



PAIA MANUAL

Compiled in terms of section 51 of the Promotion of Access to Information Act no. 2 of 2000 ("PAIA") as amended by the Protection of Personal Information Act, 2013 ("POPI")

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PROMOTION OF ACCESS TO INFORMATION

1. COMPANY OVERVIEW:

MC Botha Incorporated carries on business as a firm of attorneys and conveyancers duly registered with the Legal Practice Council.

2. CONTACT DETAILS – Section 51(1)(a)

2.1	Name of body:	MC Botha Inc.
2.2	Registration Number:	2022/737764/21
2.3	Registered address:	255 Main Road, Walmer, Gqerberha, Port Elizabeth
2.4	Postal address:	255 Main Road, Walmer, Gqerberha, Port Elizabeth
2.5	Head of Body:	MC Botha
2.6	Designated information officer:	MC Botha
2.7	Phone number:	(041) 100 00800
2.8	E-mail:	mc@mcbotha.law
2.9	Web-site:	www.mcbotha.law

3. THE SECTION 10 GUIDE ON HOW TO USE THE ACT – Section 51(1)(b)(i)

Section 10 of the Act requires the Information Regulator to update and make available the existing guide that has been compiled by the South African Human Rights Commission (“SAHRC”) containing such information, in an easily comprehensible form and manner, as may be reasonably required by a person wishing to exercise or protect any right in terms of the Promotion to Access to Information Act and the Protection of Personal Information Act. The Guide is available from the South African Human Rights Commission by no later than 31 December 2011.

4. At the time of publication of the manual, the Information Regulator had not updated and made available the existing guideline. Please direct any queries to:

Please direct any queries to:

The Information Regulator (South Africa):

Postal address: P.O. Box 31533
Braamfontein
Johannesburg
2017



Physical address: JD House
Braamfontein
Johannesburg

Website: www.justice.gov.za/inforeg/
E-mail: inforeg@justice.gov.za

And

The South African Human Rights Commission:

PAIA Unit

The Research and Documentation Department

Postal address: Private Bag 2700
Houghton
2041

Telephone: +27 11 484-8300
Fax: +27 11 484-0582
Website: www.sahrc.org.za
E-mail: PAIA@sahrc.org.za

5. **AUTOMATIC DISCLOSURES: CATEGORIES OF RECORDS OF THE BODY WHICH ARE AVAILABLE WITHOUT A PERSON HAVING TO REQUEST ACCESS IN TERMS OF THE ACT – Section 51(1)(b)(ii)**

A notice in terms of sections 52(2) of the Act describes the categories of records of the body that are available without a person having to request access in terms of the Act. Information for this notice was not available at the time of publication of the manual. However, the following information and records are freely available:

- 5.1 Pamphlets / Brochures
- 5.2 Posters
- 5.3 Other literature intended for public viewing.

6. **RECORDS AVAILABLE IN TERMS ON ANY OTHER LEGISLATION – Section 51(1)(b)(iii)**

Records are kept in accordance with such other legislation as is applicable to the private body which includes but is not limited to, the following legislation:

- 6.1 Arbitration Act 42 of 1965
- 6.2 Basic Conditions of Employment Act 75 of 1997



- 6.3 Companies Act 61 of 1973
- 6.4 Compensation for Occupational Injuries and Diseases Act 130 of 1993
- 6.5 Employment Equity Act 55 of 1998
- 6.6 Finance Act 35 of 2000
- 6.7 Income Tax Act 58 of 1962
- 6.8 Manpower Training Act 56 of 1981
- 6.9 Occupational Health and Safety Act 85 of 1993
- 6.10 Financial Intelligence Centre Act 38 of 2001
- 6.11 Pensions Funds Act 24 of 1956
- 6.12 Protection of Personal Information Act 4 of 2013
- 6.13 Regional Services Councils Act 109 of 1985
- 6.14 Skills Development Levies Act 9 of 1999
- 6.15 Skills Development Act 97 of 1998
- 6.16 South African Qualifications Authority Act 58 of 1995
- 6.17 Tax on Retirement Funds Act 38 of 1996
- 6.18 Unemployment Insurance Act 63 of 2001
- 6.19 Unemployment Insurance Contributions Act 4 of 2002
- 6.20 Value Added Tax Act 89 of 1991

