

Bester and Rhoodie Attorneys

(Registration / Identity Number: 6411230012083)

“Business”

MANUAL

PREPARED IN TERMS OF THE REQUIREMENTS OF:

**SECTION 51 OF THE PROMOTION OF ACCESS TO INFORMATION ACT NO. 2 OF 2000 (“PAIA”)
AND UPDATED IN LIGHT OF THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013
(“POPIA”) IN RESPECT OF THE BUSINESS.**



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1 INTRODUCTION

1.1 The provisions of the PAIA

The Promotion of Access to Information Act 2 of 2000 ("PAIA") gives effect to the right of access to information in records held by public or private bodies that is required for the exercise or protection of any rights as enshrined in the Bill of Rights forming part of The Constitution of The Republic of South Africa, 1996 ("the Constitution").

PAIA gives effect to the provisions of Section 32 of the Constitution, which provides for the right of access to information. This is information held by the State but also information held by any another person. A person that is entitled to exercise a right or who needs information for the protection of any right, is entitled to access that information, subject to certain restraints.

Section 51 of PAIA creates a legal right to access records (as defined in section 1 of PAIA) of a private body (both natural and juristic), however this right may be negated in circumstances as set out under Chapter 4 of Part 3 of PAIA. In addition, in compliance with POPIA a responsible party who processes personal information must notify the person to whom personal information relates ("Data Subject") of the manner in which the Data Subject can access their personal information held by the responsible party.

The Business has no subsidiaries, and its main business activity can be described as:

ATTORNEYS

2 DEFINITIONS

2.1 **Business** means Bester and Rhoadie Attorneys (Registration / Identity number: 6411230012083), currently situated at 526 SKUKUZA STREET, FAERIE GLEN, 0043;

2.2 **Conditions for Lawful Processing** means the conditions for the lawful processing of Personal Information as fully set out in chapter 3 of POPIA;

2.3 **Constitution** means the Constitution of the Republic of South Africa, 1996;

2.4 **Client** refers to any natural or juristic person that received or receives services from the Business;

2.5 **Data Subject** has the meaning ascribed thereto in section 1 of POPIA;

2.6 **Deputy Information Officer** means the Business's appointed personnel as referred to in clause 5 (*if any*);

2.7 **Head of the Business** means the "head" as defined in section 1 of PAIA and referred to in clause 5;

2.8 **Information Officer** means the Business's appointed personnel as referred to in clause 5;

2.9 **Manual** means this manual prepared in accordance with section 51 of PAIA and regulation 4(1) (d) of the POPIA Regulations;



- 2.10 **PAIA** means the *Promotion of Access to Information Act, 2000*;
 - 2.11 **Personal Information** has the meaning ascribed thereto in section 1 of POPIA;
 - 2.12 **Personnel** refers to any person who works for, or provides services to or on behalf of the Business, and receives or is entitled to receive remuneration and any other person who assists in carrying out or conducting the business of the Business, which includes, without limitation, directors (executive and non-executive), all permanent, temporary and part-time staff as well as contract workers;
 - 2.13 **POPIA** means the *Protection of Personal Information Act, 2013*;
 - 2.14 **POPIA Regulations** mean the regulations promulgated in terms of section 11(2) of POPIA;
 - 2.15 **Private Body** has the meaning ascribed thereto in sections 1 of both PAIA and POPIA;
 - 2.16 **Processing** has the meaning ascribed thereto in section 1 of POPIA;
 - 2.17 **Responsible Party** has the meaning ascribed thereto in section 1 of POPIA;
 - 2.18 **Record** has the meaning ascribed thereto in section 1 of PAIA and includes Personal Information;
 - 2.19 **Requester** has the meaning ascribed thereto in section 1 of PAIA;
 - 2.20 **Request for Access** has the meaning ascribed thereto in section 1 of PAIA; and
 - 2.21 **SAHRC** means the South African Human Rights Commission.
- Capitalised terms used in this Manual have the meanings ascribed thereto in section 1 of POPIA and PAIA as the context specifically requires, unless otherwise defined herein.

3 PURPOSE OF THE MANUAL

This Manual:

- 3.1 For the purposes of PAIA, details the procedure to be followed by a Requester and the manner in which a Request for Access will be facilitated; and
- 3.2 For the purposes of POPIA, amongst other things, details the purpose for which Personal Information may be processed; a description of the categories of Data Subjects for whom the Business Processes Personal Information as well as the categories of Personal Information relating to such Data Subjects; and the recipients to whom Personal Information may be supplied.



