



National Prosecuting Authority
South Africa

ACCESS TO INFORMATION MANUAL OF THE NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA

Version 1.06

***A MANUAL COMPILED IN TERMS OF SECTION 14 OF THE PROMOTION
OF ACCESS TO INFORMATION ACT, 2000 (ACT NO.95 OF 2000).***

Document Information

| | |
|-----------------------------|---|
| Document Title: | Access to Information Manual of the National Prosecuting Authority of South Africa |
| Document Number: | NPAATIM-0001 |
| File Plan Reference Number: | 2/2/2/1 |
| Electronic File Name: | Access to Information Manual |
| Version Number: | 1.07 |
| Author: | George M Maphutuma |
| Contributors: | Gerhard Nel, Bradley Smith, Theodore Leeuwshut, Refilwe Motshwane, Mosalanyane Mosala, Francois Du Plessis |
| Editor: | Gerhard Nel |
| Effective Date: | 1 August 2016 |
| Status: | Final Version |
| Security Classification: | None |
| Distribution: | General |
| Document Enquiries: | Information Officer, National Prosecuting Authority of South Africa, Private Bag X752, PRETORIA, 0001. E-Mail: paia@npa.gov.za , Fax: (012) 804 6171, Telephone: (012) 845-6000. |

Document Approval

The signatories hereof, being duly authorised thereto, authorise the contents of this document as the official Promotion of Access to Information Manual of the National Prosecuting Authority of South Africa.

| | | Signature | |
|---|--------------------|-----------|------|
| Deputy National Director of Public Prosecutions: National Prosecuting Authority: Information Officer | M Silas Ramaite | | Date |
| Deputy Information Officer | Mr GM Maphutuma | | Date |
| | | | |

Notice

© 2010 NPA. All rights reserved.
No part of this document may be reproduced or transmitted in any form or by any means without the express written permission of NPA.

Revision History

| Revised Series | Version. Revision | Change Control Meeting Date | NPA Approval Date |
|-----------------------|--------------------------|------------------------------------|--------------------------|
| Review and Amendments | 1.05 | | |
| Review and Amendments | 1.06 | | |
| Review and Amendments | 1.07 | | |
| | | | |
| | | | |
| | | | |

List of abbreviations

| | |
|-------------|---|
| AFU | – Asset Forfeiture Unit |
| CEO | – Chief Executive Officer |
| DCEO | - Deputy Chief Executive Officer |
| CS | – Corporate Services |
| DPP | – Director of Public Prosecutions |
| NDPP | – National Director of Public Prosecutions |
| NPA | – National Prosecuting Authority of South Africa |
| NPS | – National Prosecution Services |
| PCLU | _ Priority Crimes Litigation Unit |
| SDPP | _ Special Director of Public Prosecutions |
| SOCA | – Sexual Offences and Community Affairs |
| SCCU | – Specialised Commercial Crime Unit |
| VAT | – Value Added Tax |
| IO | - Information Officer |
| DIO | - Deputy Information Officer |

TABLE OF CONTENTS

| | |
|---|-----------|
| Document Information | 3 |
| Document Approval | 3 |
| Notice | 3 |
| Revision History | 4 |
| List of abbreviations..... | 5 |
| CHAPTER 1 : INTRODUCTORY INFORMATION | 8 |
| 1. Introduction..... | 8 |
| 2. Overview of Manual | 9 |
| 3. Enquiries about Manual | 9 |
| 4. Important contact information at NPA | 10 |
| 5. Guide of South African Human Rights Commission..... | 11 |
| CHAPTER 2 : MANDATE, STRUCTURE AND FUNCTIONING OF NATIONAL PROSECUTING AUTHORITY | 13 |
| 6. Sources of NPA's Mandate..... | 13 |
| 7. Funding of NPA | 13 |
| 8. Functions of NPA | 13 |
| 9. Structure of NPA | 17 |
| CHAPTER 3 : MEMBERS OF PUBLIC AND NPA | 28 |
| 10. Services available to public | 28 |
| 11. Representations to NPA | 30 |
| 12. Participation in policy formulation..... | 30 |
| CHAPTER 4 | 32 |
| PART I : REQUEST FOR ACCESS TO INFORMATION | 32 |
| 13. Application of Act | 32 |
| 14. Description of records kept..... | 33 |
| 15. Who may request records?..... | 36 |
| 16. Procedure for accessing records..... | 38 |
| 17. Taking a decision on your request | 42 |
| PART II: GROUNDS FOR REFUSAL OF REQUEST | 44 |
| 18. Mandatory grounds for refusal..... | 44 |
| 19. Discretionary grounds for refusal | 47 |
| PART III: APPEALS..... | 51 |
| 20. Appeals against decisions by Information Officer..... | 51 |
| PART IV: INFORMATION AVAILABLE IN TERMS OF OTHER LAWS 52 | 52 |
| 21.1 Information in police dockets | 52 |
| 21.2 Preparatory examination record | 53 |
| 21.3 Statements leading to criminal prosecution | 54 |
| PART V: INFORMATION AUTOMATICALLY AVAILABLE..... | 54 |

| | |
|---|----|
| FORM A..... | 55 |
| A Particulars of public body..... | 55 |
| B Particulars of person requesting access to the record | 55 |
| C. Particulars of person on whose behalf request is made..... | 56 |
| D. Particulars of record | 56 |
| E. Fees | 57 |
| F. Form of access to record..... | 57 |
| G. Notice of decision regarding request for access..... | 58 |

CHAPTER 1: INTRODUCTORY INFORMATION

1. Introduction

1.1 The Constitution of the Republic of South Africa guarantees everyone the right of access to any information held by the State.¹ Although this right is not unlimited, it is nonetheless fundamental to our constitutional democracy, and serves the basic purpose of ensuring accountability, responsiveness and openness in governance.

1.2 In the year 2000, Parliament passed a law in order to promote the right of access to information and to provide a framework within which it was to be effected. This law is known as the Promotion of Access to Information Act (hereinafter referred to as "the Act").² One of the ways in which the Act promotes access to information is by requiring all public bodies to compile a manual that will inform members of the public what types of records they (the public bodies) keep and what procedures need to be followed when requesting access to those records.³ The Act also requires public bodies to include in their Promotion of Access to Information Manuals certain basic information about themselves. The manual compiled by a public body must also inform the public—

- how the organisation is structured;
- what its functions are;
- what services the organisation offers to the public;
- what opportunities there are for members of the public to participate in the processes of the organisation; and finally,
- what rights members of the public have when the organisation acts contrary to the law or fails to act in accordance with it.⁴

¹ See section 32(1)(a) of the Constitution of the Republic of South Africa Act, 1996 ('the Constitution').

² Act No. 95 of 2000.

³ See section 14 of the Act.

⁴ See section 14 of the Act.

- 1.3 In issuing this Manual, the National Prosecuting Authority of South Africa (hereinafter referred to as "the NPA") reaffirms its commitment to fostering a culture of transparency and accountability in South Africa, and realising, through concrete action, the spirit and principles of Batho Pele.

2. Overview of Manual

- 2.1 The Manual is divided into four Chapters, each with its own subdivisions. Chapter 1, paragraph 4, contains contact information for the NPA officials responsible for dealing with access to information matters, while paragraph 5 contains information about the South African Human Rights Guide issued in terms of section 10 of the Act. Chapter 2 provides basic information about the NPA as an organisation. Chapter 3 describes the services and remedies available to the public and the opportunities for participation in the processes of the NPA.

- 2.2 Chapter 4, Part I, of the Manual informs the public on what information is available in terms of the Act, how to access that information and what fees are applicable. Part II provides information regarding the grounds on which the NPA may refuse a request, while Part III sets out the procedures a person should follow in the event that he or she wishes to appeal a decision made by or on behalf of the Information Officer of the NPA. The sections thereafter set out the circumstances in which it won't be necessary to rely on one's rights in terms of the Act to access information held by the NPA. Part IV explains what information is available in terms of other Acts, while Part V sets out what information is automatically available from the NPA.

