



Process Manual Document:

INFORMATION MANUAL

*In terms of Section 51 of the Promotion of Access
to Information Act*

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Prepared by : *Monde Mawasha*
Typed by : *Thando Dlanjwa*
Business Unit : *ICT, Research and Strategy Programme*
Prepared for : *Coega Development Corporation*
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ORIGINAL	Prepared by	Reviewed by	Approved by
Date: 03 May 2004	Name: Magama Makgamatho	Name: Phaphama Msimang Monde Mawasha	Name: Monde Mawasha
	Signature:	Signature:	Signature:

Distribution:	CDC
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REVISION CHART

REVISION 1	Name: Phaphama Msimang	Name: Menzi Mbina	Name: Monde Mawasha
Date:	Signature:	Signature:	Signature:

REVISION 2	Name:	Name:	Name:
Date:	Signature:	Signature:	Signature:

REVISION 3	Name:	Name:	Name:
Date:	Signature:	Signature:	Signature:

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1. INTRODUCTION

- (a) Section 32 of the Constitution of the Republic of South Africa, No. 108 of 1996 ("the Constitution") provides:

Everyone has the right of access to -

- (i) *any information held by the State; and*
- (ii) *any information that is held by another person and that is required for the exercise or protection of any rights.*

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.

- (b) The Promotion of Access to Information Act, 2 of 2000 ("the Act"), was enacted on 3 February 2002 to give effect to Section 32 (b) of the Constitution. The Act gives effect to the constitutional right of access to any information held by the State and any information that is held by another person, which is required for the exercise or protection of any rights. Where a request for information is made in terms of the Act, the private or public body to whom the request is made is obliged to release the information, except where the Act expressly provides that the information must not be released. The Act sets out the requisite procedural issues attached to such request.
- (c) The Act came into effect on 9 March 2001 with the exception of Sections 10, 14, 16 and 51, which sections were brought into operation on 15 February 2002.

2. WHO MAY REQUEST INFORMATION IN TERMS OF THE ACT

Any person, who requires information for the exercise or protection of any rights, may request information from the CDC which falls into the definition of private body as defined in the Act.

Section 50 of the Act states that:

- (a) *A requester must be given access to any record of a private body if -*
- (i) *that record is required for the exercise or protection of any rights;*

- (ii) *that person complies with the procedural requirements in this 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 Chapter 4 of this Part.*

3. PROCEDURES FOR OBTAINING ACCESS

3.1 Contact Details

Any person who wishes to request any information from the CDC, with the object of protecting or exercising a right, may contact the Company Secretary, with authority properly delegated by the Chief Executive Officer, whose contact details are as follows:

Postal Address

The Company Secretary
Coega Development Corporation (Pty) Ltd
Coega Development Corporation
P/B X6009
Port Elizabeth
6001

Physical address

Coega Business Centre
Corner Alcyon Road and Zibuko Street
Coega SEZ Zone 1,
6001
PORT ELIZABETH
Tel: (041) 403 0400
Fax (041) 403 0401
e-mail
Web site www.coega.com

3.2 Prescribed Access Form

In terms of section 53, a request for access to a record of the CDC must be made in the prescribed form to the CDC at the address, fax number or the electronic mail address given above.

The requester must provide the following:

- (a) sufficient information to enable the Company Secretary to identify the requester;
- (b) sufficient information to enable the Company Secretary to identify the record(s) requested;
- (c) the form of access which is required;
- (d) the requester's postal address or fax number;
- (e) identification of the right sought to be exercised or protected;
- (f) an explanation on why the record is required to exercise or protect that right;
- (g) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, state that manner and the necessary particulars to be so informed; and
- (h) if the request is made on behalf of another person, the requester must submit proof of the capacity in which the requester makes the request, to the satisfaction of the Company Secretary.

For a specimen of the request form see **ANNEXURE A** to the manual.

Requesters are to please note that all of the information as listed above should be provided, failing which the process will be delayed while the CDC requests such additional information. The time periods prescribed by the Act will not commence until all information pertinent to the request has been furnished to the CDC by the requester.

3.3 Prescribed Fees

Payment of fees is regulated by the terms of Section 54 of the Act.

The Regulations to the Act provide for two types of fees:

Request fee: This is a non-refundable administration fee paid by all requestors with the exclusion of personal requesters. It is paid before the request is considered.