7. **ACCESS TO THE RECORDS HELD BY THE PRIVATE BODY: SUBJECTS AND CATEGORIES OF RECORDS HELD BY THE PRIVATE BODY – Section 51(1)(b)(iv)**

Records are held by the private body on the following subjects, which are classed in the categories set out below –

7.1 **STATUTORY COMPANY INFORMATION**

- (a) Certificate of Incorporation;
- (b) Certificate of Change of Name (if any);
- (c) Memorandum and Articles of Association;



- (d) Certificate to Commence Business;
- (e) Minute Book, CM25 and CM26, as well as Resolutions passed at general/class meetings;
- (f) Proxy Forms;
- (g) Proxy Forms used at Court convened meetings;
- (h) A Register of Allotments – after a person ceased to be a member;
- (i) Register of Members;
- (j) Index of Members;
- (k) Register of Mortgages and Debentures and Fixed Assets;
- (l) Register of Directors' shareholdings;
- (m) Register of Directors and Certain Officers;
- (n) Directors' Attendance Register;
- (o) A Branch Register;
- (p) Annual Financial Statements including:
 - (i) Annual accounts;
 - (ii) Directors' reports;
 - (iii) Auditor's report.
- (q) Books of Account regarding information required by the Companies Act, 1973;
- (r) Supporting schedules to books of account and ancillary books of account;

7.2 **FINANCIAL AND ACCOUNTING RECORDS**

- (a) Books of Account including journals and ledgers;
- (b) Delivery notes, orders, invoices, statements, receipts, vouchers and bills of exchange.
- (c) Financial statements
- (d) Budgets and forecasts
- (e) Bank account records



7.3 **HUMAN RESOURCES: STATUTORY EMPLOYEE RECORDS**

- (a) Employees' names and occupations;
- (b) Time worked by each employee;
- (c) Remuneration paid to each employee.
- (d) Date of birth of each employee;
- (e) Wages register;
- (f) Attendance register;
- (g) Employment equity plan;
- (h) Salary and wages register;
- (i) Records of foreign employees;
- (j) Collective agreements;
- (k) Arbitration awards;
- (l) Determinations made in terms of the Wage Act;
- (m) Records of strikes, lockouts or protest action.
- (n) Industrial training records;
- (o) Staff records (after date of employment ceases);
- (p) Expense accounts;
- (q) Tax returns of employees;

7.4 **HUMAN RESOURCES : OTHER EMPLOYEE RECORDS**

- (a) Employee contracts;
- (b) Incentive schemes;
- (c) Staff loan schemes;
- (d) Study assistance schemes;
- (e) Maternity leave policy;
- (f) Disability scheme;
- (g) Funeral insurance scheme;



- (h) Code of conduct.

7.5 **PENSION AND RETIREMENT FUNDING RECORDS**

- (a) Provident Fund Rules;
- (b) Umbrella Fund Orion Provident Fund;
- (c) Contribution Reports;
- (d) Annual accounts.

7.6 **ENVIRONMENTAL HEALTH AND SAFETY**

- (a) Records of investigations and tests in respect to hazardous chemicals and substances;
- (b) Records of risk assessments in respect to hazardous biological agents;
- (c) Safety management systems, data and audits;
- (d) Industrial hygiene programs, data and audits;
- (e) Employee public health emergency action plans;
- (f) Permits, licences, approvals and registrations for operations of sites and business;
- (g) Emergency response plans;
- (h) Environmental impact assessments;
- (i) Environmental management programs and systems;
- (j) Details of aqueous discharges;
- (k) Details of solid waste discharges;
- (l) Details of air emission discharges.

