

**Promotion of Access to Information Act
Section 51 Manual**

Introduction

- A** This Manual is published in terms of section 51 of the Promotion of Access to Information Act, 2 of 2000. The Act gives effect to the provisions of section 32 of the Constitution, which provides for the right of access to information held by the State and to information held by another person that is required for the exercise and / or protection of any right.
- B** The reference to any information in addition to that specifically required in terms of section 51 of the Act does not create any right or entitlement (contractual or otherwise) to receive such information, other than in terms of the Act.
- C** This Manual applies in respect of the Company and the Information Officer named below is appointed in respect of its operations.

1 Definitions and interpretation

1.1 In this Manual, unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them hereunder, namely:

- (1) **Act** means the Promotion of Access to Information Act, Act 2 of 2000, as amended from time to time;
- (2) **Data Subject** means the person to whom the relevant Personal Information and/or Special Personal Information relates;
- (3) **Information Officer** means the person acting on behalf of the Company and discharging the duties and responsibilities assigned to the “head” of the Company by the Act. The Information Officer is duly authorised to act as such and such authorisation has been confirmed by the “head” of the Company in writing;
- (4) **Manual** means this manual published in compliance with Section 51 of the Act;
- (5) **Personal Information** means information about a Data Subject’s race, gender, sex, pregnancy, marital status, nationality, ethnic or social origin, sexual orientation, age, physical or mental health, disability, religion, conscience, belief, culture, language, education, medical information, financial information, criminal or employment history, an identifying number, e-mail address, physical address, telephone number, blood type, biometric information, personal opinions, views or preferences of a Data Subject; correspondence of a private or confidential nature; and the name of the person if it appears with other Personal Information relating to the Data Subject;
- (6) **Personnel** means any person who works for or provides services to or on behalf of the Company and receives or is entitled to receive any remuneration. This includes, without limitation, directors (both executive and non-executive), all permanent, temporary and part-time staff as well as contract workers;
- (7) **Record** means any recorded information, regardless of form or medium, which is in the possession or under the control of the Company, irrespective of whether it was created by the Company, the Data Subject or any other third party;
- (8) **Request** means a request for access to a Record of the Company;
- (9) **Requestor** means any person, including a public body or an official thereof, making a Request for access to a Record of the Company and includes any person acting on behalf of that person;
- (10) **SAHRC** means the South African Human Rights Commission;

- (11) **Special Personal Information**” means:
- (a) the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a Data Subject; or
 - (b) the criminal behaviour of a Data Subject to the extent that such information relates to
 - (i) the alleged commission by a Data Subject of any offence; or
 - (ii) any proceedings in respect of any offence allegedly committed by a Data Subject or the disposal of such proceedings; and
- (12) **Company** means The Spagnis (Pty) Ltd, a private company duly incorporated in accordance with the laws of the Republic of South Africa.

1.2 Any reference in this Agreement to:

- (1) a paragraph is, subject to any contrary indication, a reference to a paragraph of this Manual;
- (2) law means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law specifically applicable to the performance of obligations in terms of this Manual; and
- (3) person includes any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality)

1.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

1.4 The headings do not govern or affect the interpretation of this Manual.

1.5 Unless the context indicates otherwise, an expression which denotes any gender includes the others; the singular includes the plural, and the plural includes the singular.

1.6 Any number of days prescribed in this Manual excludes the first day and includes the last day; and any relevant action or notice may be validly done or given on the last day.

1.7 Unless the context indicates otherwise, if the day for performance of any obligation falls on a day which is not a business day, that day will be the next business day.

1.8 The words “including” and “in particular” are without limitation.

1.9 Terms defined in the Act shall have the same meaning in this Manual.

2 **Company’s commitment**

2.1 As a South African company, the Company supports the constitutional right of access to information and is committed to provide access to our Records in accordance with the provisions of the Act, the confidentiality we owe third parties and the principles of our law.

3 Availability of this Manual

- 3.1 A copy of this Manual is available on our website or by sending a Request for a copy to the Information Officer by email. This Manual may also be inspected at the Company's head office and the SAHRC. This Manual will be updated from time to time, as and when required.

