

13. ACCESS TO INFORMATION

The Promotion of Access to Information Act, 2 of 2000

Why, in a training on the AJA, are we discussing the Access to Information Act (AIA)? Well, the two laws are **closely related, and can sometimes work hand-in-glove**. The two Acts have the same purpose – promoting accountability and transparency – and can work together to achieve the same goal. The AIA can facilitate the proper working of the AJA by assisting you to get the information you need to ensure that your rights are met. This section on the AIA is not intended to be a comprehensive guide to the Act, but rather to give you a basic understanding of what it is, and how to bring an application under the AIA.

1. The Promotion of Access to Information Act

This is a complex piece of legislation that **gives effect to the right of access to information, according to Section 32 of the Bill of Rights**. What is the “right to access to information”? The Act sets out in what circumstances anyone can request information (called “records”) from state and private bodies – (which includes a person or partnership that carries on a trade, business or profession, and any company).

The Act was passed in February 2000 to meet the deadline set in the Constitution for such an Act. There are many who would argue that the drafting of the Act was rushed to meet this deadline and that it suffers greatly as a result.

Despite being passed in early 2000, it was not until 16 March 2001 that the Act came into operation. Even then, Sections 10, 14, 16 and 51 were delayed, only coming into operation on 15 February 2002.

a. What is the purpose of the Act?

The aim of the AIA is to promote a culture of:



BY THE END OF THIS SECTION

You will understand the following with respect to the Access to Information Act:

- The Act’s background
- Its purpose
- Important concepts
- Duties and obligations
- The processes and procedures
- Practical implications



BILL OF RIGHTS

In South Africa the right of access to information is expressly included as a separate right in the Bill of Rights. It reads as follows:

Section 32 – Access to Information

- (1) Everyone has the right of access to –
- (a) any information held by the state; and
 - (b) any information held by another person and that is required for the exercise or protection of any right

Section 31 (2) goes on to require Parliament to pass legislation to give effect to this right. This has been done with the Promotion of Access to Information Act (2 of 2000).

- transparency, and
- accountability.

Transparency is about things being out in the open – about nothing being hidden. If you were going to do something wrong, one of the important things you will try to ensure is that no-one can see, otherwise you will be caught. By making actions of state and private bodies transparent, the AIA helps to ensure honesty in administration and business.

Accountability is about making people responsible for their actions. The public has rights, and the civil service has obligations to the public to serve these rights. The AIA is there to ensure that these obligations are being met.

The Act puts in place mechanisms & procedures to ensure that access to the information that you need is:

- Swift,
- Inexpensive, and
- Effortless.

b. Who can you request information from?

Under the AIA, you can request information from **state bodies** (for example, the SABC), or from **private bodies** (for example, Pick & Pay). There is, however, an important difference between the two:

- When requesting information from a **public body**, you **do not need to give reasons** why you want the information.
- From a **private body**, you need to be able to **show why the information is needed** to protect one of your rights.

EXAMPLE

You have applied for a job with Pick & Pay as a till operator, and you have been unsuccessful. You believe that you were not appointed because you are disabled – you are in a wheelchair as a result of having polio as a child. However, this would not interfere with your ability to be a till operator, as you have full functioning of your upper body. You have worked as a till operator at Clicks for 8 years,

and would be well suited to the job. You have a right under the Bill of Rights not to be discriminated against as a result of your disability, and thus the right to know if the management of Pick & Pay discriminated against you by not appointing you to the job.

You could use the AIA to request the interview transcripts and minutes of the appointment meetings to find out what the ground were for their decision not to appoint you.

c. What can be requested?

The Act talks about a “**record**” – this is any piece of information that has been **written down, or recorded in some other manner** – for example a meeting may have been recorded to audio tape – and you could ask for the transcripts of this tape under the AIA. There is **no obligation on public or private bodies to create records** under the AIA; you may only request something that is already there.

EXAMPLE

Your community has made an appeal to the minister of Environmental Affairs and Tourism to declare your communal lands a protected eco-tourism area, to counter an application a mining company has made to get strip-mining rights for the same piece of land. The mining rights are granted. You could request a copy of the diary of the Minister to see if he attended meetings to discuss the matter, and to see if he visited the area.