3. Enquiries about Manual

If you have any enquiries about this Manual (for example, if you need clarity on certain procedures, or want to find out where or whether you may obtain copies of the Manual in your first language) please contact

the Information Officer of the NPA by phone, fax, post or email, at the numbers or addresses listed in the section below. The NPA will gladly attempt to assist you.

Please note, however, that if you submit your enquiries about the Manual to the Information Officer in writing, you must clearly mark your correspondence: ENQUIRY ABOUT NPA ACCESS TO INFORMATION MANUAL. This will facilitate the response to your correspondence.

4. Important contact information at NPA

Name of Public Body:

The National Prosecuting Authority of South Africa

Head of Organisation:

The National Director of Public Prosecutions

Information Officer:

Contact Details of the Information Officer

Tel: (012) 845 – 6170

Fax: (012) 843 – 2171

E-mail: paia@npa.gov.za

Deputy information officer:

George M Maphutuma

General Contact Details of NPA

Tel: (012) 845 – 6170

Fax: (012) 843 – 2171

e-mail: gmmaphutuma@npa.gov.za

Website: www.npa.gov.za

Physical Address:

Victoria & Griffiths Mxenge Building
123 Westlake Avenue, Weavind Park
Silverton
Pretoria
South Africa

Postal Address:

The National Prosecuting Authority
Private Bag X752
Pretoria
0001
South Africa

5. Guide of South African Human Rights Commission

5.1 For those persons wishing to learn more about their rights in terms of the Act, and how to exercise those rights, please note that the South African Human Rights Commission (SAHRC) has published a Guide with information that is of relevance to you. In the Guide you will find the following information:

- (a) The objects of the Act.
- (b) The contact details for the information and deputy information officers of all public bodies.
- (c) Private bodies from which information may be requested in terms of the Act.⁵
- (d) The manner and form of a request for access to information held by a public or private body.
- (e) The assistance that is available from information officers and the Human Rights Commission in terms of the Act.
- (f) All remedies available in law to secure compliance with rights and duties conferred or imposed by the Act.

⁵ To the extent that the SA Human Rights Commission was able to compile such information.

(g) The fees to be paid in relation to requests for access to information.

(h) The regulations made in terms of the Act.⁶

5.2 This Guide is available in all the official languages for inspection on the website of the South African Human Rights Commission, namely, <http://www.sahrc.org.za>. Copies of the Guide can be obtained at a cost (specified as cost per page) prescribed by the Minister for Justice and Constitutional Development. Every office of the NPA has a copy of the guide available for inspection, as does every magistrate's court.

5.3 All other enquiries on the SAHRC Guide must be directed to—

The South African Human Rights Commission

Promotion of Access to Information Act Unit

Research and Documentation Department

Private Bag 2700

Houghton

Johannesburg

2041

Tel: (011) 484 – 8300

Fax: (011) 484 – 0582

Email: paia@sahrc.org.za

Website: www.sahrc.org.za

Please note: The SAHRC Guide is a general guide to your rights in terms of the Act, and will not give you specific information on accessing records held by the NPA.

⁶ See section 10 of the Act.

CHAPTER 2: MANDATE, STRUCTURE AND FUNCTIONING OF NATIONAL PROSECUTING AUTHORITY

6. Sources of NPA's Mandate

The National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (hereinafter referred to as "the NPA Act") brought into being a single national prosecuting authority for the Republic of South Africa, headed by a National Director of Public Prosecutions. The primary mandate of the NPA is, however, provided for by the Constitution, which grants the NPA the power to institute criminal proceedings on behalf of the State, and also empowers it to carry out any other functions that are necessary and incidental to instituting criminal proceedings. Other matters concerning the prosecuting authority (including its structure, powers and functions) are dealt with by the NPA Act.

7. Funding of NPA

The NPA works in consultation with the Department of Justice and Constitutional Development to prepare the necessary estimates of revenue and expenditure for the NPA, which are voted on as part of the budget of the Department of Justice and Constitutional Development.

8. Functions of NPA

Prosecution of crime

- 8.1 The primary function of the prosecuting authority is to institute criminal proceedings on behalf of the State. Except for prosecutions falling within the exclusive authority of the National Director of Public Prosecutions ('NDPP'), the primary responsibility for instituting and conducting criminal proceedings lies with the Directors of Public Prosecutions (DPPs) in respect of those offences committed in their jurisdictions. In practice, the DPPs authorise prosecutors within their jurisdictions to institute and conduct criminal proceedings.

8.2. **The NDPP** holds exclusive authority to institute and direct prosecutions and proceedings in respect of extraditions, Constitutional Court matters and matters arising from the Truth and Reconciliation Commission, recommendations for presidential pardon and expunging details of previous offences from official police records.

8.3 The law vests the prosecuting authority with the discretion to make decisions about the following criminal processes:

- The decision whether or not to institute criminal proceedings against a person.
- The decision whether or not to withdraw charges or stop the prosecution.
- The decision on whether or not to divert the offender and resolve the case in a manner other than through normal court proceedings.
- The decision whether or not to oppose an application for bail or release by an accused person who is in custody following arrest.
- The decision about which crimes to charge an accused person with and in which court the trial should proceed.
- The decision whether or not to accept a plea of guilty tendered by an accused person.
- The decision about what evidence to present during the trial.
- The decision about what evidence to present during the sentence proceedings, in the event of a conviction.
- The decision whether or not to appeal to a higher court in connection with a question of law, an inappropriate sentence or the improper granting of bail, or to seek review of proceedings.

8.4 In criminal proceedings, the primary function of the prosecutor is to assist the court in arriving at the truth and a just verdict in respect of those accused persons having allegedly committed crime, and not simply to secure a conviction at all costs. In the event of a conviction, the prosecutor must also assist the court in arriving at a fair sentence based

upon the evidence presented in court or other evidence at the disposal of the State.

- 8.5 At the same time, prosecutors represent the community in criminal trials. In this capacity, they must ensure that the interests of victims and witnesses are promoted, without negating their obligation to act in a balanced and honest manner, free of fear, favour or prejudice.

Financial investigation and proceedings relating to forfeiture of assets

- 8.6 The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), allows the State to confiscate the assets of a person convicted of a crime after the court has assessed the amount to which the accused has benefited from those or any other related crimes. The State also has the power to apply to a high court to have property forfeited, without the need to institute criminal proceedings against the suspected offender, if the property was used to commit a serious crime or is the proceeds of unlawful activities.
- 8.7 A specialist unit within the NPA, known as the Asset Forfeiture Unit, investigates such forfeitures, and institutes and conducts all proceedings in respect of these matters.

Witness protection and support

- 8.8 The Witness Protection Act, 1998 (Act No. 112 of 1998), provides for the protection and support of intimidated and vulnerable witnesses as well as their families where there is reason to believe that the safety of those individuals is being threatened. This function is performed by another unit of the NPA known as the Office for Witness Protection.

Curator ad litem of State patients and persons committed to institutions in terms of Mental Health Act

- 8.9 Directors of Public Prosecutions in whose jurisdiction State patients are detained, are the official curators *ad litem* for all State patients so detained in terms of the Mental Health Act, 1973 (Act No. 18 of 1973). In this capacity, they only perform duties imposed on them in terms of the said Act, e.g. applications for discharge of the aforesaid State patients.

Crime prevention

- 8.10 The NPA's crime prevention role flows directly from the preamble of the NPA Act, its vision to ensure justice in our society and its mission to provide prompt, vigorous and fearless prosecution services on behalf of the State. An effective prosecuting system, and ultimately an efficient criminal justice system, is in itself an important crime prevention factor. Additionally, asset forfeiture also has a significant deterrent effect.