4 How to Request access to Records held by the Company

- 4.1 Requests for access to Records held by the Company must be made on the Request forms that are available from the SAHRC website (www.sahrc.org.za) or the Department of Justice and Constitutional Development (www.doj.gov.za) (under "regulations"). Not using this form could cause your Request to be refused (if you do not provide sufficient information or otherwise) or delayed.
- 4.2 For the convenience of Requestors, copies of such forms are included in the version of this Manual available at our head office and on our website. Please note that Requestors are also required to make payment of the prescribed fees. This issue is dealt with more fully below.
- 4.3 Requests for access to Records must be made to our Information Officer at the address or electronic mail address provided for below.
- 4.4 The Requestor must provide sufficient detail on the Request form to enable the Information Officer to identify the Record and the Requestor. The Requestor should also indicate which form of access is required and indicate if he or she wishes to be informed in any other manner and state the necessary particulars to be so informed.
- 4.5 The Requestor must identify the right that he or she is seeking to exercise or protect and provide an explanation of why the Requested Record is required for the exercise or protection of that right.
- 4.6 If a Request is made on behalf of a person, the Requestor must then submit proof, in the form of an affidavit or letter of consent, of the capacity in which the Requestor is making the Request to the satisfaction of the Information Officer.
- 4.7 If the Record Requested contains information about a third party, the Company is obliged to inform such third party of such Request. This serves to allow the third party the opportunity to respond by either granting consent to the access Request or to provide reasons why the Request should be denied. The reasons provided by the third party either for consent or denying access will be considered by the Information Officer in making a final decision regarding whether access should be granted or refused.
- 4.8 Requests will be received by the Information Officer as indicated in the following manner:
- (1) The Requestor will be notified within 30 days of the receipt of the completed Request forms.
 - (2) The Request will be evaluated by the Information Officer as well as a representative of division from which the Record is being Requested.
 - (3) The Company reserves the right to notify the Requestor of an extension period that is required to access the Requested information. The said notice will include reasons for such extension, the required extension period (which will not exceed 60 days) as well as the Requestor's right to approach a court via application proceedings for relief in the event that the Requestor is against the extension and/or the procedure.

(4) Further to that, the Company may notify the Requestor whether a fee and/or deposit is required. This fee and/or deposit will be determined by factors such as, the format and/or volume of the information Requested as well as the time required for the searching and preparation of the Records. The notice will set out the required fee and/or deposit amount as well as the Requestor's right to approach a court via application proceedings for relief in the event that the Requestor is against the payment of the required fee and/or deposit and/or the procedure.

4.9 Requestors are reminded that the Company can only provide access to Records that are in the possession of the Company.

4.10 Kindly note that all Requests to the Company will be evaluated and considered in accordance with the Act. Publication of this Manual and describing the categories and subject matter of information held by the Company does not give rise to any rights (in contract or otherwise) to access such information or Records except in terms of the Act.

4.11 If it is reasonably suspected that a Requestor has obtained access to the Company's Records through the submission of materially false or misleading information, legal proceedings may be instituted against such Requestor.

5 Contact details

5.1 The Company's contact details are available on the Company's website.

6 How to access the Guide as described in Section 10 of the Act

6.1 The Guide can be obtained from the South African Human Rights Commission. Please direct any queries to:

The South African Human Rights Commission: PAIA Unit
The Research and Documentation Department

Postal address: Private Bag 2700 Houghton 2041

Telephone: +27 11 877-3600

Fax: +27 11 403-0625

Website: www.sahrc.org.za

E-mail: paia@sahrc.org.za

7 Voluntary disclosure

7.1 The Company is not obliged to and has not published a notice in terms of Section 52(2) of the Act. Nevertheless, the Company does make certain information freely available on the Company's website.

7.2 Certain information is also made available to employees of the Company, which is not generally made available to the public. To avoid confusion, these items of information are not listed here but may be obtained by employees from the Human Resources department.