A diary is a written document – you *can* request it. Because the Ministry is a state body you would not have to say why you wanted the copies.

The Act is **retrospective** – i.e. it applies to information that dates back to before the Act was passed in February 2000.

d. Who can request information?

There are two categories of people who can request information under the AIA. They are called:

- **Requesters;** and
- **Personal requesters.**

The difference between the two, is that a personal requester is someone who has a personal interest in the information – i.e. it is **information that is about him or her**; the information must deal with that person in some way.

Why is the difference important? A **personal requester does not have to pay for information**, whereas a third party requester does.

EXAMPLE

Your application for a disability grant has been turned down on the grounds that you are not sufficiently disabled. You can request the district surgeon's report on you as a personal requester, in order to find out whether the assessment of your disability is correct. You should not pay for this record.

If you are an NGO making an application on behalf of someone, you can still make that application as a personal requester.

e. Who must make the decision?

Someone, in either a private or a public body, is going to have to decide whether to give you the information you are looking for. In a public body, that person is the **Information Officer**, who is the Director General (DG) of the department. Obviously the DG cannot deal with all requests under the AIA, so they may delegate their authority to a **Deputy Information Officer**, who can make decisions on their behalf.

In a private body, that person is the **head** of the body – in the example stated above, the Managing Director of Pick & Pay should make the decision about whether to release the information on the appointment process.

ROLE OF NGOS

An NGO acting on behalf of a client can make a request as a personal requester if that person would qualify as a personal requester.

f. Who else should be considered?

If the information you are requesting affects another person's rights, **that person must be consulted** before the information is provided.

EXAMPLE

You apply for a job, and the job is given to another candidate. You feel that you were extremely well qualified for the job and had a successful interview. In order to ensure that the decision was fairly made, you ask for the CV of the successful candidate, Peter Smith. Mr. Smith must be contacted and asked if he has any objection to you being given this information about him.

g. What is it going to cost you?

The first principle of the AIA is that **it shouldn't cost the government anything to provide you with the information**. The information that you request must therefore already be recorded in some form or another.

As already mentioned, if you are a personal requester, you do not have to pay for the information. If you are not a personal requester, you will have to pay:

- A reproduction fee
- A search fee;
- The actual postage fee of getting the information to you (if applicable); and
- VAT, of you are a registered VAT vendor.

The amount varies according to the type of information you are requesting, but **costs can mount up quite quickly**, so it is important to make some assessment of the costs before you make your application.

(TABLE OF COSTS TO FOLLOW)



FEES UNDER THE AIA

If you are a personal requester in terms of the Act (that is, someone who is asking for information about themselves), no fee is required. However, if you are asking for any other information, you are a 'requester' in terms of the Act and will have to pay the prescribed fee.

h. What are the grounds for refusal?

Under certain conditions, a request for information can be refused. It is important to note that the AIA contains a **public interest override**. This means that a request cannot simply be refused on the grounds that it is in the public interest – rather one of the following conditions must be met:

- **Right to privacy** – a request can be denied if someone’s right to privacy will be undermined. This does not apply to civil servants and their pay structures!
- **Safety of individuals or property** should not be compromised by disclosure of information.
- **Commercial secrets** and **research information** – information which is integral to business success can be withheld.
- **Law enforcement** should not be compromised by the disclosure of information.
- Information that constitutes **legal privilege** between lawyer and client can be withheld.
- Information which is related to the **defence, security, international relations, economic interest and financial welfare of South Africa** does not need to be disclosed by the state.
- **Before a decision is made**, information that is critical to the decision can be withheld, but will need to be disclosed after that decision has been made.

Finally, a request for information can be withheld if a request is **frivolous or vexatious**. For instance, if someone applies every Monday to have a copy of the diary of the President, the request could be considered after some time to be frivolous and the request could be turned down.

i. The Information Manual

To reduce the number of requests made, to make sure that at least the most basic information on all public bodies is easily available, and to assist people wanting to request information, each public body was required, by 14 August 2002, to compile a **manual in at least three official languages**. This must contain:

- A **description of the body** and its functions;
- All **contact information**, including the email address of its information officer;
- A description of **what type of records** the body holds;
- The **information that is available** without having to request it – e.g. on the department website;
- What **services** the body offers and how to access these;
- The **remedies** available in respect of any action or failure to act by the body.

