

PAIA Compliance

Presenter: **Lettie Janse van Vuuren CA(SA)**



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Promotion of Access to Information Act of 2000
Focus on the PAIA Manual & its submission requirements

Presenter

Lettie Janse van Vuuren CA(SA), RA, CBA(SA)

- Lettie joined SA Accounting Academy in November 2017 as Head of Technical. She is a Chartered Accountant, Registered Auditor and Certified Business Accountant.
- She is a **professional trainer and webinar host**, and with her relaxed and humorous presentation style, she is able to hold the attention of an audience. She has a unique ability to communicate with delegates at their respective levels of knowledge and experience. Over the last 20 years, she has trained thousands of partners, managers, trainee accountants and other professionals.
- She is responsible for our MCLU (Monthly Compliance and Legislation Updates).
- She was the Professional Development Manager at SAICA for 4 years and in charge of accrediting new training offices and monitoring existing ones (including the moderation of training offices and trainee assessments).
- Lettie is passionate about improving the efficiency and standardisation at practices. She has extensive experience on a variety of technical and practical topics which she consults on, including: SAICA re-accreditation assistance and preparation, IRBA inspection assistance and preparation, audit file reviews (post-issuance monitoring and EQCR), Quality control implementation, other office-specific manuals, and FASSET skills development facilitation.



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WHAT'S ON THE AGENDA?



Contents

- **Introduction**
- **Module 1:** The basics of PAIA
- **Module 2:** PAIA Manual – specific requirements (including e.g. who must submit a manual, Latest government gazette notice re extension
- **Module 3:** Links to relevant legislation
- ***In closing...***



Quotes

Information is the most valuable commodity in the world today and this business is about giving people access to information that is relevant to their lives

- James Murdoch



INTRODUCTION



Access to Information

- **What is PAIA?**

- PAIA = Promotion of Access to Information Act 2 of 2000
- It is legislation in the Republic of South Africa allowing access to any information held by the State, and any information held by private bodies that is required for the exercise and protection of any rights

- *45-page document*

- **2 very NB issues:**

- The manner in which access to information is REQUESTED
- The manner in which access to information is GRANTED

**The Information Officer must ensure compliance with PAIA
(and POPIA)**



Important aspects of PAIA

➤ **Who does PAIA apply to?**

- Records of a PUBLIC body
- Records of a PRIVATE body

Regardless of when the record came into existence

What is a Private body?

- a natural person who carries or has carried on any trade, business or profession, but only in such capacity;
- a partnership which carries or has carried on any trade, business or profession;
- anyy former or existing juristic person,
but excludes a public body

Important aspects of PAIA

(continued)

What is a PAIA request?

- PAIA allows individuals and organisations to ask for records from the state and private entities that already exist, such as documents, pictures, and audio files.
 - When completing a PAIA form, it's important to remember what is being requested

Role of the Information Regulator: POPIA & PAIA

- *The Information Regulator is, among others, empowered to monitor and enforce compliance by public and private bodies with the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000), and the Protection of Personal Information Act, 2013 (Act 4 of 2013)*

Exemptions

30 December 2011:

- The Department of Justice and Constitutional Development **extended the exemption** for certain private companies to compile a manual, **which lapsed on 31 December 2011**. Private companies operating in certain sectors were exempted from submitting a manual **until 31 December 2015**, but the companies still have to comply with the rest of the Act.

11 December 2015:

- The Minister of Justice has by Government Notice No. 39504, published on 11 December 2015, further exempted certain private bodies from compiling the manual contemplated in section 51(1) of the first mentioned Act for a period of five years from 1 January 2016. This exemption states that private companies with less than 50 employees or with a turnover of less than the amounts stipulated in the Schedule in the Notice will be exempt from compiling the PAIA manual until 31 December 2020. Please refer to the Government Notice for the detail.

Exemptions

(continued)

18 December 2020:

- The Minister of Justice has by **Government Notice No. 44003**, published on 18 December 2020, further exempted certain private bodies from compiling the manual contemplated in section 51(1) of the first mentioned Act for a period of 6 months from 1 January 2021.
- **This exemption states that private companies with less than 50 employees or with a turnover of less than the amounts stipulated in the Schedule in the Notice will be exempt from compiling the PAIA manual until 30 June 2021.**
- If your private body falls within the exemption and a manual has already been prepared in terms of Section 51 of PAIA, please note that there is no need to submit the manual to the Commission. The Commission do however strongly encourage entities to upload the manual on their website and ensure that same is available at the relevant office/s for public inspection

