

INFORMATION OFFICER'S FORUM 28 SEPTEMBER 2009

ENHANCING SERVICE DELIVERY THROUGH ACCESS TO INFORMATION

Presentation: Introduction of the PAIA Civil Society Network and its work in enhancing transparency and accountability through PAIA, by Charlotte Young

Firstly I would like to say thank you to the Human Rights Commission for organising today's event and for inviting civil society representatives to this year's Information Officer's Forum. There are a number of representatives in today's audience from Community-based Organisations and I see it as an extremely positive step that CBOs are included to share this important platform.

I would also like to thank the Information Officers and Deputy Information Officers for attending today's forum. It is extremely encouraging to see so many government officers keen to participate in a process that seeks to improve the implementation of PAIA.

Secondly, I do not claim to speak on behalf of civil society as a whole. Many other voices are represented in today's audience and I am sure they will take the opportunity to raise their views within this and other sessions today.

This forum allows for critical exploration of PAIA as a means of enhancing service delivery, in order to facilitate increased sharing of information at community level, public participation and enforcement of transparency and accountability within the public sector. The National PAIA Civil Society Network shares many of these goals and it is a logical step for us to be part of today's efforts.

Identifying the problem

It is generally agreed that PAIA exists to facilitate transparency, accountability and good governance. PAIA is an enabling right that theoretically affords all people the opportunity to access information that can be used to respect, protect, promote and fulfil other human rights.



It is also generally agreed by organizations and individuals from civil society that the effective, meaningful and equitable implementation of PAIA is hampered by a number of inter-related factors, including:

- historical and political context,
- poor records management,
- lack of knowledge and awareness of PAIA,
- lack of resources and
- low levels of training targeting civil society and, in particular, the Community-based sector.

Thus, the use of South Africa's relatively generous freedom of information law remains limited. Of greater concern is the fact that those who could most benefit from the legislation have little or no knowledge that it exists, and how it might be employed. If a freedom of information culture is to take hold in South Africa all its citizens must have the opportunity to access their right to information.

What is the problem; public bodies

There is an apparent lack of political prioritization given by public bodies to put in place the necessary infrastructure that will enable groups and individuals to access records in terms of the Act. In 2007 a quarter of government departments had not appointed a Deputy Information Officer despite this being a mandatory and basic compliance element of the Act¹. Only 40% of all government departments had produced a PAIA Manual and made it available to members of the public in 2008. Eight years after implementing the Act, only 36% of government departments have a system for managing PAIA Requests².

¹ *Implementation of the Promotion of Access to Information Act, [Act 2 of 2000] in the Public Service*, August 2007, The Public Service Commission (PSC), Pretoria, 2007.

² *The 2008 Public Service Commission's Fifth Consolidated Public Service Monitoring and Evaluation System Report, Research Cycle 2007/2008*, Pretoria, July 2008. The Act requires that 100% of government bodies comply with this requirement by June 2001.



Ideally public body staff have an awareness of their responsibilities in terms of the Act but in many cases staff have never heard of PAIA; often transferring requesters to their Information Technology team.

Whilst legislation necessarily takes time to be implemented effectively, civil society remains concerned by the apparent lack of political will within public bodies, to best serve the public in terms of enabling their right to access information.

Civil society's experience of the poor implementation of PAIA within public bodies has demonstrated that, in many cases, unless one has exceptional knowledge of the Act, an abnormally high level of persistence and access to unlimited resources, one is unlikely to achieve a legitimate outcome to one's PAIA Request. Those with an understanding of the Act who are prepared to be persistent when following-up on the progress of their request and have access to resources (fax, phone and email) can best address an ongoing lack of cooperation from public bodies.

It is essential that we all recognise our responsibility to work together: public and private bodies, the judiciary, civil society organisations and citizens each have the capacity to contribute to the building of our democracy. And none of these voices should be ignored. The work that I have been doing over the past two years has revealed an incredible amount of work that is done at the grassroots level by generous individuals working, without pay, to bring about change for their community. My work has built the capacity of some of these individuals to understand and use PAIA; yet, for many, simply knowing that they have this right to access information and how to go about using PAIA not enough. There are countless obstacles to overcome for this type of individual who lives far away from an urban centre, receives no or little income, is poorly informed about service delivery and other government services in his or her community, has no access to the internet, and who, in many cases, is dismissed or ignored by a local municipal officer when he or she visits their office to request access to information.