Access fee: This is paid by all requesters only when access to the information is granted.

This fee is intended to reimburse the CDC for the costs involved in searching for a record and preparing it for delivery to the requester.

The CDC may withhold a record until the request fee and the deposit, if applicable, has been paid. A schedule of the prescribed fees is attached as **ANNEXURE B** to this manual.

3.3.1 Requester other than Personal Requester

The Company Secretary must give written notice to a requester, other than a personal requestor, of the request fee and amount to be paid before the request may be further processed.

If, in the Company Secretary's opinion, the search for a record or preparation of the record for disclosure will require more than the prescribed hours, the Company Secretary may require the requester to pay a deposit, which may not be more than one third of the access fee that would be payable if the request is granted. If the request is then declined, the deposit must be repaid to the requester.

The notice given by the Company Secretary must advise the requester that s/he has a right to apply to court against the payment of the request fee or deposit, and also advise of the procedure of the application to court.

3.3.2 The Personal Requester

A personal requester is described in terms of the Act as a requestor seeking access to a record containing information about the requester.

A personal requester is not liable to pay a request fee, but is liable for payment of the access fees in the event of a request being granted. Further, a personal requester may not be required to pay a deposit before the granting of the record.

4. TYPES OF RECORDS

The requester may request access to the following types of documents:

4.1 Personnel Records

These include:-

- (a) Any personal records provided to the CDC by their personnel;
- (b) Any records a third party has provided to the CDC about any of their personnel;
- (c) Conditions of employment and other personnel-related contractual and quasi-legal records;
- (d) Internal evaluation records; and
- (e) Other internal records and correspondence.

4.1.1 Customer-related records

A customer includes any natural or juristic entity who receives services from the CDC, or from whom the CDC receives services. Customer-related information includes the following:

- (a) Any records a customer has provided to a third party acting for or on behalf of the CDC;
- (b) Any records a third party has provided to the CDC; and
- (c) Records generated by or within the CDC pertaining to the customer, including transactional records.

4.1.2 CDC records

This includes, but is not limited to, the following:

- (a) Financial records;
- (b) Operational records;
- (c) Databases;
- (d) Information technology;
- (e) Marketing records;

- (f) Internal correspondence;
- (g) Product records;
- (h) Statutory records;
- (i) Internal policies and procedures;
- (j) Treasury-related records;
- (k) Securities and equities; and
- (l) Records held by officials of the CDC.

4.1.3 Other Parties

The CDC may possess records pertaining to other parties, including without limitation, contractors, suppliers, subsidiary/holding/sister companies, joint venture companies, service providers. Alternatively, such other parties may possess records which can be said to belong to the CDC.

The following records fall under this category:

- (a) Personnel, customer or CDC records which are held by another party as opposed to being held by the CDC; and
- (b) Records held by the CDC pertaining to other parties, including without limitation, financial records, correspondence, contractual records, records provided by the other party, and records third parties have provided about the contractors / suppliers.

4.1.4 Records Available in terms of other legislation

The requester may also request information which is available in terms of legislation, such as the following:-

- (a) Alienation of Land Act (68 of 1981)
- (b) Arbitration Act (42 of 1965)
- (c) Banks Act (94 of 1990)
- (d) Basic Conditions of Employment Act (75 of 1997)
- (e) Companies Act (71 Of 2008)

- (f) Compensation for Occupational Injuries & Diseases Act (130 of 1993)
- (g) Constitution of the Republic of South Africa (1996)
- (h) Employment Equity Act (55 of 1998)
- (i) Financial Markets Control Act (55 Of 1989)
- (j) Financial Services Board Act (97 Of 1990)
- (k) Income Tax Act 58 Of 1962
- (l) Labour Relations Act (66 Of 1995)
- (m) Occupational Health And Safety Act (85 Of 1993)
- (n) Promotion of Equality And Prevention Of Unfair
Discrimination Act (4 of 2000)
- (o) Promotion of Administrative Justice Act (3 of 2000)
- (p) Protection of Personal Information (POPI) Act (4 of 2013)
- (q) Protected Disclosures Act (26 of 2000)
- (r) Public Finance Management Act (PFMA) (1 of 1999)
- (s) Regional Services Councils Act (109 Of 1985)
- (t) Short Term Act (53 Of 1998)
- (u) Skills Development Act (97 Of 1998)
- (v) Skills Development Levies Act (9 of 1999)
- (w) South African Qualifications Authority Act (58 of 1995)
- (x) Special Economic Zone Act (16 of 2014)
- (y) Unemployment Insurance Act (63 of 2001)
- (z) VAT Act (89 of 1991).
- (aa) Workmen's Compensation Act (30 of 1941)

The Company Secretary will take into consideration Section 8 of this Manual to decide on whether or not access to any of the information stated above should be given to the requester.

