

Promotion of Access to Information Act (PAIA)

Section 51 Manual for Ensimini Financial Services (Pty) Ltd (Reg. no. 2011/126189/07)

Introduction

“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 the abuse of power and human rights violations.”

This statement appears in the preamble of the Promotion of Access to Information Act (PAIA) and was undoubtedly one of the reasons why access of information was made a constitutionally protected human right in terms of section 32(1) of the Constitution.

Section 32 of the Constitution provides as follows:

1. Everyone has the right of access to:
 - any information held by the State;
 - any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the State.

Ensimini Financial Services (Pty) Ltd (“the company”) is a juristic body and falls within the definition of a private body as contained in the Promotion of Access to Information Act. The company is required in terms of section 51(1) of the Promotion of Access to Information Act to compile a manual that will facilitate the access of certain information in terms of the Act.

Section 50(1) of the Promotion of Access to Information Act provides for the right of access to records of private bodies and states that:

A requester must be given access to any record of a private body if:
that record is required for the exercise or promotion of any rights;

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

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

The purpose of this manual is to ensure the company's compliance with section 51(1) of The Promotion of Access to Information Act.

Contact Details {Section 51(1)(A)}

The head of the company is required to respond to any requests for access to information. Any person wishing to request any information from the company must use the following contact details.

Contact Details for the company contact people

Company Secretary:

Not Applicable

Head of the Company:

Jaco Pretorius - Chief Executive Officer

Physical Address:

Empire Park Block C

55 Empire Road

Parktown

2193

Postal Address:

Postnet Box 30

Private Bag X12

Greenside

2034

Tel: (011) 381 7960

Fax: 086 644 1975

E-mail: info@ensimini.com

The South African Human Rights Commission [Section 51(1)(B)]

Section 10 of the PAIA commissioned the SAHRC to compile a guide in every official language containing information that is easily comprehensible to any person wishing to exercise any right as contemplated in PAIA.

The guide will contain information such as the objects of the Act, contact details for information and deputy information officers of public bodies, particulars of private bodies, the manner of access to the records of private and public bodies, assistance that may be obtained from the SAHRC and remedies available in law in the event of a breach of the provisions of PAIA.

The contact details for the South African Human Rights Commission are as follows:

PAIA Unit Tel: (011) 484-8300 The Research and Documentation Department

Fax: (011) 484-1360 Private Bag 2700 Website: www.sahrc.org.za Houghton E-

mail: PAIA@sahrc.org.za 2041

Voluntary Disclosure and Automatic Availability of Certain Records [Section 51(1)(C)]

In terms of section 52(1) the head of the company may on a voluntary and periodic basis, submit to the Minister a description of the categories of records of the company that are automatically available to the public without a person having to request access in terms of PAIA.

Section 52(2) provides that the Minister may where appropriate on a periodic basis and by notice in the Gazette, publish the description submitted by the company.

No description in terms of section 52(1) & (2) has been made available.

Records Available in Terms of Other Legislation [Section 51(1)(D)]

Records held by Ensimini Financial Services (Pty) Ltd may be available in terms of other legislation. Information may be available in terms of the following legislation, if and where applicable.

Basic Conditions of Employment Act No. 75 of 1997

Companies Act No. 61 of 1973

Compensation for Occupational Injuries and Diseases Act No. 130 of 1993

Employment Equity Act No. 55 of 1998

Income Tax Act No. 58 of 1962

Labour Relations Act No. 66 of 1995

Occupational Health and Safety Act No. 85 of 1993

Regional Services Councils Act

Skills Development Levies Act No. 9 of 1999

Trademarks Act No. 194 of 1993

Unemployment Insurance Act No. 30 of 1966

Value Added Tax Act No. 89 of 1991

Access to the Records Held by Ensimini Financial Services (Pty) Ltd [Section 51(1)(E)]

Records relating to the following categories may be held by Ensimini Financial Services (Pty) Ltd. This list is not exhaustive and access will be determined upon receiving a request thereto.

Employment Records

Employment Contracts

Remuneration

Employer/employee retirement fund contributions

Personal employee records

Promotions, dismissals, disciplinary actions

Company Records

Company registration, Memorandum of Association, Articles of Association

Financial records of the company

Statutory Returns

Trade name and Trademark Registrations

Trade Secrets

Contracts with Suppliers

Contracts with Clients

General correspondence

Minutes of
meetings **Third Parties**

Ensimini Financial Services (Pty) Ltd may be in possession of records that pertain to third parties.