4 BUSINESS DETAILS

4.1 The details of the Business are as follows:

Physical address: 526 SKUKUZA STREET, FAERIE GLEN, 0043

Postal address: 526 SKUKUZA STREET, FAERIE GLEN, 0043

Telephone number: 0832583382

Email address: erika@bester-rhoodle.co.za

5 CONTACT DETAILS OF THE INFORMATION OFFICER

5.1 The Information Officer's contact details are as follows:

Name and surname: ERIKA BESTER

Physical address: 526 SKUKUZA STREET, FAERIE GLEN, 0043

Postal address: 526 SKUKUZA STREET, FAERIE GLEN, 0043

Telephone Number: 0832583382

Email address: erika@bester-rhoodle.co.za

6 THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

6.1 The SAHRC has compiled a guide, as contemplated in section 10 of the South African Human Rights Commission Act, 2013 ("the Act") containing information to assist any person who wishes to exercise any right as contemplated in the Act.

6.2 This guide is available from the SAHRC at:

Postal address	Private Bag 2700 Houghton2041
Website	www.sahrc.org.za
Telephone number	011 877 3600
Fax number	011 403 0684

7 PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS IN TERMS OF PAIA

7.1 Schedule of Records

The Schedule of Records as contained in Annexure 1 of this Manual details the Records that are held and/or Processed by the Business for the purposes of PAIA and POPJA respectively. Such Access to such Records may not be granted if they are subject to the grounds of refusal which are specified in clause 8 below.

7.2 List of applicable legislation

- (1) The Business retains records which are required in terms of legislation other than PAIA.
- (2) Certain legislation provides that private bodies shall allow certain persons access to specified records, upon request. Legislation that may be consulted to establish whether the Requester has a right of access to a record other than in terms of the procedure set out in the PAIA are set out in Annexure 2.

8 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS IN TERMS OF PAIA

The following are the grounds on which the Business may, subject to the exceptions contained in Chapter 4 of PAIA, refuse a Request for Access in accordance with Chapter 4 of PAIA:

- 8.1 mandatory protection of the privacy of a third party who is a natural person, including a deceased person, where such disclosure of Personal Information would be unreasonable;
- 8.2 mandatory protection of the commercial information of a third party, if the Records contain:
 - (1) trade secrets of that third party;
 - (2) financial, commercial, scientific or technical information of the third party, the disclosure of which could likely cause harm to the financial or commercial interests of that third; and/or
 - (3) information disclosed in confidence by a third party to the Business, the disclosure of which could put that third party at a disadvantage in contractual or other negotiations or prejudice the third party in commercial competition;
- 8.3 mandatory protection of confidential information of third parties if it is protected in terms of any agreement;
- 8.4 mandatory protection of the safety of individuals and the protection of property;
- 8.5 mandatory protection of Records that would be regarded as privileged in legal proceedings;
- 8.6 protection of the commercial information of the Business, which may include:
 - (1) trade secrets;
 - (2) financial/commercial, scientific or technical information, the disclosure of which could likely cause harm to the financial or commercial interests of the Business;



(3) Information which, if disclosed, could put the Business at a disadvantage in contractual or other negotiations or prejudice the Business in commercial competition; and/or

(4) computer programs which are owned by the Business, and which are protected by copyright and intellectual property laws;

8.7 research information of the Business or a third party, if such disclosure would place the research or the researcher at a serious disadvantage; and

8.8 Requests for Records that are clearly frivolous or vexatious, or which involve an unreasonable diversion of resources.

9 INFORMATION OR RECORDS NOT FOUND

If the Business cannot find the records that the Requester is looking for despite reasonable and diligent search and it believes either that the records are lost or that the records are in possession but unattainable, the Requester will receive a notice in this regard from the Information Officer in the form of an affidavit setting out the measures taken to locate the document and accordingly the inability to locate the document.

10 REMEDIES AVAILABLE TO THE REQUESTER UPON REFUSAL OF A REQUEST FOR ACCESS IN TERMS OF PAlA

10.1 The Business does not have internal appeal procedures. As such, the decision made by the Information Officer is final, and Requesters will have to exercise such external remedies at their disposal if the Request for Access is refused.