Note – the regulations to the Act state that the manual must be made available at every office of the body and must be published in the Government Gazette and on the website of the body if it has one. Many departments have been very slow in completing these manuals,

Why is this important for NGOs? The manual can assist them to submit requests to the right people, and get more information on the services and remedies available from this body.

i. Internal appeal

An **internal appeal may be lodged** against a decision of the information officer of a public body by a requester who is refused a request for information, or by a third party who feels their rights have been compromised by the decision to grant information.

An internal appeal must be **made in writing within 60 days, and the administration has 30 days to consider the appeal**. If the appeal is made by a requester, and there is a third party involved, this third party will have to be involved again in the appeal process.

If the parties are unhappy with the decision of the appeal process, they may launch an application within a court against the decision (**take the matter on judicial review**), **and this must be done within 60 days**.

Internal appeal is an area where NGOs may be called upon to assist people whose requests have been refused. The letter to launch an internal appeal must:

- be lodged on the required form;

- be sent to the information officer of the public body at their address, fax or email address;
- identify clearly the subject of the internal appeal, state the reasons for the internal appeal, and include any relevant information;
- include your full address and contact information.



A PUBLIC BODY

Consists of any part or department of government at all levels as well as any private body exercising a public function.

A PRIVATE BODY

Is defined as a person or partnership that carries on a trade, business or profession, and any company.

2. Requesting information

The AIA covers requests for information from government and from private bodies. The two flowcharts over the page outline the differences between the two types of requests.

a. Requests to government

To begin a request for information to government, the first step is to **complete the request form** (as contained in the Regulations to the Act).

The request needs then to be **sent to the correct information officer**. Briefly, this is the person who heads the department (usually the Director General) though, in reality and once the Act is properly implemented, the DGs will appoint ‘deputy information officers’. Theoretically, the names and contact details of all of these should be in every telephone directory and in the manuals each department must produce in terms of the Act. If not, you may have to spend some time calling around to find out exactly who to address your request to.

If you are a personal requester in terms of the Act (that is, someone who is asking for information about themselves), no fee is required. However, if you are asking for any other information, you are a ‘requester’ in terms of the Act and will have to **pay the prescribed fee**. This is not spelled out in the Regulations – instead, the Regulations merely say that ‘you will be notified of the amount to be paid as the request fee’. This makes sense because the costs involved will be different each time, depending on what form the record takes, how long it is and how difficult and time consuming it is to find.

The **information officer (or a deputy) must now decide** whether or not to grant you access to the record. As represented in the first flowchart, the process is more or less as follows:



BRINGING AN APPLICATION

A request under the AIA is made to the Deputy Information Officer, using the correct forms (copies are included at the end of this section). Contact details of these people should be in every telephone directory.