Establishing PAIA CSN



In 2008 SAHA met with key actors from civil society in order to address some of these problems. Each organisation we met with identified the need to establish a national network and a proposal document was circulated to gain consensus. The first PAIA Civil Society Network, or PAIA CSN, meeting was held in Johannesburg in February 2009, hosted by SAHA.

Whilst membership is open the networks' founding members are those who have pioneered the usage and implementation of the Act and who share the goal of improving the implementation of PAIA with a particular focus on enhancing understanding and usage at the grassroots level. Founding members in alphabetical order are: the Freedom of Expression Institute (FXI), the Legal Resources Centre (LRC), the Nelson Mandela Foundation (NMF), the Open Democracy Advice Centre (ODAC), Professor Jonathan Klaaren (a member in his personal capacity), Public Service Accountability Monitor (PSAM), the South African History Archive (SAHA) and the South African Human Rights Commission (SAHRC).

These individuals and organizations have been at the forefront of pushing the boundaries of PAIA; insisting on its correct and effective usage and working to develop awareness amongst broader society. Some examples include:

- PSAM works tirelessly using PAIA as a means to improve service delivery for those who most need it in the Eastern Cape.
- ODAC has supported and represented a number of CBOs in litigation relating to PAIA and hosts a vital helpline free of charge where expert legal advice is offered concerning PAIA and the Protected Disclosure Act.
- SAHA's *Freedom of Information Project: Capacity Building in the Community Based Sector* works to overcome the current limitations on understanding and the ineffective implementation and utilization of PAIA by CBOs.



Through the network members share their experiences, lessons learnt and product development, as well as learning from Network colleagues, so that the impact of one isolated case goes beyond the scope of an independent organization.

Membership of the PAIA CSN is growing and it is hoped that there will eventually be representation from every sector of civil society; from organizations concerned with environmental issues to an individual who uses PAIA as an independent citizen.

Representatives from the Transitional Justice and Gender based Violence Sectors were trained through SAHA's PAIA Shadow Mentor Programme to take on the role of PAIA Coordinator for their relevant sector. They then established a PAIA Network for each of their sectors, where those who had participated in SAHA's Training Workshops and other interested individuals, can meet to share experiences, learn from one another and discuss strategic action towards better usage of PAIA. The PAIA Coordinator for both these Sectors has been invited to join the National Network in order to represent the sectoral or 'branch' networks they manage. SAHA encourages its partners to reciprocate this model of creating 'branch' networks with an individual sitting on the national network to represent their particular group.

It is essential that the National PAIA CSN be representative not only of experts of the Act but also those with expertise through working directly at the grassroots level. As such, members of the National network will learn from representatives of CBOs as well as being able to advise and support with their experience.

Purpose

The purpose of the network is to assist public and private bodies as well as to support and enable civil society. A commitment was made during the first network meeting in February to work towards better collaboration and the development of concrete facts concerning the implementation of PAIA from the perspective of civil society. Members agreed to collaborate in five key areas: (i) training, (ii) monitoring of PAIA Requests, (iii) monitoring of litigation, (iv) advocacy and (v) self-reflection of the Network itself. This is done by way of



sharing information, opinions and organizational strategies; providing service providers with more structured and thorough feedback outside of government analyses; and coordinating responses to key issues related to relevant Policy and Law reform.

Impact

Just six months from its inception the impact of the PAIA CSN is hard to measure. Nonetheless members believe in its potential. In practical terms the Network hopes that its work will play a useful role in helping public and private bodies measure the effectiveness of their work in terms of PAIA and, more broadly, in developing South Africa towards a more open and accountable, and thus democratic, society. The Network hopes that in working together its work will also have a broader impact overseeing better awareness-raising, capacity building and support of CBOs and individuals at the grassroots level.

Statistics and Case Studies³

The *Implementation of the Promotion of Access to Information Act in the Public Service* written and published by the Public Service Commission (PSC) is an invaluable tool by which to measure the effectiveness of the Act's implementation within the public service. However, it is inadequate in terms of identifying the realities of how well the Act has been implemented and, more importantly, what this means for the people who are served by the work of the public service; the public.

