The Promotion of Access to Information Act, Act 2 of 2000, (“PAIA”) gave effect to section 32 of our Constitution by giving effect to the right of access to information to public and private bodies to promote transparency and accountability. It provides all South Africans with the right to have access to records held by the state, government institutions and private bodies.

Who can request access to information in terms of PAIA?
Any stakeholder may request access to information from a private body. Stakeholders include employees, unions and government at various level, the media, customers, suppliers, financial institutions, various non-governmental organisations and the public at large. The PAIA thus makes provision for stakeholders to acquire information about management and strategy.

How can a stakeholder ascertain what information can be accessed under PAIA?
PAIA requires private and public bodies to compile information manuals which provide information on both the types and the categories of records held by the particular body.

What constitute information manual?
A manual is a book or record in any form (hard copy, electronic or other) produced by both private and public bodies containing information on how to use PAIA to access the information of the particular body. To ascertain what records/ information is held by a body, their information manual must be requested.

What information must the information manual of a private body contain?
The requirements for information manuals for private bodies are stated in section 51 of PAIA, which states that the manuals must contain the following information:

- postal and street address, phone and fax number and, if available, the e-mail address of the head of the private body
- the description of the guide compiled by the South African Human Rights Commission and how to access it
- the latest notice regarding the categories of records of the private body which are available without a person having to request access in terms of PAIA e.g. annual reports, publications and any other record or information which is already in the public domain
- A description of the records which the private body keeps in compliance with other legislation
- the description of available records generated by the company stating those which are automatically available and those that are available on request
- outline the request procedure in terms of PAIA
- a description of the subjects on which the private body holds records, and the categories of records held on each subject
- state who the head of the body is e.g. the CEO of the company
• stipulate the fees applicable as legislated by the Act which are chargeable to requesters
• remedies available to requesters if their request for information has been refused
• details facilitating request for access to a record

What information must the information manual of a public body contain?
The requirements for the information manuals of public bodies are stated in section 14 of the Act, which states that the manuals must contain the following information:

• A description of its structure and functions of the public body
• The postal and street address, phone and fax number and if available the e-mail address of the information officer of the body, as well as of every deputy information officer of the public body
• the description of the guide compiled by the South African Human Rights Commission and how to access it
• adequate information to assist in facilitating access to a record held by a public body. The public body must therefore describe the subjects on which it holds records, and the categories of records held on each subject
• some information is readable available without a person having to request access in terms of PAIA. The manual of the public body must indicate this information which is readily available.
• a description of the services available to members of the public from the body and how to access to these services
• a description of any arrangement or provision for a person to either consult, make representation or participate in or influence the formulation of policy; or existence of
• powers or performance of duties by a public body.

Can access be obtained in respect of any information under the PAIA?
The PAIA considers a requester's constitutional right to access to information to private and public bodies relative to the confidentiality of the information and whether any disclosure thereof may harm the private or public body.

In terms of public bodies, the PAIA does not apply to the following public bodies:
- the Cabinet and its committees;
- the High Court of SA;
- a Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunal Act, Act 74 of 1996;
- an individual member of Parliament or of a provincial legislature in that capacity.

How has the Companies Act impact stakeholders’ access to information?
The Companies Act, Act. No. 71 of 2008, effective from 1 May 2011, permits any person who holds a “beneficial interest” in any security issued by a profit company, or who is a member of a non-profit company, the right to inspect and make copies of the following:
1. The Memorandum of Incorporation (“MOI”) of the company and any amendments to it;
2. The rules of the company;
3. The company’s records on directors (which will include the identity or passport numbers of each director, an address for legal service of each director, as well as details concerning other directorships each director might hold);
4. Reports presented at annual general meetings of the company;
5. The annual financial statements;
6. Notices and minutes of shareholders meetings;
7. Written communications dispatched by the company to holders of any class of securities; 
    and 
8. The securities register of a profit company, or the member register of a non-profit 
    company.

The holder of a beneficial interest in a profit company or member of a non-profit company is 
not entitled to have access to the minutes of meetings of the directors or board committees 
or to the accounting records of the company, unless: 
   a) The MOI establishes additional rights to such information, or any other information; or 
   b) The holder can establish a right of the access to such information in terms of the 
      following: 
      - Section 32 of the Constitution; 
      - The Promotion of Access to Information Act; 
      - Any other public legislation.

A person who is not a holder of a beneficial interest to any issued securities of a profit 
company or who is not a member of a non-profit company, has the right to inspect the 
securities register of the profit company or the members register of a non-profit company or 
the company’s record of its directors on payment of a stipulated fee.

A person’s right to access to the records of the company may be exercised: 
   a) For a reasonable period during business hours; 
   b) By direct request made to the company in the prescribed manner, either in person or 
      through an attorney or another personal representative designated in writing; 
   c) In accordance with the PAIA.

A person holds a “beneficial interest” in the securities of a profit company if they have a right 
or entitlement, through ownership, agreement, relationship or otherwise, alone or together 
with another person to: 
1. Receive or participate in any distribution in respect of the company’s securities; 
2. Exercise or cause to be exercised, in the ordinary course, any or all of the rights 
   attaching to the company’s securities; or 
3. Dispose or direct disposition of the company’s securities, or any part of a distribution in 
   respect of securities.

It must be noted that a “beneficial interest” does not include an interest held by a person in a 
collective investment scheme or unit trust.

Conclusion 
The Companies Act of 2008 was harmonised with other legislation, including the Promotion 
of Access to Information Act. The Companies Act allocates different access rights to those 
stakeholders that have an interest in an entity from those that are totally independent of an 
entity. However the stakeholder’s right must still be demonstrated in terms of the Promotion 
to Access of Information Act.

While the Companies Act of 2008 also aims for more transparency, the Companies 
Regulations of 2011 place more onerous burden on individuals and companies seeking 
access to company information. Specifically section 26(3) of the Regulations states that a 
person claiming a right of access to information must make a written request by delivering to 
the company a completed Request for Access to Information Form CoR24 and for any 
further document or other information, the request must be made in terms of the Promotion 
of Access to Information Act.
It can therefore be concluded that any stakeholder wishing to obtain any information from any entity, should first consult that particular entity’s information manual so as to ascertain the availability of the information and the process to as request the information sought.

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