

## **ANNEXURE A**

### **SECTION 61 & CHAPTER 4 OF PAIA**

#### **61 Access to health or other records**

- (1) If the head of a private body who grants, in terms of section 50, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being-
  - (a) of the requester; or
  - (b) if the request has been made on behalf of the person to whom the record relates, of that person, (in this section, the requester and person referred to in paragraphs (a) and (b), respectively, are referred to as the '**relevant person**'), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the head may, before giving access in terms of section 60, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.  
[Sub-s. (1) substituted by s. 41 of Act 42 of 2001 (wef 7 December 2001).]
- (2) If the relevant person is-
  - (a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or
  - (b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.
- (3) (a) If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person, would be likely to cause serious harm to his or her physical or mental health, or well-being, the head may only give access to the record if the requester proves to the satisfaction of the head that adequate provision is made for such counselling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.
  - (b) Before access to the record is so given to the requester, the person responsible for such counselling or arrangements must be given access to the record.

## **CHAPTER 4**

### **GROUND FOR REFUSAL OF ACCESS TO RECORDS (ss 62-70)**

#### **62 Interpretation**

A provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, must not be construed as-

- (a) limited in its application in any way by any other provision of this Chapter in terms of which a request for access to a record must or may or may not be refused; and
- (b) not applying to a particular record by reason that another provision of this Chapter in terms of which a request for access to a record must or may or may not be refused, also applies to that record.

### **63 Mandatory protection of privacy of third party who is natural person**

- (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information-
  - (a) about an individual who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;
  - (b) already publicly available;
  - (c) that was given to the private body by the individual to whom it relates and the individual was informed by or on behalf of the private body, before it is given, that the information belongs to a class of information that would or might be made available to the public;
  - (d) about an individual's physical or mental health, or well-being, who is under the care of the requester and who is-
    - (i) under the age of 18 years; or
    - (ii) incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;
  - (e) about an individual who is deceased, and the requester is-
    - (i) the individual's next of kin; or
    - (ii) making the request with the written consent of the individual's next of kin; or
  - (f) about an individual who is or was an official of a private body and which relates to the position or functions of the individual, including, but not limited to-
    - (i) the fact that the individual is or was an official of that private body;
    - (ii) the title, work address, work phone number and other similar particulars of the individual;
    - (iii) the classification, salary scale or remuneration and responsibilities of the position held, or services performed by the individual; and
    - (iv) the name of the individual on a record prepared by the individual in the course of employment.

### **64 Mandatory protection of commercial information of third party**

- (1) Subject to subsection (2), the head of a private body must refuse a request for access to a record of the body if the record contains-
  - (a) trade secrets of a third party;
  - (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
  - (c) information supplied in confidence by a third party, the disclosure of which could reasonably be expected-
    - (i) to put that third party at a disadvantage in contractual or other negotiations; or
    - (ii) to prejudice that third party in commercial competition.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information about-

- (a) a third party who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;
- (b) the results of any product or environmental testing or other investigation supplied by a third party or the results of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

[Para. (b) substituted by s. 42 of Act 42 of 2001 (wef 7 December 2001).]

- (3) For the purposes of subsection (2) (b), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

#### **65 Mandatory protection of certain confidential information of third party**

The head of a private body must refuse a request for access to a record of the body if its disclosure would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.

#### **66 Mandatory protection of safety of individuals, and protection of property**

The head of a private body-

- (a) must refuse a request for access to a record of the body if its disclosure could reasonably be expected to endanger the life or physical safety of an individual; or
- (b) may refuse a request for access to a record of the body if its disclosure would be likely to prejudice or impair-
  - (i) the security of-
    - (aa) a building, structure or system, including, but not limited to, a computer or communication system;
    - (bb) a means of transport; or
    - (cc) any other property; or
  - (ii) methods, systems, plans or procedures for the protection of-
    - (aa) an individual in accordance with a witness protection scheme;
    - (bb) the safety of the public, or any part of the public; or
    - (cc) the security of property contemplated in subparagraph (i) (aa), (bb) or (cc).

#### **67 Mandatory protection of records privileged from production in legal proceedings**

The head of a private body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.