Policy making

- 8.11 The Constitution also imposes an obligation on the NDPP to determine a Prosecution Policy that must be observed in the prosecution process. The NDPP exercises this policy making function after consultation with the Directors of Public Prosecutions, and with the concurrence of the Minister for Justice and Constitutional Development. The Policy guides prosecutors in the way they perform their functions, exercise their powers and carry out their duties. It also serves to inform members of the public about the principles governing the prosecution process.
- 8.12 The NDPP is also responsible for issuing policy directives and developing a code of conduct that must be complied with by prosecutors.

Policy advice

- 8.13 The NDPP may perform the following policy advisory functions:

- He or she may advise and make recommendations to the Minister for Justice and Constitutional Development on the prosecuting authority and the administration of justice as a whole.
- He or she may advise the Minister on the salaries of prosecutors.⁷
- He or she may advise the Minister on the appropriate legal qualifications for prosecutors.⁸
- He or she may advise the Minister on the creation of a structure to which members of the public may report complaints or allegations of misconduct, impropriety or prejudice against prosecutors.

8.14 In addition, the NDPP also advises the Minister for Justice and Constitutional Development, other Ministries, Parliamentary Committees and the South African Law Commission on the development and/or application of laws or amendments to laws.

9. Structure of NPA

As indicated above, the NPA Act established a single national prosecuting authority, headed by a National Director of Public Prosecutions. According to the Constitution and the NPA Act, the structure of the NPA consists of the Office of the NDPP and the Offices of the Directors of Public Prosecutions at the High Courts. The Minister for Justice and Constitutional Development holds final responsibility for the prosecuting authority.

9.1 Office of NDPP

The Office of the NDPP comprises–

- the NDPP, as head of the prosecuting authority;
- Deputy National Directors of Public Prosecutions;
- Special Directors of Public Prosecutions;

⁷ Section 18(1) of the NPA Act.

⁸ Sections 16(3) and 25(2)(a) of the NPA Act.

- members of the Prosecuting Authority appointed or assigned to the Office; and,
- members of the Administrative Staff of the Office.

Please note: Members of the public who wish to make enquiries about specific units of the NPA, are encouraged to use the general contact information provided in paragraph 4 above.

(a) The NDPP

The NDPP is the head of the NPA and is appointed by the President, and serves a non-renewable term of ten (10) years. The NDPP has a range of powers, duties and functions that are detailed in section 22 of the NPA Act.

(b) Deputy National Directors of Public Prosecutions

The Deputy National Directors of Public Prosecutions are appointed by the President, after consultation with the Minister for Justice and Constitutional Development and the NDPP. The NPA Act allows for the appointment of a maximum of four Deputy National Directors. Deputy National Directors do not have a fixed term of office, but must vacate their office upon turning 65 years of age. There are currently four Deputy National Directors of Public Prosecutions holding office. Each Deputy National Director heads a particular specialised unit within the Office of the NDPP, namely, the National Prosecutions Service, the Asset Forfeiture Unit, the Legal Affairs Division and the National Special Services Division.

(i) National Prosecutions Service (NPS)

The NPS is responsible for the prosecuting function in all the mainstream courts and therefore for all the offices of the Directors of Public Prosecutions. Its primary function is to ensure the effective prosecution in criminal cases and core functions associated with the administration of criminal courts. Additionally, the NPS is responsible for the development of policy directives, deals with representations to the NDPP and constitutional litigation involving the NPA. The NPS includes a specialist Priority Crimes Litigation Unit.

(ii) Asset Forfeiture Unit (AFU)

The AFU is responsible for driving the implementation of the forfeiture provisions of the Prevention of Organised Crime Act, 1998, and ensures that the powers of the Act are used to maximum effect in the fight against crime. The AFU has six regional branches across the country, namely, in Johannesburg, Cape Town, Durban, Port Elizabeth, Pretoria (including Free State and North West) and the Far North (Limpopo, Mpumalanga and Northern Cape).

(iii) National Special Services Division

National Special Services Division is made up of specialised units such as the Sexual Offences and Community Affairs Unit, the Office for Witness Protection, the Specialised Commercial Crime Unit and the Priority Crimes Litigation Unit. Each of these Units is headed by Special Directors of Public Prosecutions.

(c) The Special Directors

The President appoints Special Directors of Public Prosecutions after consultation with the Minister for Justice and Constitutional

Development and the NDPP, to perform specific functions, carry out specific duties and exercise specific powers. There are currently five Special Directors of Public Prosecutions.

(i) *Sexual Offences and Community Affairs Unit (SOCA Unit)*

The SOCA Unit oversees operations that cover four key responsibility areas, namely, sexual offences, domestic violence, and maintenance and child justice. The Unit's core function is to act as a centre of excellence on prosecutions relating to crimes against women and children.

(ii) *Office for Witness Protection (OWP)*

A Special Director of Public Prosecutions, who exercises the powers and performs the duties set out in the Witness Protection Act, heads the OWP. The Office's core function is to protect and support vulnerable or intimidated witnesses. There are six regional offices of the OWP servicing the Gauteng, North West, KwaZulu-Natal, Free State, Eastern Cape and Western Cape provinces.

(iii) *Specialised Commercial Crime Unit (SCCU)*

The Special Director of Public Prosecutions in charge of the SCCU is responsible for managing and directing the investigation and prosecution of complex commercial crimes emanating from the South African Police Service's Commercial Crime Branch in order to contribute to economic stability and reduce commercial crime. The SCCU operates from 6 Regional Offices in Pretoria, Johannesburg, Durban, Port Elizabeth, Cape Town and Bloemfontein.

(iv) *Priority Crimes Litigation Unit (PCLU)*

The Special Director of Public Prosecutions in charge of the PCLU, is responsible for managing and directing the investigation and prosecution of crimes contemplated in the Implementation of the Rome Statute of International Criminal Court Act, 2002 (Act No. 27 of 2002). Furthermore, the PCLU is also responsible for the investigation and prosecution of serious national and international crimes, including acts of terrorism and sabotage, high treason, sedition, foreign military crimes and other such crimes determined by the NDPP.

(v) *Special Director: Strategic and Legal Advisor*

This Special Director of Public Prosecutions is responsible for all International Mutual Legal Assistance, extradition matters, promoting cooperation with other law enforcement agencies; the drafting of legislation and regulations relating to the prosecuting authority and criminal matters on the above issues.

(d) *The Administrative Staff of Office of National Director*

The Administrative Staff of the Office of the National Director consists of the Communication Unit, the Internal Audit Unit and Corporate Services Division of the NPA.

(i) Office of the CEO

The office of the CEO is responsible for the coordination of all corporate services as well as to ensure that the NPA is well managed. The CEO as the administrative head of the NPA must ensure that the NPA complies with policies and procedures as well as the broader government framework. In order to achieve this, the Office of the CEO consists of the following service centres:

(ii) Integrity Management Unit

The Integrity Management Unit's primary responsibility is the creation of a preventative environment (i.e. an environment promoting ethical behaviour and compliance with professional norms and standards, regulations and policies), which will protect the NPA and its members. To achieve this environment and enhance integrity within the NPA, the Unit focuses on the following:

- Facilitating the establishment and implementation of standards and programmes to develop and enhance integrity in the NPA.
- Advocacy, education and training to continuously raise the levels of awareness and consciousness about organisational standards, reputation and integrity issues, as well as constitutional obligations.
- Monitoring and evaluation of compliance with standards, policies, procedures and constitutional requirements.

(iii) Communication Unit

The Communication Unit is responsible for managing the internal and external communication function for the NPA, in particular, media liaison and events management.

(iv) Internal Audit Unit

The Chief Audit Executive, who reports administratively to the CEO and functionally to the

Audit Committee, heads the Internal Audit Unit. The internal audit unit determines whether the organisation's network of risk management, control and governance processes, as designed and represented by management, are adequate and functioning in a manner to ensure that—

- risks are appropriately identified and managed;
- interaction with the various governance groups within the organisation occurs as appropriate;
- significant financial, managerial and operating information is accurate, reliable and timely;
- employees actions are in compliance with policies, standards, procedures, applicable laws and regulations;
- resources are acquired economically, used efficiently and adequately protected;
- programmes, plans and objectives are achieved;
- quality and continuous improvement are fostered in the organisation's control process; and
- significant legislative or regulatory issues impacting on the organisation are recognized and addressed appropriately.

