Functions of an information officer in terms of the Protection of Personal Information Act\(^1\) 4 of 2013 and the Promotion of Access to Information Act 2 of 2000\(^2\)

1. Introduction

Section 32 of the Constitution\(^3\) guarantees every person the right of access to information. Every individual, including juristic persons or natural persons, has the right to access information held by the state or any other person in order to assist him or her to exercise or protect his or her rights.

POPI and PAIA requires that every employer in the public or private sector ought to employ an information officer.

2. Who is the Information Officer or who should be appointed as one?

In terms of Section 1 of PAIA, the Information Officer will include the following persons:

“(a) in the case of a national department, provincial administration or organisational component—

(i) mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), means the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said

\(^1\) Hereafter referred to as POPI.
\(^2\) Hereafter referred to as PAIA.

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Schedule 1 or 3 opposite the name of the relevant national department, provincial administration or organisational component or the person who is acting as such; or

(ii) not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component, respectively, or the person who is acting as such;

(b) in the case of a municipality, means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or the person who is acting as such; or

(c) in the case of any other public body, means the chief executive officer, or equivalent officer, of that public body or the person who is acting as such.”

In terms of Section 1 of POPI, it would include the following persons:

“information officer” of, or in relation to, a—

(a) public body means an information officer or deputy information officer as contemplated in terms of section 1 or 17; or

(b) private body means the head of a private body as contemplated in section 1, of the Promotion of Access to Information Act;.”

The answer is easy in the case of a national or provincial department, as the relevant Director-General will fulfil the role of the Information Officer. The answer in terms of municipalities is equally easy, as the municipal manager will fulfil the role. The Chief Executive Officer, or employee of similar rank, of other public bodies are the persons
responsible for performing the duties of the Information Officer. In practice, would this amount to requiring the principal or chairperson of the school governing body to assume this role? The chairperson of a governing body is in an equitable position to that of the chairperson of a company, whilst the principal fulfils the role of a managing director. The principal will accordingly fulfil the role of Information Officer for a school and he or she is at liberty to appoint deputies from the school’s corps of educators.

3. Duties of an Information Officer

The rights and duties of the information officer are prescribed by POPI itself, as well as the regulations. It is, however, unclear what exactly every duty entails, seeing as the Act is rather vague with regards to certain issues; we will keep our members updated as soon as the Act is promulgated in its entirety. The duties include the following:

- To ensure compliance with both POPI and PAIA;
- To ensure the school is registered with the Information Regulator\(^4\);
- To deal with requests for access to personal information\(^5\);
- To cooperate with the regulator in the event of investigations initiated against the school\(^6\);
- To ensure that a compliance framework is developed, implemented, monitored and maintained\(^7\);

\(^4\) Sec 55(2) of POPI. The registration process is not finalised as yet; we will keep our members abreast of any developments.
\(^5\) Sec 55(1)(b) of POPI.
\(^6\) Sec 55(1)(c) of POPI.
\(^7\) Paragraph 4(1)(a) as published in Government Gazette No. 42110 as published on 14 December 2018.
To ensure that a personal information impact assessment is conducted and to ensure that sufficient measures and standards exist in order to comply with the requirements regarding the legal processing of personal information⁸;

To ensure that a manual is developed, monitored, maintained and made available, as prescribed by section 14 of PAIA⁹;

To ensure that internal measures are developed, in conjunction with complete systems to deal and process any requests regarding access to information¹⁰;

To ensure that internal awareness programs pertaining to the Act as well as the regulations to the Act are conducted, and to ensure that a code of conduct, or information from the Regulator can be obtained and kept.¹¹

If any copies of the manual (as mentioned in point 7) are sought, such copies should be provided to the person subject to payment of a fee as determined by the Regulator.¹²

The Information Officer has the following responsibilities in terms of PAIA:

- To compile a manual setting out the structure and functioning of operations of the public body. This manual must be made available in three (3) official languages.¹³

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¹³ Sec 14. See the FEDSAS sample manual in this regard.

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• To submit to the Minister at least once a year a description of:
  “(a) the categories of records of the public body that are automatically available without a person having to request access in terms of this Act, including such categories available—
  (i) for inspection in terms of legislation other than this Act
  (ii) for purchase or copying from the body; and
  (iii) from the body free of charge; and
  (b) how to access such records.”

• The information officer of a public body may delete any part of a record which, on a request for access, may or must be refused.

• The information officer of a public body has direction and control over every deputy information officer of that body.

• The information officer of a public body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body. The delegation should be in writing and can be revoked at any stage.

• An individual who because of illiteracy or a disability is unable to make a request for access to a record of a public body, may make that request orally. The information officer of that body must reduce that oral request to writing and provide a copy thereof to the requester.

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14 Sec 15(1)(a) (i)—(iii).
15 Sec15(4).
16 Sec 17(2).
17 Sec 17(3).
18 Sec 17(6)(a) & (c).
19 Sec 18(3)(a) & (b).

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• The information officer should provide reasonable assistance free of charge to those requesting information.\(^{20}\)

• The information officer may not refuse requests if such requests are not made in the prescribed form, unless the information officer notified the requester of his or her intention to refuse the request, provided reasons for the refusal and provided assistance to the requester to make the request in the prescribed manner.\(^{21}\)

• The information officer must provide a requester with a reasonable opportunity to request assistance, must provide the requester with any information that would assist the requester in making a request and provide the requester a reasonable period to confirm or amend a request in order to comply with the prescribed format.\(^{22}\)

• The information officer has to ensure that, in the event that a request is directed at the wrong public body, the request is referred to the correct public body or information officer within 14 days.\(^{23}\)

• The information officer has to ensure that the prescribed fees are paid (if applicable) before a request is processed.\(^{24}\)

• In the event that records cannot be traced or found, the information officer should testify through a sworn affidavit that all reasonable steps have been taken to trace the documents or to confirm that the documents do not exist. The affidavits should

\(^{20}\) Sec 19(1).
\(^{21}\) Sec 19(2)(a)(i)–(ii).
\(^{22}\) Sec 19(3)(c) & (d).
\(^{23}\) Sec 19(4)(a)–(b).
\(^{24}\) Sec 22(1).
also contain the correspondence between the persons involved in the search conducted on behalf of the information officer.\textsuperscript{25}

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\textsuperscript{25} Sec 23(1)(a);(b)(i), (ii) & (2).

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