



INFORMATION REGULATOR (SOUTH AFRICA)

*Ensuring protection of your personal information
and effective access to information*

Complaint Ref No.	CI 369/24
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PRE-INVESTIGATION REPORT

In terms of section 77E of the Promotion of Access to Information Act 2 of 2000

Complainant: Solly Tshepiso Msimanga

Public Body: The Premier, Gauteng Provincial Government

THE NATURE OF THE COMPLAINT

Complaint made in terms of section 77A(2)(a) of PAIA against The Premier, Gauteng Provincial Government's refusal of access to records in terms of section 25(3)(a) of PAIA.

3/02/2025

EXECUTIVE SUMMARY

This is the Pre-investigation Report of the Information Regulator (“the Regulator”) issued in terms of section 77E of the Promotion of Access to Information Act 2 of 2000 (“PAIA”). The report communicates the Regulator’s decision on a complaint received following a preliminary investigation into the alleged refusal of access to the records in terms of section 25(3)(a) of PAIA, held by the Office of the Premier, Gauteng Provincial Government (“the public body”).

The records in question relate to 177 Forensic Investigation Reports from 2016 to date.

The complaint relates to the PAIA request (“the request”) for records in respect of which access was allegedly refused. In terms of Section 25(3)(a) of PAIA, when a request for access to records is allegedly refused, the notice must state adequate reasons for the refusal, including the specific provisions of the Act that have been relied upon. However, it is alleged that the refusal notice provided does not meet these requirements, as it lacks sufficient details regarding the grounds for refusal and the specific provisions of PAIA in which it was relied upon.

It is alleged that the Information Officer did not comply with the provision of 25(3)(a) of PAIA, which provides that if the request for access is refused, the decision on request and notice thereof must state adequate reasons for the refusal, including the provisions of this act relied on.

Following the refusal of access to the records, the complainant lodged an internal appeal on 18 November 2024. The Relevant Authority responded to the internal appeal and refused to grant access and did not state adequate reasons for the refusal, including the provisions of PAIA (grounds for refusal of access) relied on.

The complaint is made against a public body and the right(s) to be exercised or protected need not be disclosed when the request is made.

The complaint was lodged with the Regulator within the prescribed period of 180 days, referred to in section 77A (2) of PAIA. The request and the complaint were submitted using the prescribe forms.

Conclusion

The Regulator has decided to investigate the complaint to ascertain if the complainant must be given access to records of the public body in accordance with section 11(1) of PAIA.

PARTIES						
Name of the complainant	Solly Tshepiso Msimanga (“the complainant”)					
Capacity of person/party lodging a complaint	Personal	<input checked="" type="checkbox"/>	Representative	<input type="checkbox"/>	Third party	<input type="checkbox"/>
Type of the Body	Public Body	<input checked="" type="checkbox"/>	Private Body		<input type="checkbox"/>	<input type="checkbox"/>
Name of the Body	Office of the Premier, Gauteng Provincial Government (“the public body”)					

COMPLAINT						
Nature of the complaint	Refusal of access in terms of section 25(3)(a) of PAIA					
Date on which the complaint arose	01 December 2024					
Date on which the complaint was received	06 January 2025					
Name of the complainant	Solly Tshepiso Msimanga (“the complainant”)					
Has the complaint passed the prerequisites stage.	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>NB: If the complaint did not pass the prerequisite stage, reject the complaint and close the file.</i>						

Brief description of the complaint
1. On 16 October 2024, the complainant submitted a request for access to information held by the public body.

2. The complainant requested the following records **as per the description of records** in Form 2, a 177 Forensic Investigation Reports from 2016 to date.
3. It is alleged that the Information Officer did not comply with the provision of section 25(3)(a) of PAIA, which provides that if the request for access is refused, the decision on request and notice thereof must state adequate reasons for the refusal, including the provisions of this act relied on.
4. Following the refusal of access to the records, the complainant lodged an internal appeal on 18 November 2024.
5. The Relevant Authority responded to the internal appeal and refused to grant access. Furthermore, the response did not state adequate reasons for the refusal, including the provisions of PAIA (grounds for refusal of access) relied on.