7.7 **FIXED PROPERTY**

- (a) Leases;
- (b) Building plans;

7.8 **MOVABLE PROPERTY**

- (a) Asset register;



- (b) Finance and Lease Agreements;
- (c) Notarial Bonds;
- (d) Deeds of Pledge.

7.9 **INTELLECTUAL PROPERTY**

- (a) Agreements relating to intellectual property such as licence agreements, secrecy agreements, research and development agreements, consulting agreements, use agreements, joint venture agreements and joint development agreements;
- (b) Litigation and other disputes involving intellectual property.

7.10 **AGREEMENTS AND CONTRACTS**

- (a) Material agreements concerning provision of services or materials;
- (b) Agreements with shareholders, officers or directors;
- (c) Acquisition or disposal documentation;
- (d) Agreements with contractors and suppliers;
- (e) Agreements with customers;
- (f) Warranty agreements;
- (g) Sale agreements;
- (h) Restraint agreements;
- (i) Agreements with governmental agencies;
- (j) Purchase or lease agreements.

7.11 **TAXATION**

- (a) Copies of all Income Tax Returns and other tax returns and documents;
- (b) VAT records

7.12 **LEGAL**

- (a) Complaints, pleadings, briefs and other documents pertaining to any actual, pending or threatened litigation, arbitration or investigation;
- (b) Settlement agreements;



- (c) Material licences, permits and authorisations;

7.13 **INSURANCE**

- (a) Insurance policies;
- (b) Claim records;
- (c) Details of insurance coverages, limits and insurers.

7.14 **INFORMATION TECHNOLOGY**

- (a) Hardware;
- (b) Operating Systems;
- (c) Telephone Exchange Equipment;
- (d) Telephone Lines, Leased Lines and Data Lines;
- (e) Software Packages;
- (f) Disaster Recovery;
- (g) Capacity and Utilization of Current Systems;
- (h) Development or Investment Plans;
- (i) Agreements;
- (j) Licenses;
- (k) Audits.

7.15 **SALES AND MARKETING**

- (a) Products;
- (b) Markets;
- (c) Customers;
- (d) Brochures, Newsletters and Advertising Materials;
- (e) Sales;
- (f) Domestic and Export Orders

7.16 **COMMUNICATIONS**

Correspondence with internal and external parties.



8. **ACCESS TO THE RECORDS HELD BY THE PRIVATE BODY: THE REQUEST PROCEDURES**

8.1 **Form of request:**

- (a) The requester must be given access to a record of a private body if the requester complies with the following:
 - (i) that record is required for the exercise of protection of any rights;
 - (ii) the requester complies with the procedural requirements in the Act relating to a request for access to that record; and
 - (iii) access to that record is not refused in terms of any ground for refusal contemplated in the Act [section 51].
- (b) The requester must use the prescribed form that has been printed in the Government Gazette [Govt. Notice R187 – 15 February 2002 Form C] to make the request for access to a record (see **Schedule 2** annexed). This must be made to the head of the private body or any other person designated for this purpose, details of which are stated in paragraph 2 above. This request must be made to the address, fax number or electronic mail address of the private body [section 53(1)].
- (c) The requester must provide sufficient details on the request form to enable the head of the private body to identify the record in respect of which access is requested and the requester. The requester should also indicate which form of access is required and if any other manner is to be used to inform the requester, in which event the necessary particulars to be so informed, must be provided [section 53(2)(a) and (b) and (c)].
- (d) The requester must identify the right that is sought to be exercised or to be protected and provide an explanation of why the requested record is required for the exercise or protection of that right [section 53(2)(d)].
- (e) If a request is made on behalf of another person, the requester must submit proof of the capacity in which the requester is making the request to the satisfaction of the head of the private body [section 53(2)(f)].

8.2 **Fees:**

A requester who seeks access to a record, must pay the required request fee:

- (a) 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 [section 54(1)].