The Request Procedure [Section 51(1)(E)]

A requester must use the prescribed form (Annexure B) to make the request for access to a record. The completed request form must be submitted to the Company Secretary at the address, fax number or electronic mail address provided above.

The request must contain the following information:

It must contain sufficient particulars to enable the head of the company to identify the record requested as well as the requester;

It must contain information as to the form of access required;

It must provide a postal address or fax number for the requester in the Republic;

It must indicate what right will be protected or exercised by providing the requester with access to the record and reasons why the record is required to exercise or protect that right;

If the requester wishes to be informed of the decision in terms of the request in any form other than a written notification, this must be stated in the request;

If the request is made on behalf of another person, the requester must submit proof of the capacity in which he/she is making the request, to the reasonable satisfaction of the head of the company.

Fees in Respect of a Request [Annexure A]

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 company 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.

If the search for a record held by the company in respect of which a request for access by a requester, other than a personal requester, has been made and the preparation of the record for disclosure would in the opinion of the head of the company require more than the hours prescribed for this purpose, the head of the company must by notice require the requester, other than a personal requester, to pay as a deposit the prescribed portion (not more than one-third) of the access fee which would be payable if the request is granted.

In respect of the notice mentioned above, such notice must state the amount of the deposit payable, if applicable and must advise the requester that he/she may lodge an application with a court against the tender or payment of a deposit and the procedure for such application.

If a deposit has been paid in respect of a request for access which is refused, the deposit must be repaid to the requester.

A record may be withheld until the requester concerned has paid the applicable fees (if any). After the head of the company 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 reproduction and search and preparation respectively and for any time that has exceeded the prescribed hours to search and prepare the record for disclosure.

Other Information as may be Prescribed [Section 51(1)(F)]

The Minister of Justice and Constitutional Development has not made any regulations in this regard.

Availability of the Manual [Section 51(3)]

The manual is available for inspection at the offices of Ensimini Financial Services (Pty) Ltd free of charge.

Decision on Request and Notice Thereof

The head of the company must within 30 days of receipt of a request for access to a record decide in accordance with the provisions of PAIA whether or not to grant the request. He/she must also notify the requester of the decision.

If the request is granted the notice must include the following detail:

The access fees payable;

The form in which access will be given; and

Notice that the requester may lodge an application with the court against the access fee and matters relating thereto.

If the request is refused the notice must contain the following details:

Reasons for the refusal with reference to the provisions of PAIA relied upon to reach this conclusion;

Any reference to the content of the record must be excluded from the notice;

Notice that the requester may lodge an application with a court against the refusal of the request and matters relating thereto.

A request for access to a record may be granted in part and refused in part.

Where circumstances warrant, the head of the company may extend the period in which a decision and notification must be made by an additional 30 days.

Where access to a record has been granted, the head of the company must as soon as is reasonably possible after notifying the requester of the granting of the access, give access to the requester in the form reasonably required by the requester or where no particular form was requested, in any form that the head of the company determines.

What Records May Be Refused?

PAIA provides for a number of categories of information that may not be disclosed when a request for access to information is received. The head of the company must in such instances refuse access.

Mandatory protection of privacy of third party who is a natural person

PAIA requires that the head of the company must refuse access to the records of a third person if such disclosure would involve the unreasonable disclosure of personal information about a third party including a deceased person. There are however several exceptions to this provision.

A request for access to a record that pertains to a third party who is a natural person may not be refused where the information is of the following nature:

Where an individual has consented to its disclosure;

The information is already publicly available;

Where the information was given to the private body by the individual and the individual was advised that such information would or might be made available to the public;

Information about an individual's physical or mental health, or well-being, who is under the care of the requester and who is under the age of 18 years or is incapable of understanding the nature of the request and if giving access would be in the individual's best interests;

Where the information is about an individual who is deceased and the requester is the individual's next of kin or made the written request with the consent of the deceased's next of kin;

Where the information relates to the position or function of the individual who is or was an official of a private body.

Mandatory protection of commercial information of third party

A request for access to records that pertain to the following must also be refused:

Trade secrets of a third party.

Financial, commercial, scientific or technical information, other than trade secrets, of a third party which would be likely to cause harm to the commercial or financial interests of the third party if it were disclosed.

Information that was disclosed in confidence by the third party, the disclosure of which could reasonably be expected to put the third party at a disadvantage in contractual or other negotiations or to prejudice the third party in commercial competition.

The information must however be granted if the third party has consented to the disclosure or where it pertains to the results of any product or environmental testing supplied by or carried out by the third party and the disclosure of which would reveal a serious public safety or environmental risk.