In fulfilling its function the Internal Audit Unit does not assume the functions, systems and processes of risk management, but assists management in monitoring risk management in the NPA.

(v) *Human Resource Management and Development Service Centre*

The Human Resource Management and Development Service Centre is responsible for all human resource functions within the NPA, including, organisational management, performance management, recruitment, appointments, remuneration, training, conditions of service, labour relations, terminations, transfers, promotions, internships, and employee wellness.

(vi) *Finance and Procurement Service Centre*

The Finance and Procurement Service Centre is responsible for all financial management and procurement functions within the NPA, including, budget allocation; expenditure reporting; banking; payment of salaries, allowances, bonuses and contractors; facilities, fleet and contract management; and procurement of goods and services.

(vii) *Information and Systems Management Service Centre*

The Information Management Service Centre is responsible for all information management and technology functions within the NPA, including, the provision, management and maintenance of information and communications systems; document management; process management; and management of the NPA Call Centre. The Information Management Service Centre also shares a knowledge management function with the Research and Policy Information Service Centre.

(viii) *Strategic Management Office*

The Strategic Management Office facilitates and coordinates the development of the NPA strategy and the NPA Annual Plan.

The office is further responsible for enterprise performance management, enterprise risk management and research within the NPA.

(ix) *Security and Risk Management Unit*

The Security and Risk Management Unit is responsible for safeguarding the physical security of all NPA premises and personnel; security monitoring of NPA officials; and by agreement with the National Intelligence Agency, is responsible for the vetting of all posts requiring secret and confidential security clearances.

9.2 Offices of Prosecuting Authority at High Courts

The following offices of the NPA have been established at the seat of each of the 11 High Courts in the Republic:

- The Office of the DPP for the North Gauteng High Court: Pretoria, which has jurisdiction over all of Gauteng (except Witwatersrand), the Limpopo Province (excluding the former Venda), Mpumalanga and a portion of the North West Province.
- The Office of the DPP for the South Gauteng High Court: Johannesburg, which has jurisdiction over Johannesburg, Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Kempton Park, Krugersdorp, Nigel, Randburg, Randfontein, Roodepoort, Springs and Westonaria.

- The Office of the DPP for the Mafikeng High Court, which has jurisdiction over the area formerly known as Bophuthatswana with the exception of parts of Bophuthatswana which were in the Free State.
- The Office of the DPP for the Venda High Court, which has jurisdiction over the area formerly known as Venda, as well as the districts of Zoutpansberg, Messina, Levubu, Malamulela and Giyani.
- The Office of the DPP for the Northern Cape High Court: Kimberley, which has jurisdiction over the whole of the Northern Cape, except for those districts falling within the jurisdiction of the Cape of Good Hope and the Eastern Cape.
- The Office of the DPP for the Free State High Court: Bloemfontein, which has jurisdiction over the whole of the Free State.
- The Office of the DPP for the Cape of Good Hope High Court: Cape Town, which has jurisdiction over the whole of the Western Cape, but Springbok, Calvinia, Williston, Sutherland, Fraserburg and Willowmore, also fall within its jurisdiction.
- The Office of the DPP for the Eastern Cape High Court: Grahamstown, which has jurisdiction over 44 magisterial districts, including Port Elizabeth, Hanover and Colesburg (which are in the Northern Cape) and Murraysburg (which is in the Western Cape).
- The Office of the DPP for the Eastern Cape High Court: Mthatha, which has jurisdiction over the former Transkei except for those districts falling within the jurisdiction of KwaZulu Natal.
- The Office of the DPP for the Eastern Cape High Court: Bisho, which has jurisdiction over the former Ciskei.
- The Office of the DPP for the KwaZulu Natal High Court: Pietermaritzburg, which has jurisdiction over the 61 magisterial districts in the KwaZulu Natal province, including Maluthi and Umzimkule (which are in the Eastern Cape (former Transkei)).

Each DPP office is headed by a Director of Public Prosecutions, or Deputy Director of Public Prosecutions, as the case may be, and is staffed by Deputy Directors of Public Prosecutions, Senior State

Advocates, Junior State Advocates and a limited number of administrative staff.

Please note that there are also Chief Prosecutors, Senior Public Prosecutors and prosecutors seated at magistrates' and regional courts across the country.

CHAPTER 3: MEMBERS OF PUBLIC AND NPA

10. Services available to public

In addition to performing all of the abovementioned functions, the NPA also offers the following services to members of the public:

10.1 *Public awareness campaigns*

The SOCA Unit of the NPA organises annual national public awareness campaigns, which aim to educate members of the public, in particular women and children, about their legal rights as far as sexual offences, domestic violence and maintenance are concerned, as well as to encourage reporting. The campaigns take the form of workshops, which are coordinated and promoted at a regional level by Senior Public Prosecutors in various magisterial districts across the country, and involve partnerships with government departments and non-governmental institutions. Attendees at these workshops have an opportunity to pose questions to panellists, and are provided with information brochures on the subjects noted above.

10.2 *Thuthuzela Care Centres*

The SOCA Unit also manages multi-disciplinary care centres and trauma centres, at various cities across the country that offer services to victims of sexual offences and domestic violence. These centres are known as the Thuthuzela Care Centres. The first Thuthuzela Centre was opened in June 2000 at the request of the Minister for Justice and Constitutional Development, and is housed within the Jooste Hospital in Manenberg, Cape Town. The centre is linked to three police stations (located in Manenberg, Gugulethu and Khayelitsha) and one specialised sexual offences court in Wynberg. The Centre acts as a 'one-stop' base for rape-care management, streamlining a network of existing investigative, prosecutorial, medical and psychological services in the hospital where

it is located. The collaborative effort adopted by the Thuthuzela Centres ensures that the victim is treated with the care and dignity that she or he deserves. This not only ensures that the victim's trauma is reduced and that secondary victimisation is prevented, but also strengthens the investigation by ensuring that there is proper handling of medical evidence to be used in a trial, and also that proper statements are taken from the victim.

10.3 Court preparation

In order to avoid further trauma for victims of sexual offences and domestic violence, and to ensure that they are adequately prepared for trial, victim assistance officers based at the multi-disciplinary care centres provide special assistance in court. This includes effective dissemination of information to the victim, counselling, assisting with protection orders, preparing the victim for court and reassuring the victim.

10.4 Maintenance

Maintenance prosecutors are stationed at 80 magisterial districts across the country. They are required to mediate and facilitate consensus between maintenance applicants and respondents. However, in cases where mediation does not resolve the dispute, it may be necessary to engage in a formal inquiry to determine the amount of maintenance due. In such cases, the maintenance prosecutor presents evidence before the magistrate leading the inquiry to assist in the determination of the appropriate amount. Maintenance prosecutors work in partnership with maintenance officers (who are employed by the Department of Justice and mostly handle informal maintenance inquiries or mediations), as well as maintenance investigators (who collect evidence relevant to maintenance proceedings). Maintenance prosecutors may also institute criminal proceedings against any person that defaults on maintenance payment.

11. Representations to NPA

- 11.1 The right of the public to approach the NPA is a vital element of access to justice. Accordingly, members of the public are entitled to make representations to the NPA on a range of subject matters. Generally, representations range from requests to reconsider the institution of a prosecution to complaints about the conduct of individual prosecutors.
- 11.2 Part 6 of The Policy Directives issued by the NDPP sets out the procedures for making representations to the NPA. Representations should be made in writing, particularly representations made to the NDPP, DPPs or SDPPs. However, at lower court level, informal approaches may be accommodated in certain circumstances.
- 11.3 Where the subject matter of the representation relates to a decision of a lower court prosecutor to institute a prosecution or not, the representation should be directed to Chief, Senior or Control Prosecutors. As a matter of law and policy, representations should only be made to the NDPP after remedies of recourse to the relevant DPP have been exhausted.
- 11.4 An accused person may also make representations to the NPA. In such circumstances, the representations will be treated as having been made “without prejudice”.