The 2009 PAIA CSN Shadow Report offers an introduction to the work of the Network and details the experience of all PAIA Requests submitted by PAIA CSN members to public bodies at the national, provincial and municipal level from 01 January – 31 July 2009. Just 12.7% of these PAIA Requests were responded to by the relevant public body within 30 days. The remaining 87.3% were not responded to within the required time period; either as a result of the public body neglecting to adhere to its responsibilities in terms of Section 25, deferring to Section 26 without a written agreement, or, in some cases, as the result of an

³ The South African Human Rights Commission does not practice the submission of PAIA Requests and is therefore incapable of providing statistics for the purpose of this report.



agreement between requester and requestee to extend the response period in terms of Section 26. In the majority of cases it is not possible to comment on the outcome of the PAIA Request as the results are pending either the decision of an internal appeal or litigation. Just one third (34.5%) of PAIA Requests have resulted in the records requested being granted in full.

Civil society has spoken for many years about the 'brick wall' faced by the majority of South Africans when attempting to access information held by a public body. The PAIA CSN will provide useful facts and case studies in its reports demonstrating the realities of this obstacle. A recent example demonstrates how all individuals requesting information are not treated equally; an individual known to be, or at least appearing to be, an expert in PAIA will be treated differently to an individual who is unknown to a public officer or who appears to be poorly educated or from a poorer community. A middle-aged (55-64 years old) woman from Small Farm requested a copy of the budget and expenditure for the Evaton Urban Renewal Project but was advised that this information was confidential and meant "for senior management only". This is not only factually inaccurate; this kind of response is inconsistent with the objects of the Act and demonstrates just a small part of the culture in which citizens are operating.

Another barrier met by civil society is the reluctance with which public bodies are willing to refer to legitimate grounds for refusal of access to information. This is partly illustrated by the high volume of PAIA Requests submitted to public bodies that necessitate the lodging of an Internal Appeal. Internal Appeals were lodged in support of 56% of all PAIA Requests. Whilst National Network members have the capacity to write, lodge and follow up on Internal Appeals, for the majority of South Africans this is an impossible task.

It is in our interest for public body officers to be aware of and take responsibility for their role in effectively implementing this Act. The PAIA CSN will contribute to these efforts by



demonstrating where work is needed through the publication of reports, communicating on platforms such as today's forum and sharing real life case studies.

The PAIA CSN will publish a comprehensive report in 2010 detailing statistics and case studies evincing the experience of PAIA from civil society's perspective from 01 August 2009 – 31 July 2010. These dates have been chosen to coincide with the Right to Know Day; as this report has not yet been written government bodies represented here today have an opportunity to affect the outcome of this report by improving their response to PAIA.

Through greater efforts to ensure the necessary infrastructure is established to support implementation of the Act it is hoped that there will be greater transparency and accountability, placing less of a burden on civil society; in particular for individuals with low levels of education and poor access to resources. Access to information should not be dependent on one's access to resources. The PAIA CSN plays a role in overcoming these barriers by building capacity through training and product development distribution at all levels. We encourage Information Officers to respond to these efforts by treating all people who submit PAIA Requests with the same level of respect and be mindful of the objects of the Act.

A proud, effective democracy should not be afraid to share information with all its citizens.

Additional Comments

The PAIA CSN hopes to see greater proactive disclosure of information not simply via government websites; but also through better use of community radio, displaying information on billboards, at municipal offices, libraries and even making use of the opportunity to share information through the new RBT Public Transport System.

We all need to take responsibility for creating more of an information culture in South Africa. There needs to be greater disclosure of information so that citizens are better



informed and don't always need to defer to PAIA. Another way of being proactive in the disclosure of information is to display information about service delivery such as budgets, expenditure, who is in charge of which projects, etc, outside the local municipal office. This is being done in Rajasthan, India, where such information is painted in huge writing on the outside wall of a local municipal office.

The point is that IO/DIOs need to respond to PAIA Requests better at the first point of contact; we should move away from the need for organizations and individuals to submit internal appeals and to litigate. If PAIA Requests are dealt with appropriately at the first point of contact; within 30 days, or requesting an extension where relevant, or providing legitimate grounds for refusal if that is necessary. We are currently far from this ideal. The Department of Justice today responded to SAHA's question that asked why DOJ fails to respond appropriately to numerous PAIA Requests; DOJ stated that SAHA should take them to court. This is in complete contrast to the object of the Act and the spirit of today's forum; we are about improving the implementation of PAIA, not limiting its usage only to those who have resources that allow them to litigate.

Charlotte distributed copies of SAHA's PAIA Resource Kit. This resource is also available on SAHA's website: www.saha.org.za