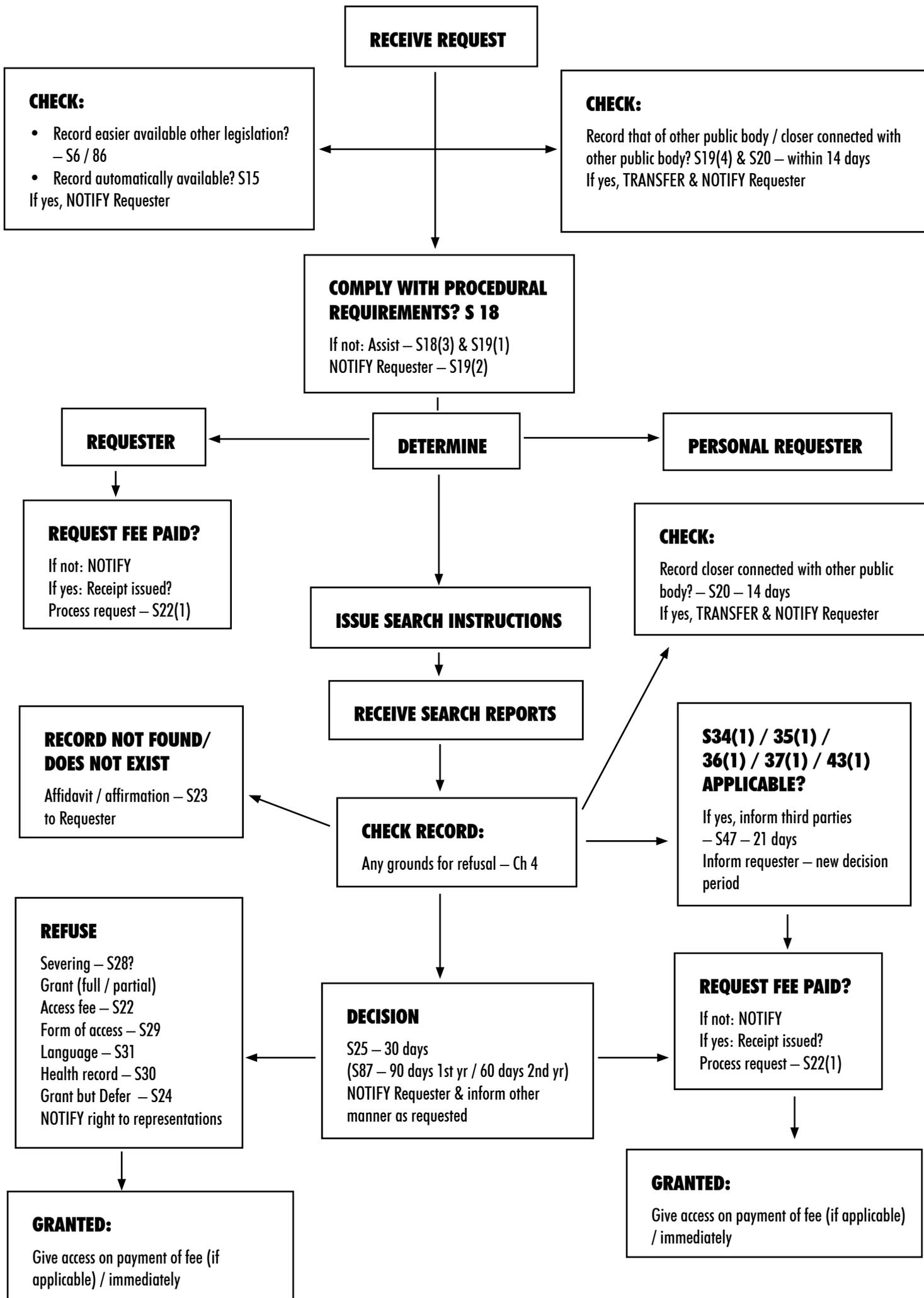


REASONABLE ASSISTANCE

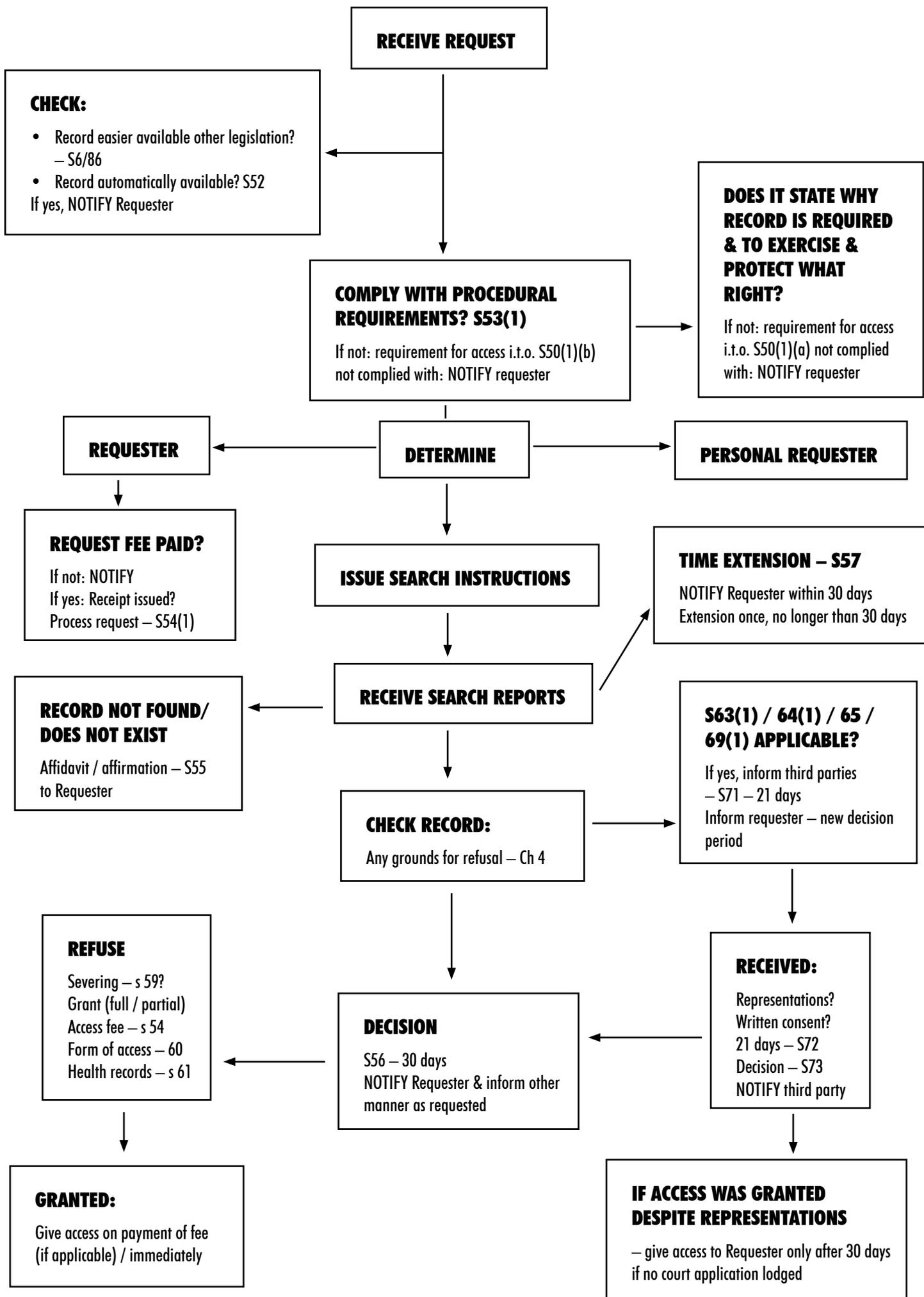
Information officers are required to provide ‘reasonable’ assistance to anyone requesting information, free of charge. A request cannot be refused because it does not comply with requirements, unless the requester has been notified of the problem and been offered the assistance and time to alter the request.

- The information officer (IO) will first need to check that the request has been sent to the **correct department**. If not, they must transfer it to the correct body and notify you.
- The next question is whether the record cannot be **accessed more easily with another law** or whether it is already automatically available. If the answer is yes, they must notify you.
- If the request is at the right place but **does not comply with all the procedures in the Act**, the IO is expected to advise you of this and to offer assistance on getting it right. They must also check whether you are a personal requester and, if not, they must tell you what the fee will be and make sure it is paid.
- If the request is at the right place and all procedures complied with (including paying the fee), the **IO must now find the record**.
- **If the record cannot be found or does not exist**, they must complete an affidavit to this effect and send it to you.
- Once the record is found, the **decision must be made whether or not to allow you access** to it. They will need to consider the grounds for refusal in Chapter 4, and must also check whether any third party is involved. If so, the 3rd party must be notified and given a chance to say whether or not they give permission for the record to be given to you.
- **If a third party decides not to give permission**, they must notify the IO of this and explain why. The IO must then decide whether or not to give you access. (The mere fact that the 3rd party does not want you to get access is not enough to prevent you getting access – they must have good reasons for not wanting you to see it).
- **If the IO decides to grant you access** (or partial access), they must notify you and tell you what fee you need to pay – once you have paid it, you will be given access in an appropriate way.
- If they decide not to grant you access to all, or part, of a record, the **IO must notify you and explain that you have the right to make representations** to try and

Flowchart 1: Request to Government



Flowchart 2: Request to Private Bodies



convince them otherwise. An internal appeal is then held to decide and, if you are still not given access, you can apply to a court to have this decision turned around.

b. Private bodies

As set out in flowchart 2, the process is more or less the same when you request information from a private body.

The flowcharts on the previous pages are based on those developed by Jakkie Wessels, formerly at Justice College, and are used with her kind permission.