12. Participation in policy formulation

- 12.1 No specific arrangements have been put in place to facilitate public participation in the execution of the NPA’s policy-making or policy advisory functions. Members of the public are, however, free to make representations to the NDPP on any matter concerning the NPA, and are therefore encouraged to use this process should they wish to influence the formulation of the NPA's policies.

12.2 When the NPA proposes new policy or legislation, it undertakes consultation with stakeholders through publishing papers and/or workshops or conferences. The process of participation differs from project to project and is made known in advance.

CHAPTER 4

PART I: REQUEST FOR ACCESS TO INFORMATION

13. Application of Act

- 13.1 The Act applies to all recorded information in the possession or under the control of an official of the NPA. It does not matter who created the record, when it came into existence, or in what form or medium the record is (i.e. the Act applies equally to memorandums, letters, e-mail, and video recordings). However, the Act cannot be used to request the NPA to create a record that does not yet exist at the time of application.
- 13.2 Information held by an individual or a company in his or her or its capacity as an independent contractor of the NPA, also falls within the scope of the Act. In such a case, an application for access to information should also be addressed to the Information Officer of the NPA.
- 13.3 The Act does not apply to a record held by the NPA if --
- that record is requested for the purpose of criminal or civil proceedings;
 - the proceedings in question have already begun; and
 - access to that record for the above-mentioned purpose is provided for in another law.

Please be aware that any information obtained in contravention of this rule will not generally be admissible as evidence in court. This is to ensure that the normal rules of discovery apply in civil and criminal cases.⁹ Administrative proceedings are not affected by this provision.

- 13.4 The Act overrides any other legislation that prohibits or restricts disclosure of a record of a public body when that law is materially

⁹ See section D.1 below.

inconsistent with the Act. This matter is comprehensively dealt with in the section dealing with grounds for refusal.

14. Description of records kept

The NPA holds the following categories of information:

| | SUBJECT MATTER | CATEGORY |
|----|---|---|
| 1. | Legislation and Policy | <ul style="list-style-type: none"> • Drafting and alterations of Acts of Parliament, Regulations, and Policy Manual • Interpretations and legal opinions on Acts of Parliament and Regulations |
| 2. | Annual Reports | <ul style="list-style-type: none"> • Annual Reports required in terms of the NPA Act • Annual Report contributions by Units of the NPA • Policy and routine enquiries about Annual Reports |
| 3. | Parliamentary and National Director Affairs | <ul style="list-style-type: none"> • Parliamentary questions • Contributions to the President's Speech • Opening of Parliament • Circulars by the NDPP and Ministry of Justice • Meetings, agendas and minutes of the executive of the Office of the National Director • Speeches by the NDPP • Internal and external Protocols and Agreements |
| 4. | Corporate Services | <ul style="list-style-type: none"> • Circulars by the CEO • Meetings, minutes and agendas of Corporate Services meetings • Donations, grants and donor organisations • Staff establishment and new posts • Conditions of service • Recruitment advertisements and applications; panel selection, arrangement and dates. |

| | SUBJECT MATTER | CATEGORY |
|----|-----------------------|---|
| | | <ul style="list-style-type: none"> • Interviews and other appointment information for permanent, contract and temporary staff members • Training of staff, course and accreditation information, symposiums, seminars and conferences • Performance management evaluations and monitoring plans • Promotions, termination of services • Salaries, allowances and bonuses • Accidents and Unemployment Insurance • Projects and project management • Facilities and fleet management • Filing system, records control and disposal of records policy and routine requests • Planning and physical security measures • Information security • Security clearances • Budget allocation, budget control and expenditure • Criminal Assets Recovery Account • Reports on state expenditure, departmental expenditure, revenue and bookkeeping • Procurement information • Information technology service agreements, contracts and tenders, service and repair records, inventory • Research project management documentation, administration, and reports • Library management information |
| 5. | Witness Protection | <ul style="list-style-type: none"> • Provision of accommodation for witnesses • Medical care of witnesses |

| | SUBJECT MATTER | CATEGORY |
|----|---------------------------------------|--|
| | | <ul style="list-style-type: none"> • Provision of furniture and equipment for witnesses • Transport • Admission of witnesses onto programme |
| 6. | Asset Forfeiture | <ul style="list-style-type: none"> • Asset forfeiture case records • Partner initiatives • Meetings, agendas and minutes • Newsletter and training materials |
| 7. | Sexual Offences and Community Affairs | <ul style="list-style-type: none"> • Domestic Violence matters • Maintenance matters • Sexual offences, sexual offences courts and manuals • Agreements and aid • Statistics on sexual offences and domestic violence • Community affairs, representations and complaints |
| 8. | National Prosecutions Service | <ul style="list-style-type: none"> • Court establishment and demarcation • Court performance management (statistics, strategic plans, targets and media reports) • NPS Projects (court centres, Saturday courts, Rescue missions and awaiting trial prisoners) • Internal and external correspondence • Routine enquiries about criminal and procedural matters • NDPP authorisations and delegations to prosecute (high court, lower court and non-NPS prosecutors) • Plea bargains reports in terms of section 105 of the Criminal Procedure Act, 1977 • Expert and overseas witnesses |

| | SUBJECT MATTER | CATEGORY |
|-----|-----------------------------------|--|
| | | <ul style="list-style-type: none"> • DPP decisions on the forum of trial, mental observation of accused, State patients, the prosecution of certain persons (Part 5 of Policy Manual), statutory authority to prosecute, in terms of Insolvency Act, fraud or commercial crimes, plea and sentence negotiations, dangerous criminals and occupational and safety matters • Files on State patients or mentally ill patients committed to an institution in terms of the Mental Health Act |
| 9. | Specialised Commercial Crime Unit | <ul style="list-style-type: none"> • Commercial criminal matters • Plea bargaining records and statistics • Court establishment and routine enquiries • Individual court and prosecutor statistics • Media reports • Minutes, meetings, agendas for internal and external meetings • SAPS case dockets in pending trial and decision cases • Internal and external correspondence • Routine enquiries about criminal and procedural matters • NDPP authorisations and delegations to prosecute |
| 10. | Internal Audit | <ul style="list-style-type: none"> • Meetings, minutes, agendas • Projects and special projects • Internal and external liaison |

15. Who may request records?

- 15.1 As noted above, the Constitution guarantees everyone the right of access to information held by the State. This means that a person's right is not dependent on his or her national origin. Therefore, whether you are a citizen of South Africa or a foreign national, you are entitled, subject to justifiable limitations, to access state-held information.
- 15.2 The Act itself distinguishes between **requesters** and **personal requesters**. For the purposes of this Manual, a **requester** is defined as any person making a request for access to a record of the NPA. This includes natural persons (i.e. human beings) and juristic persons (i.e. companies, partnerships, universities, NGOs and other such legal entities). Municipalities and national or provincial government departments may not request access to information held by the NPA in terms of the Act. Nor can any functionary or institution exercising a public function in terms of the Constitution or provincial constitution. These bodies and their officials must follow the normal channels of communication that exist within the NPA, and their requests will be dealt with in terms of the principles of cooperative government set out in section 41 of the Constitution.
- 15.3 The only public bodies that may request information from the NPA in terms of the Act are those bodies that exercise a public power or perform a public function in terms of an Act of Parliament (other than the Constitution).
- 15.4 A **personal requester**, on the other hand, is a special category of requester that wants access to personal information about him or herself. Personal information is defined as information relating to race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language or birth. It also includes information relating to your education, medical, criminal, or employment history, and any identifying number, symbol or other particular assigned to you and by which you may be identified.