5. DECISION-MAKING PROCESS

In terms of Section 55, the Company Secretary will take all reasonable steps to find a record that has been requested.

If the record cannot be found or does not exist, the Company Secretary must notify the requester by way of affidavit or affirmation that it is not possible to give access to the record. This is deemed to be a refusal of the request. If, however, the record is later found, the requester must be given access if the request would otherwise have been granted.

Section 56 provides that the Company Secretary must, within 30 days of receipt of a correctly completed request, notify the requester of the decision as to whether or not to grant the request.

If the request is:

- (a) Granted, the notification must state the applicable access fee required to be paid, together with the procedure to be followed should the requester wish to apply to court against such fee, and the form in which access will be given.
- (b) Declined, the notification must include adequate reasons for the decision, together with the relevant provisions of the Act relied upon, and provide the procedure to be followed should the requester wish to apply to court against the decision.

The Company Secretary may extend the period of 30 days by a further period not exceeding 30 days, if:

- (a) The request is for a large number of records or requires a search through a large number of records;
- (b) The request requires a search for records located in a different office of the CDC not situated in the same city;
- (c) Consultation between divisions of the CDC, or with another private body is required; or
- (d) The requester consents to the extension.

The requester must be notified within the initial 30 day period in writing of the extension, together with reasons therefore, and the procedure involved should the requester wish to apply to court against the extension. The Company Secretary's failure to respond to the requester within the 30 day period constitutes a deemed refusal of the request.

- 5.4 Section 59 provides that the Company Secretary may sever a record and grant access only to that portion which the law does not prohibit access to. If access is granted, access must be given in the form that is reasonably required by the requester, or if the requester has not identified a preference, in a form reasonably determined by the Company Secretary.

6. THIRD PARTIES

If the request is for a record pertaining to a third party, the Company Secretary must take all reasonable steps to inform that third party of the request. This must be done within 21 days of receipt of the request. The manner in which this is done must be in the fastest means reasonably possible, but if orally, the Company Secretary must thereafter give the third party a written confirmation of the notification. The third party may, within 21 days thereafter, either make representation to the CDC as to why the request should be refused, alternatively grant written consent to the disclosure of the record. The third party must be advised of the decision taken by the Company Secretary on whether to grant or decline the request, and must also be advised of his/her/its right to appeal against the decision by way of application to court within 30 days after the notice.

7. GROUNDS FOR REFUSAL OF A REQUEST

Notwithstanding compliance with Section 50, the request may be declined in accordance with one of the grounds prescribed in the Act, namely:

- 7.1 Section 63 of the Act prohibits the unreasonable disclosure of the personal information of natural-person third parties to requesters. This includes the personal information of deceased persons. However Section 63(2) does provide exceptions to this.
- 7.2 Section 64 states that a request must be refused if it relates to records containing third party information pertaining to:
 - (a) Trade secrets;
 - (b) Financial, commercial, scientific or technical information where disclosure would be likely to cause harm to the commercial or financial interests of that third party;
or
 - (c) Information supplied 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 prejudice the third party in commercial competition.

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

- 7.3 Section 65 prohibits disclosure of information if such disclosure would constitute a breach by the CDC of any duty of confidentiality owed by it to a third party in terms of an agreement.

7.4 In terms of Section 66, the CDC would refuse a request for access to a record of the body if disclosure could reasonably be expected to:

- (a) Endanger the life or physical safety of an individual;
- (b) Prejudice or impair the security of a building, structure or system, including but not limited to a computer or communication system, means of transport or any other property.

This section further allows the CDC to refuse a request for access to information which would prejudice methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme, or for the safety of the public.

7.5 Section 67 mandates the refusal of a request if the record is privileged from production in legal proceedings, unless the person entitled to the privilege has waived the privilege.

7.6 Section 68 pertains to records containing information about the CDC itself. Unlike the other provisions pertaining to the declining of a request, this section is not mandatory, but rather discretionary.