EXERCISE 8 – MAKING A REQUEST FOR INFORMATION

The forms for making an application under the AIA are included on the following pages. Under the guidance of your facilitator, complete these forms to gain access to the information you need.

ANNEXURE B

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY
(Section 18(1) of the Promotion of Access to Information Act, 2000

(Act No. 2 of 2000))

[Regulation 6]

FOR DEPARTMENTAL USE	Reference number:
Request received by _____ (state rank, name and surname of information officer/deputy information officer) on (date) at _____ (place).	
Request fee (if any): R	
Deposit (if any): R	
Access fee: R	
_____ SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER	

A. Particulars of public body

The Information Officer/Deputy Information Officer:

B. Particulars of person requesting access to the record

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

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:

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 below, state your disability and indicate in which form the record is required.

Disability:	Form in which record is required:
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Mark the appropriate box with an X.

NOTES:

*(a) Compliance with your request for access 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
<i>Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.</i>			
In which language would you prefer the record?			

G. 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

FORM B

NOTICE OF INTERNAL APPEAL

(Section 75 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 8]

STATE YOUR REFERENCE NUMBER:

A. Particulars of public body

The Information Officer/Deputy Information Officer:

B. Particulars of requester/third party who lodges the internal appeal

- (a) *The particulars of the person who lodge the internal appeal must be given below.*
- (b) *Proof of the capacity in which appeal is lodged, if applicable, must be attached.*
- (c) *If the appellant is a third person and not the person who originally requested the information, the particulars of the requester must be given at C below.*

Full names and surname:

Identity number:

Postal address:

Fax number: _____ Telephone number:

E-mail address:

Capacity in which an internal appeal on behalf of another person is lodged:

C. Particulars of requester

This section must be completed ONLY if a third party (other than the requester) lodges the internal appeal.

Full names and surname:

Identity number:

D. The decision against which the internal appeal is lodged

Mark the decision against which the internal appeal is lodged with an X in the appropriate box:

	Refusal of request for access
	Decision regarding fees prescribed in terms of section 22 of the Act

	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester
	Decision to grant request for access

E. Grounds for appeal

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

State the grounds on which the internal appeal is based:

State any other information that may be relevant in considering the appeal:

F. Notice of decision on appeal

You will be notified in writing of the decision on your internal appeal. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

State the manner:

Particulars of manner:

Signed at _____ this _____ day of _____ 20

SIGNATURE OF APPELLANT

FOR DEPARTMENTAL USE:

OFFICIAL RECORD OF INTERNAL APPEAL:

Appeal received on _____ (date) by _____ (state rank, name and surname of information officer/deputy information officer).

Appeal accompanied by the reasons for the information officer's/deputy information officer's decision and, where applicable, the particulars of any third party to whom or which the record relates, submitted by the information officer/deputy information officer on (date) to the relevant authority.

OUTCOME OF APPEAL:

DECISION OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER CONFIRMED/NEW DECISION SUBSTITUTED

NEW DECISION:

RELEVANT AUTHORITY

DATE

RECEIVED BY THE INFORMATION OFFICER/DEPUTY INFORMATION OFFICER FROM THE RELEVANT AUTHORITY ON (date):

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

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

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

Full names and surname:

Identity number:

D. Particulars of record

- | | |
|-----|---|
| (a) | <i>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.</i> |
| (b) | <i>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.</i> |

- 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:
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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:			
<input type="checkbox"/>	copy of record*	<input type="checkbox"/>	inspection of record
2. If record consists of visual images (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):			
<input type="checkbox"/>	view the images	<input type="checkbox"/>	copy of the images*
<input type="checkbox"/>		<input type="checkbox"/>	transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound:			
<input type="checkbox"/>	listen to the soundtrack (audio cassette)	<input type="checkbox"/>	transcription of soundtrack* (written or printed document)
4. If record is held on computer or in an electronic or machine-readable form:			
<input type="checkbox"/>	printed copy of record*	<input type="checkbox"/>	printed copy of information derived from the record*
<input type="checkbox"/>		<input type="checkbox"/>	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?			<input type="checkbox"/> YES <input type="checkbox"/> NO
Postage is payable.			

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