16. Procedure for accessing records

The steps below have been designed to ensure that a request for information is dealt with as quickly and efficiently as possible.

16.1 Consider what it is that you want

- (a) Firstly, you should consider whether you qualify as a requester or a personal requester as described above. This is important since personal requesters are exempted from the prescribed request fees.
- (b) Secondly, you should ask yourself whether you require access to a record or written reasons for a decision made by the NPA. If what you require is a written reason for a decision made by the NPA, your matter is more likely to fall within the ambit of the Promotion of Administrative Justice Act, and it will therefore not be appropriate to use the Promotion of Access to Information Act, including the procedures set out in this Manual.
- (c) Thirdly, you should consider whether the record you require is something that is likely to be in the possession or under the control of the NPA. If you request access to a record that is not held by the NPA, or is more closely connected to another public body, the NPA will transfer your request to that other body within 14 days of receiving the request. In the event that your request is transferred, the Information Officer will notify you of the body to which the request has been transferred, the reasons for the transfer and the timeframes within which the request must be dealt with by that body.
- (d) To lessen the administrative burden on all concerned, you are therefore encouraged to read through the description of our records set out above and familiarise yourself with those sections outlining the structure and functions of the NPA before submitting your request.

- (e) Finally, if indeed it is access to a record in possession of the NPA that you require, you should ask yourself whether or not the information can be requested in terms of another Act of Parliament, or is already information that is automatically available.

16.2 *Complete request form*

- (a) The request must be made in writing on the prescribed form set out below as Form A. It should be addressed, faxed, emailed or hand delivered to the Information Officer at the contact details provided for in paragraph 4 above.
- (b) Copies of the form are available upon request from all branch offices of the NPA, as well as magistrates and regional courts, but can also be obtained from the NPA's website (www.npa.gov.za) or the Information Officer.
- (c) The application form contains detailed instructions that must be followed when being completed. Doing so will facilitate the processing of your request.
- (d) You will be required to provide a full description of the record as is known to you at the time. You should also indicate the form of access you require – e.g. if the record is in a written format, you should indicate whether you want a copy of the record, or merely to inspect it. Where applicable, you should also stipulate the language in which you prefer to have the record made available to you. However, the NPA does not guarantee that the record will be made available to you in that language.
- (e) If you are requesting information on behalf of another, it is your responsibility to attach a copy of the mandate authorising you to request such information. The NPA will not process your application until such time as it has received this mandate. In the case of requests on behalf of illiterate persons, a sworn affidavit by the person on whose behalf the information is being requested will suffice as proof of mandate. In other instances, letters of

authorisation from the person or their legal guardian, where appropriate, will suffice as proof.

- (f) You will also be required to indicate the manner in which you would like to be given notice of our decision.
- (g) Your request will not be refused automatically on the grounds that it did not meet the procedural requirements identified in the Act. In instances where your request does not meet certain procedural requirements, the Information Officer will notify you of the intention to refuse your request on grounds of non-compliance. The notice will identify those areas where the request does not meet the relevant procedural requirements. If needed, the Information Officer and relevant support staff are available to answer any questions you may have about completing the form.

16.3 *Payment of applicable fees*

The amounts of fees have been set by the Minister for Justice and Constitutional Development, and can be varied from time to time by proclamation in the *Government Gazette*. The following types of fees are provided for in the Act:

(a) Request Fees

Request fees should be paid at the time of the submission of your request. Applications for access to one of our records will not be processed until the request fee has been paid or proof of payment received (whichever is applicable). If a request is received without payment or proof of payment of the request fee, you will be notified that the fee is outstanding and that your request will not be processed until payment or proof of payment has been received. As mentioned above, the prescribed request fee for all public bodies, including the NPA, is contained in a Proclamation in the *Government Gazette*.

This amount can be paid in any one of the following ways:

- Direct deposits into the NPA Bank Account. The details are as follows:

Account holder name: National Prosecuting Authority
of South Africa

Bank Name : Standard Bank of SA

Account Number : 010105328

Branch Number : 010045

Branch name : Church Square.

Reference number : PAIA 2/2/2/1

- Payment at the Head Office of the NPA
 - Cash.
 - Postal orders.
 - Bank guaranteed cheques.

Payment by credit card and non-guaranteed cheques will not be accepted.

Please note that in the event of a direct deposit into the abovementioned bank account, it is your responsibility to submit proof of deposit, to the NPA, as we will not be able to process your request until that documentation is received.

As noted above, the request fee does not need to be paid when you request personal information about yourself from the NPA – i.e. when you fall within the definition of a personal requester described in the Act.

(b) Access Fees

The prescribed access fee, which is payable once access has been granted, consists of the following costs:

- The cost of reproducing the record (if applicable).
- The costs for time spent searching for the record.
- The costs for preparing the record for disclosure, including making arrangements for making it available in the preferred format and language.
- The cost of postage (if applicable).

The Minister will from time to time prescribe the rates payable. The Information Officer will notify you of the applicable access fee once the record has been prepared. Payment can then be made in the same way as provided for above in respect of request fees. The same procedures also apply in respect of proof of payment. Please note that we will withhold the record until payment of the access fee has been made or proof of payment has been received (whichever is applicable).

When it appears to the Information Officer that the preparation of the record will involve more than 6 hours of work, you will be required to pay one third of the access fee that would be payable if the request is granted, and will be notified of such. The NPA's notice will also advise you that you may lodge an application in court against the tender or payment of a deposit fee.

17. Taking a decision on your request

17.1 The Information Officer will, as soon as is reasonably possible, take a decision on whether to grant your request. The Act gives, the NPA, a period of 30 calendar days, from receipt of your request, within which to notify you of a decision. However, if payment is not made or proof of payment not received on the same day as the request form, the 30 day period will run from the date that the request fee is paid or proof of payment is received by the NPA.

- 17.2 In the event that your request is for a large number of records, or requires a search through a large number of records, and will be difficult to process within the 30-day period, the Information Officer may extend the period for making a decision on your request for a further maximum of 30 days. The Information Officer can also extend the period if the record is not situated in the same town or city as the Office of the Information Officer and cannot as a result be reasonably completed within the required timeframes. Similarly, if the decision on access to the record requires consultation within the NPA, which cannot reasonably be completed within the necessary timeframes, the period for notifying you of the NPA's decision may be extended.
- 17.3 If the period is extended, you will be notified of the new date by which a decision on your request will be taken. If you have any objection, you are entitled to make an application to court challenging the Information Officer's decision.
- 17.4 If all reasonable steps are taken to find the requested record, and the Information Officer has reason to believe that it does not exist, or is not held by the NPA, the Information Officer will, notify you in writing that it is not possible to give access to that record. The notice will set out the steps that were taken to find the record in question. However, even if access can be granted, the Information Officer may also defer access to your request for a reasonable period if the record you have requested access to—
- is to be published within 90 days of receiving your request; or,
 - is required by law to be published but is yet to be published; or,
 - has been prepared for submission to Parliament or another person, but has yet to be submitted.
- 17.5 When access is deferred, you will be notified of that decision. However, you may within 30 days of receiving such notice, make a representation to the Information Officer as to why access is needed before then.

17.6 Finally, we would like to point out that although the Act lays down specific grounds upon which a decision may or must be refused, each request will be examined on an individual basis to determine whether or not access will or will not be granted.

PART II: GROUNDS FOR REFUSAL OF REQUEST

18. Mandatory grounds for refusal

18.1 Protection of privacy of a third party who is a natural person

18.1.1 The Information Officer is obliged to refuse a request for access to a record held by the NPA if its disclosure would involve the unreasonable disclosure of personal information about a third party who is a natural person. However, if the third party concerned consents to the disclosure of that record after receiving notice of the request, or the information is already publicly available then access may be granted.