- (b) The fee that the requester must pay to a private body is R50,00 plus VAT (if VAT is applicable). The requester may lodge a complaint with the Information Regulator or an application to the court against the tender or payment of the request fee [section 54(3)(b)].
- (c) After the head of the private body has made a decision on the request, the requester must be notified in the required form.
- (d) If the request is granted, an access fee must be paid for the search, reproduction, preparation and for any time that has exceeded 6 (six) hours to search and prepare the record for disclosure [section 54(6)].

8.3 Prescribed forms and prescribed fees;

The prescribed forms are available on the Information Regulator's website www.justice.gov.za/infoereg/docs.html or the website of the Department of Justice and Constitutional Development www.doj.gov.za (under "forms"), the prescribed fee structure is available on the SAHRC's website www.sahrc.org.za.

9. THE PROTECTION OF PERSONAL INFORMATION– Section 51(1)(c)

9.1 The purpose of processing:

The private body processes personal information for a number of reasons including but not limited to the following:

- (a) To perform legal services for and on behalf of its clients;
- (b) To maintain records as prescribed by enabling legislation;
- (c) For temporary or permanent employment purposes;
- (d) For the candidate legal practitioner programme;
- (e) Health and safety purposes; and
- (f) To assist the company to detect and prevent fraud and corruption.

9.2 The categories of data subjects and personal information processed by the private body includes the categories of data subjects and personal information as listed on **Schedule 3**.

9.3 The recipients or categories of receipts to whom the personal information may be supplied:

- (a) The private body may share personal information for any purpose related to and outline in paragraph 8.1. above with its service providers,



consultants, agents and correspondent attorneys who perform services on behalf of the private body, duly authorized and mandated by the private body; and

- (b) The private body does not share personal information with third parties, unless:
 - (i) By order of court ordering such information be shared;
 - (ii) The private body is obliged to provide such information for legal or regulatory purposes;
 - (iii) the private body is required to do so for existing or future legal proceedings;
 - (iv) in terms of an agreed customer or client agreement;
 - (v) the private body is assisting with the prevention of fraud and corruption; and
 - (vi) the third party performs services and processes personal information as duly authorized and mandated by and on behalf of the private body
- (c) communication and notifications will only be sent out to the private body's data subjects in terms of agreement or as required by law;
- (d) the private body will only disclosed personal information to Government authorities if it is required to do so by law; and
- (e) all employees of the private body are required to adhere to data privacy and confidentiality principles as set out in the private body's Policy on Lawful Processing of Information in terms of the Protection of Personal Information Act.

9.4 Planned transborder flows of personal information:

- (a) The private body does not share or transfer data subject personal information to third parties outside the Republic of South Africa.
- (b) If the private body shares or transfers information to parties and third parties outside the Republic of South Africa, it will ensure that this is only done if required to perform a service or if so required by law in the circumstances and only in accordance with the Protection of Personal Information Act and any other relevant applicable legislation, or with the consent of the data subject.

9.5 Information Security Measures:



- (a) The private body shall take all reasonable, technical and organization measures to protect the personal information processed by the private body.
- (b) The private body shall continuously monitor and implement technical and organizational security measures to protect personal information against unauthorized access as well as against accidental or willful manipulation, loss and destruction.
- (c) The private body will takes steps to ensure that operators that are authorised and mandated to process personal information for and on behalf of the private body, apply adequate safeguards to protect personal information against unauthorized access as well as against accidental or willful manipulation, loss and destruction
- (d) If the private body receives personal information from a third party, it shall:
 - (i) ensure that it has written consent to from the data subject;
 - (ii) ensure that the data subject is aware of the contents of this manual as well as the private body's Policy on Lawful Processing of Information in terms of the Protection of Personal Information Act;
 - (iii) ensure that the data subject does not have nay objection to the private boy processing their personal information in accordance with this manual.

10. **AVAILABILITY OF MANUAL- Section 51(3)**

10.1 The Manual is available:

- (a) for inspection on the website of the private body;
- (b) at the offices of the private body, during normal business hours;
- (c) to any person upon request and upon the payment of a reasonable amount; and
- (d) to the Information Regulator upon request.