The head of the company must refuse a request for access to a record where such disclosure would be in 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

The head of the company must refuse access to the records of the company where:

Such disclosure can reasonably be expected to endanger the life or physical safety of an individual; or may refuse a request where:

Such disclosure is likely to prejudice or impair the security of a building, structure or system including but not limited to, a computer or communication system or any other property.

Such disclosure may prejudice or impair methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme or the safety of the public or the security of property.

Mandatory protection of records privileged from production in legal proceedings

A request for access to a record where the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

Commercial Information of a private body

The head of the company may refuse to grant access to the records of the private body where the disclosure pertains to the following information in relation to the private body itself and not third parties. Where the information pertains to:

Trade secrets of the private body;

Financial, commercial, scientific or technical information, other than trade secrets, of the private body which would be likely to cause harm to the commercial or financial interests of the private body if it were disclosed.

The disclosure information which could reasonably be expected to put the private body at a disadvantage in contractual or other negotiations or to prejudice the private body in commercial competition.

A computer program owned by the private body.

The information must however be released where it pertains to the results of product or environmental testing supplied by or carried out by or on behalf of the private body, the disclosure of which would reveal a serious public safety or environmental risk.

Further protection is extended to research information of a third party and research information of a private body. Mandatory disclosure is required where such disclosure would be in the public interest.

Third Parties

When the head of the company is considering a request for access to a record that pertains to a third party, he/she must take all reasonable steps to inform the third party to whom the record relates of the request. The notification must:

Be made as soon as is reasonably possible but within 21 days of receiving the request;

By the fastest means possible. Where this is orally, this must be followed by written notification.

State that he/she is considering a request for access that may pertain to the third party and the content of the record in question.

Furnish the name of the requester.

The third party may within 21 days after the third party has been informed, make written or oral representations to the head of the company as to why access should be refused or give written consent to the disclosure to the requester. A third party that hasn't been advised in terms of the above requirements may still make written or oral representations to the head of the company.

The head of the company must advise the third party within a reasonable time but not exceeding 30 days after the third party was informed of his/she decision.

ANNEXURE A

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	1,10
b)	For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine readable form	0,75
c)	For a copy in a computer-readable form on: i. stifty disc ii. compact disc	7,50 70,00
d)	i. For a transcription of visual images, for an A4-size page or part thereof ii. For a copy of visual images	40,00 60,00
e)	i. For a transcription of an audio record, for an A4-size page or part thereof ii. For a copy of an audio record	20,00 30,00
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:	
1) a)	For every photocopy of an A4-size page or part thereof	1,10
b)	For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine readable form	0,75
c)	For a copy in a computer-readable form on: i. stifty disc ii. compact disc	7,50 70,00
d)	i. For a transcription of visual images, for an A4-size page or part thereof ii. For a copy of visual images	40,00 60,00
e)	i. For a transcription of an audio record, for an A4-size page or part thereof ii. For a copy of an audio record	20,00 30,00
f)	To search for and prepare the record for disclosure, R30,00 for each hour or part of an hour reasonably required for such search and preparation.	
2)	For purposes of section 54(2) of the Act, the following applies:	
b)	Six hours as the hours to be exceeded before a deposit is payable; and	
a)	one third of the access fee is payable as a deposit by the requester.	
3)	The actual postage is payable when a copy of a record must be posted to a requester.	

ANNEXURE B

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]

Particulars of private body

The Head:

Particulars of person requesting access to the record

The particulars of the person who requests access to the record must be given below.

The address and/or fax number in the Republic to which the information is to be sent must be given.

Proof of the capacity in which the request is made, if applicable, must be attached. o Full names and surname:

o Identity number:

o Postal address

o Fax number:

o Telephone number:

o E-mail address:

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

Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname:

Identity number:

Particulars of record

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.

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:

Description of record or relevant part of the record

Reference number, if available

Any further particulars of record

Fees

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.

You will be notified of the amount required to be paid as the request fee.

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.

If you qualify for exemption of the payment of any fee, please state the reason for exemption.

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).

NOTES

Compliance with your request in the specified form may depend on the form in which the record is available.

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.

The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

If the record is in written or printed form:

copy of record*

inspection of record

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*

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)

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. YES/NO**

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.

Indicate which right is to be exercised or protected:

**Explain why the record requested is required for the exercise or protection of the
aforementioned right:**

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 of _____ 20 .

**Signature of Requester / Person
On Whose Behalf Request Is Made**