18.1.2 Other circumstances in which access may be granted is where the individual is deceased and the requester is his or her next of kin; or where the individual is or was an official of the NPA, and the request is limited to information on the position or functions of the person concerned.

18.1.3 The Information Officer must grant access to the record containing personal information of a third party if disclosure of that record would reveal evidence of a substantial contravention of the law, an imminent and serious public safety or environmental risk, and the public interest in the disclosure clearly outweighs the harm contemplated. Parts of the record, which may be severed without the rendering the record incomprehensible, may be withheld from the requester.

18.2 *Protection of commercial information of third party*

- 18.2.1 The Information Officer is obliged to refuse a request for access to a record that contains financial, commercial, scientific or technical information of a third party, if disclosing that record would be likely to cause harm to the commercial or financial interests of that third party. Additionally, if the information in the record requested was supplied in confidence by the third party, and would be likely to put that third party at a disadvantage in contractual or other negotiations, or prejudice that third party in commercial competition, the Information Officer must refuse the request.
- 18.2.2 However, if the information requested is already publicly available, or that third party has consented in writing to the disclosure of the information, it is within the Information Officer's discretion to grant access to that record.
- 18.2.3 The Information Officer must grant access to that record if disclosure would be in the public interest as described in paragraph 18.1.3 above.

18.3 *Protection of certain confidential information*

- 18.3.1 Where the disclosure of a record held by the NPA would constitute a breach of a duty of confidence owed to a third party in terms of an agreement, the Information Officer must refuse a request for access to that record.
- 18.3.2 Additionally, if the disclosure of the record could be expected to prejudice the future supply of information, or information from the same source, and it is in the public interest that such information continued to be supplied, the Information Officer may (but is not obliged to) refuse access to the request concerned. If, however, disclosure of the record would be in the public interest, the Information Officer must disclose the record.

18.4 *Protection of safety of individuals, and protection of property*

If disclosure of a record could reasonably be expected to endanger the life or physical safety of an individual, access to that record must be refused. This is particularly applicable to information held by covert section of our organisation, such as the Office of Witness Protection.

18.5 *Protection of police dockets in bail proceedings*

18.5.1 If disclosure of a record is prohibited by section 60(14) of the Criminal Procedure Act, 1977, the Information Officer must refuse a request for such record. Section 60(14) relates to bail proceedings and prohibits disclosure of any information, record or document relating to the offence in question, which is contained in, or forms part of, a police docket. This includes any information, record or document, which is held by a police official charged with the investigation in question.

18.5.2 The prosecutor in charge of the case does, however, have the discretion to grant access to the docket. This discretion is provided for in section 60(14). In exercising this discretion, prosecutors will be mindful of the provisions of section 60(11) of the Criminal Procedure Act, which provides that an accused charged with certain offences shall be held in custody unless he or she adduces evidence, which satisfies the court that exceptional circumstances exist to justify his or her release. If such evidence is to be found in the docket, prosecutors may exercise their discretion to grant access to the docket, bearing in mind their duty as officers of the court to act in the interests of justice.

18.5.3 Thus, the correct procedure would be to approach the prosecutor in charge of the case with a request for access to the docket. If that request has been denied, then the bail applicant is not entitled to use the provisions of the Act to gain access to the docket. If the prosecutor grants the request, then it will not be necessary to apply to the Information Officer for access in terms of the Act.

18.6 *Protection of records privileged from production in legal proceedings*

The Information Officer must refuse access to records that are privileged in legal proceedings, such as records that enjoy legal professional privilege.

18.7 *Protection of research information of third party or public body*

18.7.1 The Information Officer must refuse a request for access to information about research being done or to be carried out by or on behalf of a third party, if its disclosure would expose that third party, the researchers concerned, or the subject matter of the research, to serious disadvantage.

18.7.2 Similarly, the Information Officer must refuse access to information about research being done or to be done by or on behalf of a public body, if disclosure of the requested records would expose that public body, the researchers concerned, or the subject matter of the research, to serious disadvantage.

19. Discretionary grounds for refusal

19.1 *Protection of law enforcement and legal proceedings*

19.1.1 If a record of the NPA contains methods, techniques, procedures or guidelines for the prevention, detection, curtailment or investigation of offences, or the prosecution of alleged offenders, and the disclosure of such information could reasonably be expected to prejudice the effectiveness of those methods, techniques, procedures or guidelines, the Information Officer may refuse the request.

19.1.2 The Information Officer may also refuse a request for access to information if the prosecution of an alleged offender is being prepared

or is about to commence, and the disclosure of that record would impede the prosecution, or result in a miscarriage of justice in that prosecution.

19.1.3 Furthermore, access to a record of the NPA may generally be refused if disclosure of the record could reasonably be expected to–

- prejudice an investigation of a contravention of possible contravention of a law (regardless of whether that investigation is in progress, is about to commence or is likely to be resumed);
- reveal or enable a person to ascertain the identity of a confidential source of information;
- result in the intimidation or coercion of a witness, or person who might be called as a witness in criminal or other proceedings;
- facilitate the commission of a crime; or
- prejudice or impair the fairness of a trial.

19.1.4 The Information Officer may also refuse to confirm or deny the existence of a document where the existence or non-existence of the record would be likely to cause harm. In such situations, the Information Officer will state this fact in his or her notice to you.

19.2 *Defence, security and international relations of South Africa*

19.2.1 The Information Officer may refuse your request if disclosure of the record or records concerned can reasonably be expected to prejudice the defence, security or international relations of the Republic.

19.2.2 Your request will also be refused if the information contained in the record was–

- supplied in confidence by or on behalf of another state or international organisation;

- supplied by or on behalf of SA to another state or international organisation in terms of an international agreement;
- required to be held in confidence by an international agreement or customary international law.

19.2.3 The Act spells out a long list of the type of information covered by this provision in section 41(2) of the Act.

19.3 *Economic interests and financial welfare of the Republic*

The Information Officer has a discretion to refuse your request if the information that will be disclosed as a result of granting your request—

- would be likely to materially jeopardize the economic interests or financial welfare of South Africa;
- contains the trade secrets of the State or a public body;
- contains financial, commercial, scientific or technical information that could cause harm to the commercial or financial interests of the State if disclosed;
- contains information that could reasonably be expected to put a public body at a disadvantage in contractual negotiations, prejudice a public body in commercial competition; or
- is a computer programme owned by the State or a public body.

19.4 *Operations of public body*

19.4.1 If a record being requested contains—

- an opinion, advice, report or recommendation that has been obtained for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty;
- an account of a consultation, discussion or deliberation that has occurred for the purpose of policy formulation or taking a decision as noted above

then the Information Officer may refuse access to that record.

19.4.2 Similarly, if the disclosure of a record could reasonably be expected to frustrate the deliberative process in a public body or, if prematurely exposed, could reasonably be expected to frustrate the success of a policy, the Information Officer has the discretion to refuse such a request.

19.4.3 Access to draft versions of records may be refused. As may records containing evaluative material where disclosure of the record would breach a promise made to the person who supplied the material.

19.5 *Manifestly frivolous or vexatious requests*

If a request is deemed to be manifestly frivolous or vexatious, or the work involved would substantially and unreasonably divert the resources of the NPA, the Deputy Information Officer may refuse the request.

19.6 *Protection of privacy of a third party who is a natural person*

19.6.1 The Information Officer is obliged to refuse a request for access to a record of a third party held by the NPA if its disclosure would involve the unreasonable disclosure of personal information about a third party who is a natural person or commercial information of the third party or breach of contractual agreement (expressed as a duty of confidentiality or confidence) with the third party.

19.6.2 However, if the third party concerned consents to the disclosure of that record after receiving notice of the request, or the information is already publicly available, then access may be granted. Other circumstances in which access may be granted, is where the request is about information already publicly available or is in the public interest or is limited to an individual who is or was an official of a public body and

which relates to the position or functions of the individual, including, but not limited to—

- the title, work phone number, work office number and other similar particulars of the individual;
- the classification, salary scale and responsibilities of the position held or responsibilities performed by the individual.