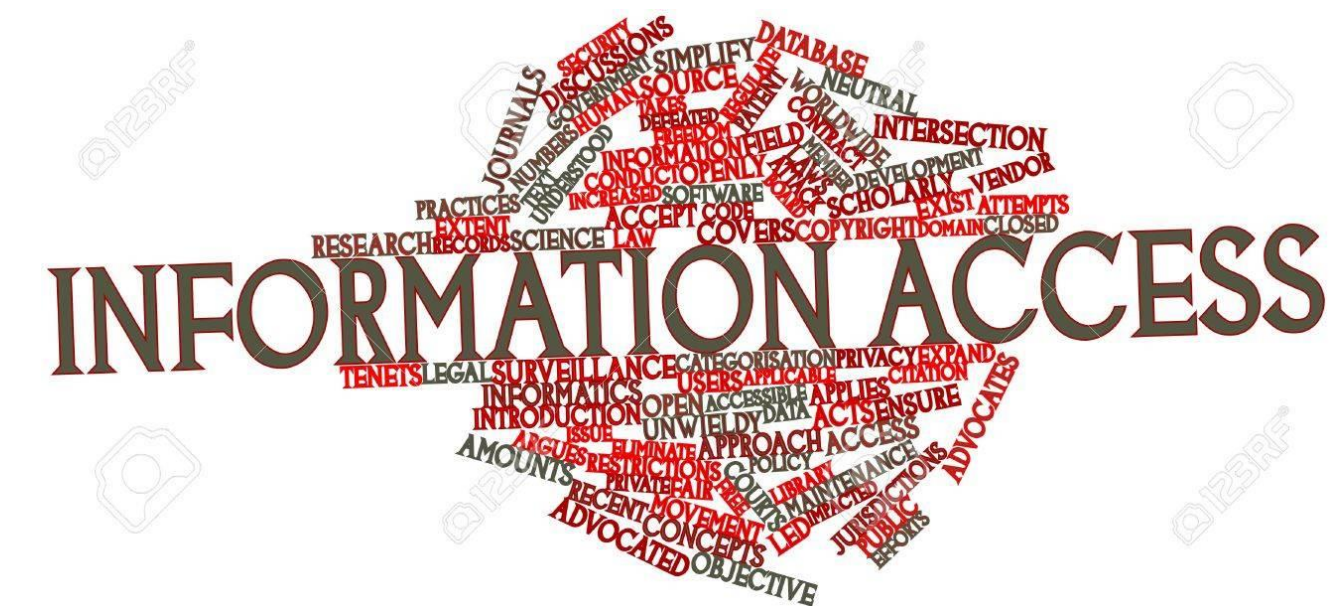
Interaction with POPIA

- One of the Responsibilities of the Information Officer as per POPIA Regulation 4 = *Development of PAIA Manual*:
- *a manual must be developed, monitored, maintained and made available as prescribed in **sections 14 and 51** of PAIA*
- In SA **section 17 of POPIA** requires a responsible party to maintain a record of all processing operations (or activities or functions) under its responsibility in a PAIA manual.
- POPIA amended the sections in PAIA that deal with the manual and your manual must now contain additional information (unless is it contained in your privacy policy). E.g, a description of the different categories of your data subjects

This means that POPIA requires you to provide additional information in your PAIA manual.

MODULE 2

PAIA MANUAL



Some background...

- Some organisations still do not have a manual even though the law requires them to
- What is the PAIA manual deadline?
 - *There isn't really a PAIA deadline...it is in actual fact an extension of an exemption from submitting a PAIA Manual*
 - What really happened is that on 31 December 2020 the previous exemption granted by the government expired. This has been extended to 30 June 2021.
 - Before the warning bells go off for you, you need to ask:
 - Am I currently exempt?
 - And will my organisation be exempt in the future?

Most small organisations are currently exempt

Submission of PAIA Manual

Who needs a PAIA Manual?

- PAIA prescribes that every public and private body must publish an information manual to assist requesters who wish to access a record

Who do you submit your PAIA Manual to?

- Manual previously submitted to the SAHRC
- Must be submitted in future to the Information Regulator
 - ✓ the SAHRC hands over officially to the Information Regulator on 1 July 2021
- The PAIA Manual submission deadline **for certain private bodies** has been extended **until 30 June 2021**
 - ☐ *Refer to next slide for detail*

You are exempt if...