8 Records available in terms of any other legislation

8.1 Information is retained in terms of the legislation listed below. The information retained in terms of this legislation will only be made available to the persons or entities specified in the legislation:

- (1) Companies Act 71 of 2008;
- (2) Income Tax Act 58 of 1962;
- (3) Value Added Tax Act 89 of 1991;
- (4) Labour Relations Act 66 of 1995;
- (5) Basic Conditions of Employment Act 75 of 1997;
- (6) Employment Equity Act 55 of 1998;
- (7) Skills Development Act 97 of 1998
- (8) Skills Development Levies Act 9 of 1999;
- (9) Unemployment Insurance Act 63 of 2001;
- (10) Unemployment Contributions Act 4 of 2002;
- (11) Compensation for Occupational Injuries and Health Diseases Act 130 of 1993;
- (12) Occupational Health & Safety Act 85 of 1993;
- (13) Protection of Businesses Act 99 of 1978;
- (14) Regional Services Councils Act 109 of 1985;
- (15) Stamp Duties Act 77 of 1968;
- (16) Trade Marks Act 194 of 1993; and
- (17) The Independent Broadcasting Authority Act 153 of 1993, the Broadcasting Act 4 of 1999 and the licences issued and the regulations prescribed thereunder.

9 Records held by the Company

9.1 The Company maintains Records on the categories and subject matters listed below. However, please note that listing a category or subject matter in this Manual does not imply that a Request for access to such Records would be granted.

9.2 All Requests for access will be evaluated on a case by case basis in accordance with the provisions of the Act.

9.3 All Records in the possession of the Company that contain Special Personal Information shall only be provided to the person to whom the Special Personal Information pertains. In the event that the Requestor is not the subject of the Special Personal Information, then the Requestor must submit proof of consent to Request such Record for their use or on behalf of the Data Subject.

9.4 The Company may legitimately refuse to grant access to Records that fall within certain categories. The grounds to refuse access to particular Records include:

- (1) Records contain Personal Information of a third party and must be protected from unreasonable disclosure including Records of a deceased person;
- (2) Records containing third party commercial information that must be protected from unreasonable disclosure;
- (3) disclosure of a Record would result in a breach of a duty of confidence owed in terms of an agreement to a third party;
- (4) disclosure of a Record would result in an individual's life being endangered;
- (5) disclosure of a Record would prejudice or impair the security of property;
- (6) disclosure of a Record would prejudice or impair the protection of a person under witness protection;
- (7) disclosure of a Record would prejudice or impair public safety;
- (8) disclosure of a Record is privileged in terms of legal proceedings, unless such privilege has been waived;
- (9) disclosure of a Record would harm the commercial and financial interests of the Company; and/or
- (10) disclosure of a Record would put the Company at a disadvantage in contractual or other negotiations or prejudice it in commercial competition.

9.5 In the event that the Requested Record cannot be located and/or it is believed that the Record does not exist, the Company will inform the Requestor by way of affidavit or affirmation of the reason for delay or inability to locate the Record.

9.6 The categories and subject matters of Records are as follows:

- (1) Internal Records
 - (a) Memorandum of Incorporation and constitutional documents;
 - (b) Financial Records;
 - (c) Operational Records;
 - (d) Intellectual property;
 - (e) Marketing Records;
 - (f) Internal correspondence;
 - (g) Product Records;
 - (h) Statutory Records;
 - (i) Internal policies and procedures; and
 - (j) Records held by officials of the Company related to the company's operations.

- (2) Personnel Records (these Records can only be Requested by the person the Record pertains to):
 - (a) Any Records provided to the Company by its Personnel;
 - (b) Any Records a third party has provided to the Company about any of its Personnel;
 - (c) Conditions of employment and other Personnel-related contractual and quasi-legal Records;
 - (d) Internal evaluation Records; and
 - (e) Other internal Records and correspondence.
- (3) Other parties' Records are kept in respect of other parties, including without limitation contractors, commercial banks, clients, auditors and consultants, suppliers, joint venture companies and service providers, and general market conditions. In addition, such other parties may possess Records which can be said to belong to the Company. The following Records fall under this category:
 - (a) Personnel, customer, or the Company's Records which are held by another party as opposed to being held by the Company; and
 - (b) Records held by the Company pertaining to other parties, including financial Records, correspondence, contractual Records, Records provided by the other party, and Records third parties have provided about the contractors or suppliers.
- (4) Further Records are held including:
 - (a) Information relating to the Company's own commercial activities; and
 - (b) Research information belonging to the Company or carried out on behalf of a third party.