10.2 In accordance with sections 56(3) (c) and 78 of PAlA, a Requester may apply to a court for relief within 30 (thirty) days of notification of the decision for appropriate relief.

11 PROCEDURE FOR A REQUEST FOR ACCESS IN TERMS OF PAlA

11.1 A Requester must comply with all the procedural requirements as contained in section 53 of PAlA relating to a Request for Access to a Record.

11.2 A Requester must complete the prescribed Request for Access form attached as Annexure 3 and submit the completed Request for Access form as well as payment of a request fee (if applicable) and a deposit (if applicable), to the Information Officer at the postal or physical address, facsimile number or electronic mail address stated in clause 5 above.

11.3 The Request for Access form must be completed with enough detail so as to enable the Information Officer to identify the following:

(1) the Record/s requested;

(2) the identity of the Requester;

(3) the form of access that is required, if the request is granted;

(4) the postal address or fax number of the Requester; and

- (5) the right that the Requester is seeking to protect and an explanation as to why the Record is necessary to exercise or protect such a right.
- 11.4 If a Request for Access is made on behalf of another person, the Requester must submit proof of the capacity in which the Requester is making the request to the reasonable satisfaction of the Information Officer.
- 11.5 If an individual is unable to complete the prescribed form because of illiteracy or disability, such a person may make the request orally.
- 11.6 The Business will voluntarily provide the requested Records to a Personal Requester (as defined in section 1 of PAlA). The prescribed fee for reproduction of the Record requested by a Personal Requester will be charged in accordance with section 54(6) of PAlA and paragraph 11 below.
- 12 FEES**
- 12.1 When the Request for Access is received by the Information Officer, the Information Officer will by notice require the Requester, other than a Personal Requester, to pay the prescribed request fee (if any), before further processing of the Request for Access.
- 12.2 Prescribed request fees are set out in **Annexure 4**.
- 12.3 If the search for a Record requires more than the prescribed hours for this purpose, the Information Officer will notify the Requester to pay as a deposit, the prescribed portion of the access fee (being not more than one third) which would be payable if the Request for Access is granted.
- 12.4 The Information Officer will withhold a Record until the Requester has paid the fees set out in **Annexure 4**.
- 12.5 A Requester whose Request for Access to a Record has been granted, must pay an access fee for reproduction and for search and preparation, and for any time reasonably required in excess of the prescribed hours to search for and prepare the Record for disclosure, including making arrangements to make it available in a requested form provided for in PAlA.
- 12.6 If a deposit has been paid in respect of a Request for Access which is refused, the Information Officer will repay the deposit to the Requester.
- 13 DECISION TO GRANT ACCESS TO RECORDS**
- 13.1 The Business will decide whether to grant or decline the Request for Access within 30 (thirty) days of receipt of the Request for Access and must give notice to the Requester with reasons (if required) to that effect.
- 13.2 The period referred to above may be extended for a further period of not more than 30 (thirty) days if the Request for Access is for a large number of Records or the Request for Access requires a search for Records held at another office of the Business and the Records cannot reasonably be obtained within the original 30 (thirty) day period.
- 13.3 The Business will notify the Requester in writing should an extension of time as contemplated above be required.



13.4 If, in addition to a written reply from the Information Officer, the Requester wishes to be informed of the decision on the Request for Access in any other manner, the Requester must state the manner and particulars so required.

14 AVAILABILITY OF THE MANUAL

14.1 This Manual is made available in terms of PAIA and section 4 of the Regulations to POPIA.

14.2 This Manual is further available at the offices of SAHRC and at the offices of the Business for inspection during normal business hours. No fee will be levied for inspection as contemplated in this clause.

14.3 Copies of the Manual can be obtained from the Information Officer. A fee will be levied for copies of the manual in accordance with Annexure 4.

15 PROTECTION OF PERSONAL INFORMATION THAT IS PROCESSED BY THE BUSINESS

15.1 Chapter 3 of POPIA provides for the minimum Conditions for Lawful Processing of Personal Information by a Responsible Party. These conditions may not be derogated from unless specific exclusions apply as outlined in POPIA.