Schedule 1**PAIA MANUAL
PRESCRIBED FEES**

When the records are requested on Form C, (see **Schedule 2** annexed) a charge may be levied for obtaining such records, which shall be the fee for the reproduction of the record in question.

1. The breakdown of the applicable fees for reproduction is as follows:

(a)	For every photocopy of an A4-size or page thereof	R1.10
(b)	For every printed copy of an A4-size page or part thereof held on the computer or in electronic or machine-readable form	R0.75
(c)	For a copy in a computer readable form on CD (compact disc)	R70.00
(d)	A transcription of visual images, for an A4-size page or part thereof	R40.00
(e)	For a copy of visual images	R60.00
(f)	A transcription of an audio record, for an A4-size page or part thereof	R20.00
(g)	For a copy of an audio record	R30.00
(h)	Search and preparation of the record for disclosure	R30.00 per hour or part thereof, excluding the first hour, reasonably required for the search and preparation
(i)	Actual postage fee	

2. Request Fees:



- (a) The fee for requesting records from the Private Body is R50.00; and
- (b) Persons who are requesting access to their personal information are exempt from paying an access fee.

3. The breakdown of the Access fees is as follows:

(a)	For every photocopy of an A4-size or page thereof	R1.10
(b)	For every printed copy of an A4-size page or part thereof held on the computer or in electronic or machine-readable form	R0.75
(c)	For a copy in a computer readable form on CD (compact disc)	R70.00
(d)	A transcription of visual images, for an A4-size page or part thereof	R40.00
(e)	For a copy of visual images	R60.00
(f)	A transcription of an audio record, for an A4-size page or part thereof	R20.00
(g)	For a copy of an audio record	R30.00
(h)	Search and preparation of the record for disclosure	R30.00 per hour or part thereof, excluding the first hour, reasonably required for the search and preparation
(i)	Actual postage fee	

4. Deposits:

- (a) Where the Private Body receives a request for access to information held on a person other than the requester himself/herself, and the information officer upon receipt of the request is of the opinion that the preparation of the required record of disclosure will take more than 6 (six) hours, a deposit is payable by the requester;



- (b) The deposit amount payable shall be equal to one third of the amount of the applicable access fees.

5. Value Added Tax (VAT):

- (a) VAT is payable by institutions that have registered as Vat vendors as required under the Valued Added Tax Act of 1991.



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]

. Particulars of private body

The Head:

--

. Particulars of person requesting access to the record

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

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 ONLY 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:

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:

- (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 to 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.				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.....of.....20

.....
SIGNATURE OF REQUESTER/PERSON ON WHOSE
BEHALF REQUEST IS MADE



PAIA MANUAL

CATEGORIES OF DATA SUBJECTS AND PERSONAL INFORMATION

<u>Categories of Data Subjects</u>	<u>Processed Personal Information</u>
Existing and Potential Clients	<ul style="list-style-type: none"> (a) Proof of identification (b) Proof of address and location (c) Resolutions (d) Written Correspondence (e) Tender Documents (f) Source Documents (g) Invoices (h) Banking information (i) Employee information (j) Deeds (k) Contracts
Service providers and suppliers	Information related to the business of the service providers and suppliers
Employees	<ul style="list-style-type: none"> (a) Employee contracts (b) Employee medical information (c) Employee personal information (address, next of kin, emergency contacts) (d) Employee disability information (e) Employee sign in and attendance records (f) Employee Surveillance records (g) Payroll records (h) Banking information (i) Employment history (j) Disciplinary records (k) Employee qualification records (l) Employee registers (m) COVID-19 screening information (n) Electronic access records (o) Online identifiers
Prospective employees (Applications)	<ul style="list-style-type: none"> (a) Application forms containing personal information (b) Academic records

	(c) Curriculum Vitae (d) Employment history (e) Qualification documents (f) COVID-19 screening information
Visitors	(a) Contact information (b) COVID-19 screening information