7.7 The CDC may refuse access to a record if the record:

- (a) Contains trade secrets of the CDC;
- (b) Contains financial, commercial, scientific or technical information, the disclosure of which would be likely to cause harm to the commercial or financial interests of the CDC;
- (c) Contains information which, if disclosed, could reasonably be expected to put the CDC at a disadvantage in contractual or other negotiations, or prejudice the CDC in commercial competition; or
- (d) Consists of a computer program owned by CDC.

Notwithstanding the above, the information must be released if it pertains to the results of product or environmental testing, the disclosure of which would reveal a serious public safety or environmental risk.

7.8 Section 69 prohibits the disclosure of information about research where disclosure is likely to expose the third party, the person conducting the research on behalf of the third party, or the subject matter of the research to serious disadvantage. Disclosure is discretionary if such research pertains to the CDC itself.

- 7.9 Notwithstanding any of the above-mentioned provisions, Section 70 provides that a record must be disclosed if its disclosure would:
- (a) Reveal evidence of a substantial contravention of, or failure to comply with the law, imminent and serious public safety or environmental risk; and
 - (b) If the public interest in the disclosure clearly outweighs the harm.

8. RIGHTS OF APPEAL

A requester that is dissatisfied with the Company Secretary's refusal to grant access to any information may, within 30 days of notification of the decision, apply to court for relief. Likewise, a third party dissatisfied with the Company Secretary's decision to grant a request may, within 30 days of notification of the decision, apply to court for relief.

It should be noted that notwithstanding any provision in this Act, the court may examine the record(s) in question. No record may be withheld from the court on any grounds. The court may not, however, disclose the contents of the record(s).

The court is empowered to grant any order that is just and equitable, including:

- (a) Confirming, amending or setting aside the Company Secretary's decision;
- (b) Requiring the Company Secretary to take any action, or refrain from taking any action as identified by the court within a specified period; and
- (c) Granting an interdict, interim or special relief, declaratory order or compensation; or costs.



APPROVAL

CDC Information Officer (PAIA)

Monde Mawasha

Monde Mawasha | 086d46c2-ae23-4949-8ab6-bb4c14fdac2f | 2020/08/20 4:00:16 P

2020-08-20 04:00:16

Date:

ANNEXURE A

FORM B

REQUEST FOR ACCESS TO RECORD OF CDC

REQUEST FOR ACCESS TO RECORD OF CDC

9.1.1 Particulars of private body

The Company Secretary, duly authorized hereto by the Head:

9.1.2 Particulars of person requesting access to the record

Full name and surname /: Organisation

Identity number:

Postal Address:

Telephone number: _____ Fax number: _____

E-mail address:

A. 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.

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

Full names and surname:

Identity number:

B. 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 record:

2. Reference number, if available:

3. Any further particulars of record:

9.1.3 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 therefore.*

Reason for exemption from payment of fees:

9.1.4 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) *Your indication as to the required form of access depends 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? A postal fee is payable.					YES	NO

H. Notice of decision regarding request for access:

How would you prefer to be informed of the decision regarding your request for access to the record?

9.1.5 Reproduction fees

Where a private body has voluntarily provided the Minister with a list of categories of records that will automatically be made available to any person requesting access thereto, the only charge that may be levied for obtaining such records, will be a fee for reproduction of the record in question.

The applicable fees for reproduction as referred to above are:

	R
* For every photocopy of an A4-size page or part thereof	1,10
* 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
* For a copy in a computer-readable form on:	
- Stiffy disc	7,50
- Compact disc	70,00
* A transcription of visual images, for an A4-size page or part thereof	40,00
* For a copy of visual images	60,00
* A transcription of an audio record, for an A4-size page or part thereof	20,00
- For a copy of an audio record	30,00
* To search for a record that must be disclosed, R30,00 per hour or part of an hour reasonably required for such search.	
* Where a copy of a record needs to be posted the actual postal fee is payable.	

9.1.6 Deposits

Where the CDC receives a request for access to information held and relating to a person other than the requester himself/herself, and the Company Secretary, upon receipt of the request, is of the opinion that the preparation of the required record for disclosure will take more than 6 (six) hours, a deposit is payable by the requester.

The amount of the deposit is equal to 1/3 (one third) of the amount of the applicable access fee.