Sequence of events leading to the complaint to the Regulator

1. The complainant submitted the PAIA request to the public body on 16 October 2024, **as per the PAIA request form (Form 2) dated 16 October 2024 and copy of letter dated 16 October 2024** from the complainant addressed to the Information Officer of the public body.
2. On 11 November 2024, the public body refused the request for access to records requested by the complainant. The decision on request and notice thereof to the complainant (section 25 notification) does not state adequate reasons for the refusal, including the provisions of this act relied on, **as per the copy of the public body's letter dated 11 November 2024.**
3. The complainant submitted an internal appeal on 18 November 2024 **as per the PAIA internal appeal form (Form 4) dated 18 November 2024 and the complainant's letter dated 18 November 2024.**
4. The Relevant Authority responded to the internal appeal and dismissed same **as per the letter dated 01 December 2024.**

5. The complainant then lodged the complaint with the Regulator on 06 January 2025, **as per the PAIA complaint form (Form 5) dated 20 December 2024.**

6. On 16 January 2025, the Regulator issued a letter to the public body as notice of the complaint received against the public body, **as per the notification letter dated 16 January 2025.**

PRELIMINARY ISSUES TO BE CONSIDERED

Complaint submitted within the period of the prescribed 180 days	Yes	X	No	
Condonation Application: Not Applicable				
If you selected No above, please confirm if the complainant has lodged a condonation application?	Yes	N/A	No	N/A
If condonation application is submitted, what is the degree of lateness?	N/A			
Prejudice to be suffered by the complainant	N/A			
Is the condonation application opposed?	N/A		No	N/A
If yes, what are the grounds for opposing the application?	N/A			
Is the condonation application granted?	Yes	N/A	No	N/A
Reasons for refusal or granting the condonation application	N/A			

Preliminary findings on the merits of the complaint

1. Based on the information before the Regulator, there is a *prima facie* case that the complainant met the minimum requirements prescribed in section 18(1) of PAIA, in that, the PAIA request form was duly submitted to the public body.
2. The information officer of the public body did not comply with the provision of section 56(3)(a)

of PAIA, which provides that if the request for access is refused, the decision on request and notice thereof must state adequate reasons for the refusal, including the provisions of this act relied on.

3. The internal appeal was lodged with the public body; however, the public body refused to grant access and did not state adequate reasons for the refusal, including the provisions of PAIA (grounds for refusal of access) relied on.
4. The complaint was submitted to the Regulator within the prescribed period of 180 days, referred to in section 77A (2) of PAIA.
5. The alleged refusal by the Information Officer to grant access as well as failure to state adequate reasons for the refusal, including the provisions of PAIA (grounds for refusal of access) relied on necessitates an investigation of this complaint to ascertain if the requester must be given access to records of the public body. The investigation will also determine if the requester complied with all the procedural requirements in PAIA, relating to the request for access to records; further that access to the records is refused in terms of any ground for refusal contemplated in Chapter 4 of Part 2, in accordance with section 11(1) of PAIA.

REGULATOR'S DECISION ON THE COMPLAINT

(In terms of section 77C of PAIA)

Select	Decision	Reasons	
X	Investigate the complaint.	To ascertain if the complainant must be given access to records of the public body in accordance with section 11(1) of PAIA.	
	Refer the complaint to the Enforcement Committee.		
	Take no action on complaint.	The complaint has not been submitted within the period referred to in section 77A(2) of PAIA and there are no reasonable grounds to condone the late submission.	
		The complaint is frivolous or vexatious or is not made in good faith.	

		Having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.	
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Adv Makhwedi Makgopa-Madisa

ACTING EXECUTIVE: PAIA

Date: 03 February 2025

Prepared by: Mr Moraka Serepa: Complaints & Investigations Officer: PAIA CI

Reviewed by: Ms Zanele Mofokeng: Senior Complaints & Investigations Officer: PAIA CI

Recommended by: Ms Mathapelo Magagula: Acting Senior Manager: PAIA CI



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