15.2 The Business needs Personal Information relating to both individual and juristic persons in order to carry out its business and organisational functions. The manner in which this Information is Processed and the purpose for which it is Processed is determined by the Business. The Business is accordingly a Responsible Party for the purposes of POPIA and will ensure that the Personal Information of a Data Subject:

- (1) is processed lawfully, fairly and transparently. This includes the provision of appropriate information to Data Subjects when their data is collected by the Business, in the form of privacy or data collection notices. The Business must also have a legal basis (for example, consent) to process Personal Information;
- (2) is processed only for the purposes for which it was collected;
- (3) will not be processed for a secondary purpose unless that processing is compatible with the original purpose.
- (4) is adequate, relevant and not excessive for the purposes for which it was collected;
- (5) is accurate and kept up to date;
- (6) will not be kept for longer than necessary;
- (7) is processed in accordance with integrity and confidentiality principles; this includes physical and organisational measures to ensure that Personal Information, in both physical and electronic form, are subject to an appropriate level of security when stored, used and communicated by the Business, in order to protect against access and acquisition by unauthorised persons and accidental loss, destruction or damage;
- (8) is processed in accordance with the rights of Data Subjects, where



applicable. Data Subjects have the right to:

- (a) be notified that their Personal Information is being collected by the Business. The Data Subject also has the right to be notified in the event of a data breach;
- (b) know whether the Business holds Personal Information about them, and to access that information. Any request for information must be handled in accordance with the provisions of this Manual;
- (c) request the correction or deletion of inaccurate, irrelevant, excessive, out of date, incomplete, misleading or unlawfully obtained personal information;
- (d) object to the Business's use of their Personal Information and request the deletion of such Personal Information (deletion would be subject to the Business's recordkeeping requirements);
- (e) object to the processing of Personal Information for purposes of direct marketing by means of unsolicited electronic communications; and
- (f) complain to the Information Regulator regarding an alleged infringement of any of the rights protected under POPIA and to institute civil proceedings regarding the alleged non-compliance with the protection of his, her or its personal information.

15.3 Purpose of the Processing of Personal Information by the Business:

As outlined above, Personal Information may only be Processed for a specific purpose. The purposes for which the Business Processes or will Process Personal Information is set out in **Part 1 of Annexure 5.**

15.4 Categories of Data Subjects and Personal Information/special Personal Information relating thereto

As per section 1 of POPIA, a Data Subject may either be a natural or a juristic person. **Part 2 of Annexure 5** sets out the various categories of Data Subjects that the Business Processes Personal Information on and the types of Personal Information relating thereto.

15.5 Cross-border flows of Personal Information

Section 72 of POPIA provides that Personal Information may only be transferred out of the Republic of South Africa if the:

- (1) recipient country can offer such data an "adequate level" of protection. This means that its data privacy laws must be substantially similar to the Conditions for Lawful Processing as contained in POPIA; or
- (2) Data Subject consents to the transfer of their Personal Information; or
- (3) transfer is necessary for the performance of a contractual obligation between the Data Subject and the Responsible Party; or
- (4) transfer is necessary for the performance of a contractual obligation between the Responsible Party and a third party, in the interests of the Data Subject; or
- (5) the transfer is for the benefit of the Data Subject, and it is not reasonably



practicable to obtain the consent of the Data Subject, and if it were, the Data Subject, would in all likelihood providesuch consent.

Part 3 of Annexure 5 sets out the planned cross-border transfers of Personal Information and the condition from above that applies thereto.

15.6 Description of information security measures to be implemented by the Business

Part 4 of Annexure 5 sets out the types of security measures to implemented by the Business in order to ensure that Personal Information is respected and protected. A preliminary assessment of the suitability of the information security measures implemented or to be implemented by the Business may be conducted in order to ensure that the Personal Information that is processed by the Business is safeguarded and Processed in accordance with the Conditions for Lawful Processing.

15.7 Objection to the Processing of Personal Information by a Data Subject

Section 11 (3) of POPIA and regulation 2 of the POPIA Regulations provides that a Data Subject may, at any time object to the Processing of his/her/its Personal Information in the prescribed form attached to this manual as **Annexure 6** subject to exceptions contained in POPIA.

15.8 Request for correction or deletion of Personal Information

Section 24 of POPIA and regulation 3 of the POPIA Regulations provides that a Data Subject may request for their Personal Information to be corrected/deleted in the prescribed form attached as **Annexure 7** to this Manual.



Information Officer Signature

Date: 30 / 6 / 2021



Head of Organisation Signature

Date: 30 / 6 / 2021