#### **68 Commercial information of private body**

- (1) Subject to subsection (2), the head of a private body may refuse a request for access to a record of the body if the record-

- (a) contains trade secrets of the private body;
  - (b) contains financial, commercial, scientific or technical information, other than trade secrets, of the private body, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body;
  - (c) contains information, the disclosure of which could reasonably be expected-
    - (i) to put the private body at a disadvantage in contractual or other negotiations; or
    - (ii) to prejudice the body in commercial competition; or
  - (d) is a computer program, as defined in section 1 (1) of the Copyright Act, 1978 (Act 98 of 1978), owned by the private body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.
- (2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the results of any product or environmental testing or other investigation supplied by the private body or the results of any such testing or investigation carried out by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.
- [Sub-s. (2) substituted by s. 43 of Act 42 of 2001 (wef 7 December 2001).]
- (3) For the purposes of subsection (2), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

**69 Mandatory protection of research information of third party, and protection of research information of private body**

- (1) The head of a private body must refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of a third party, the disclosure of which would be likely to expose-
- (a) the third party;
  - (b) a person that is or will be carrying out the research on behalf of the third party; or
  - (c) the subject matter of the research, to serious disadvantage.
- (2) The head of a private body may refuse a request for access to a record of the body if the record contains information about research being or to be carried out by or on behalf of the private body, the disclosure of which would be likely to expose-
- (a) the private body;
  - (b) a person that is or will be carrying out the research on behalf of the private body; or
  - (c) the subject matter of the research, to serious disadvantage.

**70 Mandatory disclosure in public interest**

Despite any other provision of this Chapter, the head of a private body must grant a request for access to a record of the body contemplated in section 63 (1), 64 (1), 65, 66 (a) or (b), 67, 68 (1) or 69 (1) or (2) if-

- (a) the disclosure of the record would reveal evidence of-
  - (i) a substantial contravention of, or failure to comply with, the law; or
  - (ii) imminent and serious public safety or environmental risk; and

- (b) the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

## **SECTION 53 OF PAIA**

### **Form of request**

- (1) A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.
- (2) The form for a request for access prescribed for the purposes of subsection (1) must at least require the requester concerned-
  - (a) to provide sufficient particulars to enable the head of the private body concerned to identify-
    - (i) the record or records requested; and
    - (ii) the requester;
  - (b) to indicate which form of access is required;
  - (c) to specify a postal address or fax number of the requester in the Republic;
  - (d) to identify the right the requester is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or protection of that right;
  - (e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and
  - (f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction.

**ANNEXURE B: NOTICE OF SECURITY COMPROMISES IN TERMS OF SECTION 22 OF POPIA**

TO: CLIENT

CHOOSE ONE OF THE FOLLOWING METHODS OF NOTIFICATION:

PHYSICAL/POSTAL ADDRESS

EMAIL

PROMINENT POSITION ON COMPANY WEBSITE

PUBLISHED IN NEWS MEDIA

AS DIRECTED BY REGULATOR

**RE: NOTICE OF SECURITY COMPROMISES IN TERMS OF SECTION 22 OF POPIA**

We regret to inform you that there has been a security compromise and your/your business's personal information has been accessed or acquired by an unauthorized person.

1. Details of the security compromise is as follows:
  - 1.1 The date and time the security compromise was discovered;
  - 1.2 How it came to the Company's attention and reporting structure followed;
  - 1.3 The date and time the security compromise occurred;
  - 1.4 The identity of the unauthorized person (if available);
  - 1.5 Brief description what happened;
  - 1.6 Categories of personal information compromised: (refer to definition of "personal information", section 26 for special personal information and section 57 of the POPIA.
2. Description of possible consequences of the security compromise:
  1. Description of measures the Company intends to take or has taken to address the security compromise:
  2. We recommend that you / your Company take the following measures to mitigate the possible adverse effects of the security compromise:

\_\_\_\_\_

The security compromise was also reported to the Regulator as required on ..... (Regulation 7(1) into section 74(1) – Part 1 of Form 5-Form to be confirmed).

The Company will further act and take all necessary steps in accordance with any direction provided by the Regulator with regards to publicity in order to protect you / your Company.

Yours faithfully