of recorded words or information which can be reproduced in sound:					
	listen to the soundtrack audio cassette		transcription of soundtrack* written or printed document		
4. If record is held on computer or in an electronic or machine-readable form:					
	printed copy of record*		printed copy of information derived from the record"		
			copy in computer readable form* (stiffy or compact disc)		
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.			<table border="1"> <tr> <td style="width: 50%;">YES</td> <td style="width: 50%;">NO</td> </tr> </table>	YES	NO
YES	NO				

G Particulars of right to be exercised or protected

If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Indicate which right is to be exercised or protected:
2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed at..... This..... day of20

SIGNATURE OF REQUESTER / PERSON ON
WHOSE BEHALF REQUEST IS MADE