- If you are a **private** company in terms of the Companies Act and you are **NOT in any of the industries or sectors listed** in the “Industry or sector” per the GG notice, **you don't need to compile a manual.**
- If you are a **private company in any of the industries or sectors listed** in the “Industry or sector” column **AND you have 50 or more employees**, **you need to compile a manual.**
- If you are a **private company in any of the industries or sectors listed** in the “Industry or sector” column **AND your ANNUAL TURNOVER is equal to or more than the amount** gazette in your respective industries “Threshold Turnover”, **you need to compile a manual.**

If none of the above applies, you do not need to compile a manual at this stage.

Turnover Threshold per industry

- Agriculture - R6 million
- Mining and Quarrying - R22,5 million
- Manufacturing - R30 million
- Electricity, Gas and Water - R30 million
- Construction - R15 million
- Retail and Motor Trade and Repair Services - R45 million
- Wholesale Trade, Commercial Agents and Allied Services - R75 million
- Catering, Accommodation and other Trade - R15 million
- Transport Storage and Communications - R30 million
- Finance and Business Services - R30 million
- Community, Special and Personal Services - R15 million

Turnover Threshold Industries

(continued)

- The notice has not increased the turnover threshold for the industries as the previous notice had. The industries that are quoted below are as per the notice in the gazette. The list is not accurate so you might struggle to determine which industry you fall into. There is, unfortunately, no other guidance. You'll just have to pick the one that is closest to your industry.
- Remember that you only need a manual if you are in one of the industries or sectors in the table above.

For more information on what is included the finance and business services sector, go to [South African Embassy in the Kingdom of the Netherlands](#) or [Wesgro](#)

Latest PAIA Manual Extension

- This GG notice 44003 extends the exemption for Private entities
 - Financial services is excluded from the exemption
 - **NB:** this is an EXTENSION of exemption which would have ended on 31 December 2020 but has been extended **until 30 June 2021**.
- This deadline is based on the fact that the SAHRC hands over officially to the Information Regulator on 1 July 2021 and it will be up to the Regulator to decide on maintaining the exemption or dropping it – the likelihood is that the exemption will be dropped and PAIA mandated

Do you still need a PAIA Manual?

*The simple answer is **YES!***

*Except if **GG44003** applies to you, and then **ONLY up to 1 July 2021:***

- If you are a small organisation, you don't
- If you are a large organisation, you still do (always have)
 - ❖ *You should draft a PAIA manual, or contact a specialist to draft one for you*
- If you are in between, you need to check if your company fits into a listed sector or industry, and check if you have 50 or more employees, OR if your turnover is above the new threshold

PAIA Manual contents...

Section 14 = for Public bodies

Section 51 = for Private bodies

- It is important to note that a MANUAL does not imply that you need a massive document with hundreds of policies and procedures...
- You could also compile a basic document (even a 2-pager) that explains how your entity handles your PAIA obligations
- If you have a website, your PAIA Manual must be on the website
 - If not, then you should explain processes to anyone who enquires on access to your information

The Information Regulator has issued a template which you can use for a basic PAIA Manual - *Section 51 Generic Version.doc 2015*

MODULE 3

LINKS TO RELEVANT LEGISLATION



Useful Links to Legislation

The Promotion of Access to Information Act, 2000

- **PAIA**
- <http://www.justice.gov.za/infoereg/docs/InfoRegSA-act-2000-002.pdf>

The Promotion of Access to Information Amendment Act, 2002 & 2019

- ***The PAIA Amendment Act***
- <http://www.justice.gov.za/infoereg/docs/InfoRegSA-act-2002-054.pdf>
- **2019** = to amend the Promotion of Access to Information Act, 2000, so as to provide for information on the private funding of political parties and independent candidates to be recorded, preserved and made available
- https://www.gov.za/sites/default/files/gcis_document/202007/43388gon630.pdf

6 Source Documents available to you

- PAIA Act of 2000
- PAIA Amendment Act 2019
- Partial private body exemption extension until June 2021 44003gon1354
- Section 51 Generic Version.doc 2015
- SA Embassy of Netherlands re Finance and business services
- Wesgro re Finance and Business services



In closing...

- PAIA compliance is a very important part of becoming POPIA compliant!
- If you are currently exempt, you can “relax” until 1 July 2021
- If you are not exempt, you should compile and submit your PAIA Manual

We will host another webinar on the PAIA Manual once the Information Regulator has published any new information from 1 July 2021 onwards...

QUESTIONS



Formal Q&A Session

We will now take a **quick comfort break** before we go live to discuss some questions received during the webinar.

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for your participation!