PART III: APPEALS

20. Appeals against decisions by Information Officer

20.1 The Act makes provision for the requestor to appeal a decision of the Information Officer regarding the form of access granted, the access fees including the access deposit to be paid or a refusal to grant access. However, because the NPA is an institution exercising power and performing duties in terms of the Constitution, there is no internal appeal process regarding the decisions of the Information Officer.

20.2 A requester or third party who is unhappy about a decision of the Information Officer must lodge an application with the Court within 30 days, from date of receipt of the decision, for appropriate relief. An application must be made either at the Constitutional Court, the High Court or another court of similar status (including a Magistrates Court presided over by a designated magistrate). An application must be brought on notice of motion and must be—

- supported by an affidavit setting out the facts and circumstances upon which the application is based;
- accompanied by true copies of all documents upon which the applicant intends to rely; and
- addressed and delivered to the clerk of the court and the NPA.

- 20.3 It should be noted that the rules of evidence applicable in civil proceedings apply in this appeal. The court hearing the application may grant any order that is just and equitable, including but not limited to—
- confirming, amending or setting aside the decision which is the subject of the application;
 - requiring the Information Officer to take such action or refrain from taking such action as the court considers necessary within a period mentioned in the order; and
 - granting an interdict, interim or specific relief, or compensation.

PART IV: INFORMATION AVAILABLE IN TERMS OF OTHER LAWS

21. Access to information in police dockets, preparatory examination records and certain statements made to peace officers are already provided for in terms of other laws. In other words, it is not necessary to use the provisions of the Promotion of Access to Information Act to gain access to these records. The applicable procedures are set out below.

21.1 Information in police dockets

- 21.1.1 In terms of the policy directives issued by the NDPP on 1 November 1999,¹⁰ a defence application for access to the docket should be in writing. The police docket will in accordance with the Constitution be made available to a requestor if the requester is the accused or his or her defence attorney. Generally, such requests will only be considered after the investigation has been completed or reached an advanced stage. In this regard application for access will be made directly to the office of the prosecutor prosecuting the case.

- 21.1.2 In the normal course of events, only the “A” section of a docket will be furnished to the defence. Applications for access to the “B” and “C”

¹⁰ See NPA Policy Manual, B.31.

sections of the docket are generally refused. However, the accused may bring a formal court application in such circumstances. When an application for access is lodged with the court, it may be opposed where--¹¹

- there is a real risk that the identity of an informer may be disclosed;
- State secrets may be revealed;
- State witnesses may be intimidated;
- the proper ends of justice may be impeded;
- policing methods and investigative techniques may be disclosed; or
- confidential cooperation between police forces may be compromised or revealed.

21.1.3 Copies of statements and documents will only be made free of charge if the accused cannot afford to pay for them.

21.2 Preparatory examination record

21.2.1 Section 143 of the Criminal Procedure Act provides that an accused who is arraigned for sentence or for trial under section 139 of the Act may, without payment, inspect the record of the preparatory examination at the time of his arraignment before the court.

21.2.2 An accused who is arraigned for sentence or for trial under section 139 of the Criminal Procedure Act, shall be entitled to a copy of the record of the preparatory examination upon payment of a reasonable amount not exceeding twenty-five cents for each folio of seventy-two words. However, where a legal practitioner under the Legal Aid Act, 1969 (Act No. 22 of 1969), or *pro deo* counsel is appointed to defend the accused or where the accused is not legally represented, this amount is not applicable.

¹¹ Shabalala and Others vs Attorney General Transvaal and Another; 1995 (2) SACR 761 (CC)

21.3 Statements leading to criminal prosecution

Any person who has made a statement to a peace officer in writing or which was reduced to writing is entitled to a copy of that statement at his or her request if criminal proceedings are instituted against him or her in connection with the matter to which the statement relates. In the normal course of events this statement will form part of the contents of the police docket disclosed to the defence (see paragraph 21.1 *supra*).

PART V: INFORMATION AUTOMATICALLY AVAILABLE

22. No notice has yet been published regarding the categories of records of the NPA, which are available without a person having to request access in terms of the procedures in the Promotion of Access to Information Act. However, the following categories of records are already publicly available (examples of records for each category are also listed hereunder).

| CATEGORY | RECORDS |
|---------------------------------------|---|
| Newsletters | <ul style="list-style-type: none">• Khasho |
| Pamphlets | <ul style="list-style-type: none">• Domestic Violence• Thuthuzela Care Centres• Maintenance• Understanding the criminal justice system |
| Financial and performance information | <ul style="list-style-type: none">• Annual report |

FORM A

REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000)

FOR DEPARTMENTAL USE

Reference number: _____

Request received by _____
name and surname of information officer/deputy information officer on
_____ (date) at _____ (place)

Request fee (if any): R.....

Deposit (if any): R

Access fee: R.....

.....Signature of information officer/deputy Information Officer

A PARTICULARS OF PUBLIC BODY

The Information Officer/Deputy Information Officer:

B PARTICULARS OF PERSON REQUESTING ACCESS TO THE RECORD

- | |
|--|
| <p>(a) <i>The particulars of the person who requests access to the record must be given below.</i></p> <p>(b) <i>The address and/or fax number in the Republic to which the information is to be sent, must be given.</i></p> <p>(c) <i>Proof of the capacity in which the request is made, if applicable, must be attached.</i></p> |
|--|

Full names and surname: _____

Identity number: _____

Postal address:

Fax number: _____

Telephone number: _____

E-mail address: _____

Capacity in which request is made, when made on behalf of another person:

C. PARTICULARS OF PERSON ON WHOSE BEHALF REQUEST IS MADE

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: _____

Identity number: _____

D. PARTICULARS OF RECORD

(a) *Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.*

(b) *If the provided space is inadequate, please continue on a separate folio and attach it to this form.*

The requester must sign all the *additional* folios.

1 Description of record or relevant part of the record:

2 Reference number, if available: _____

3 Any further particulars of record:

E. FEES

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees:

F. FORM OF ACCESS TO RECORD

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

| | | | | | |
|--|--|--------------------------|---|--------------------------|---|
| <u>Disability:</u> <hr/> <hr/> <hr/> <hr/> | Form in which record is required: <hr/> <hr/> <hr/> <hr/> | | | | |
| Mark the appropriate box with an X. NOTES: (a) Compliance with your request for access in the specified form may depend on the form in which the record is available. (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form. (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested. | | | | | |
| 1. If the record is in written or printed form: | | | | | |
| <input type="checkbox"/> | copy of record* | <input type="checkbox"/> | inspection of record | | |
| 2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc): | | | | | |
| <input type="checkbox"/> | view the images | <input type="checkbox"/> | copy of the images* | <input type="checkbox"/> | transcription of the images* |
| 3. If record consists of recorded words or information which can be reproduced in sound: | | | | | |
| <input type="checkbox"/> | listen to the soundtrack (audio cassette) | <input type="checkbox"/> | transcription of soundtrack* (written or printed document) | | |
| 4. If record is held on computer or in an electronic or machine-readable form: | | | | | |
| <input type="checkbox"/> | printed copy of record' | <input type="checkbox"/> | printed copy of information derived from the record* | <input type="checkbox"/> | copy in computer readable form* (stiffy or compact disc) |

| | | |
|--|------------|-----------|
| <p>*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.</p> | <p>YES</p> | <p>NO</p> |
| <p>Note that <i>if</i> the record is not available in the language you prefer, access may <i>be granted</i> in the language in <i>which</i> the record is available.</p> | | |
| <p>In which language would you prefer the record? _____</p> | | |

G. NOTICE OF DECISION REGARDING REQUEST FOR ACCESS

You will be notified whether your request has been approved/denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed at thisday of.....20

SIGNATURE OF REQUESTER / PERSON ON
WHOSE BEHALF REQUEST IS MADE