

PUBLIC AUDIT AMENDMENT BILL COMMENTS

No.	Status quo	Proposed amendments	Rationale for amendment
1.	<p>Section 50. No authorised auditor, person assisting an authorised auditor or a member of the staff of the Auditor-General may, without the permission of the Auditor-General, disclose information obtained in the course of an audit or the carrying out of duties in terms of this Act otherwise than in an audit report or in accordance with section 18(4).</p>	<p>Section 50. (1) No authorised auditor, person assisting an authorised auditor or a member of the staff of the Auditor-General may, without the permission of the Auditor-General, disclose information obtained in the course of an audit or the carrying out of duties in terms of this Act otherwise than in an audit report or in accordance with section 18(4).</p>	<p>Currently, section 50 of the Public Audit Act 25 of 2004 (PAA) makes it difficult for the deputy Auditor-General, as a head of administration, to be an information officer responsible for public access to the audit related information and records generated and received in pursuance of the Auditor-General of South Africa's mandate.</p> <p>In terms of section 1 of PAIA 'information officer' of, or in relation to, a public body- (c) in the case of any other public body, means the chief executive officer, or equivalent officer, of that public body or the person who is acting as such. The deputy Auditor-General fit this role as section 32. (1) of the PAA stipulates that the deputy Auditor-General is the head of the administration who must perform the functions of office in accordance with the directions of the Auditor-General.</p> <p>The proposed amendment is an attempt to reconcile/harmonise the above identified sections of both the PAA and PAIA or to</p>

		<p>Section 50. (2) Consistent with subsection (1) above the Auditor-General render the Auditor-General of South Africa accessible for requesters of its audit related information and records, and the deputy Auditor-General render the Auditor-General of South Africa accessible for requesters of its non-audit information and records in terms of the Promotion of Access to Information Act 2 of 2000.</p>	<p>close a gap as it has a negative practical implication.</p>
<p>2.</p>	<p>Section 21. (1) The Auditor-General must submit an audit report in accordance with any legislation applicable to the auditee which is the subject of the audit.</p>	<p>Section 21. (1) The Auditor-General must submit one copy of audit report in accordance with any legislation applicable to the auditee which is the subject of the audit and keep another copy for reference purpose and any legal matters.</p>	<p>Section 28 (3) (a) and (c) of PAA stipulate that the auditor appointed in terms of section 25 (1) of the same Act must submit the copies of the audit report to the auditee and to the Auditor-General, among other recipients.</p> <p>From an information and records management perspective, it is logical to explicitly state that the Auditor-General keep copies of audit reports generated from audits that the Auditor-General have conducted as well. This will provide the basis in which the Auditor-General have complete collection in its repository of both audit reports generated by the auditor appointed in terms of section 25 (1) of PAA</p>

	<p>and those generated in terms of section 21 of the same Act.</p> <p>Section 181 (2) of the Constitution of South Africa of 1996 stipulate that “These institutions are independent, and subject only to the Constitution and the law...”. Since the Auditor-General is one of the Chapter 9 institutions subject to the Constitution and the law, it is not clear if the definition of the “governmental bodies” defined in section 1 of the National Archives and Records Services of South Africa Act 43 of 1996 include the Chapter 9 institutions.</p> <p>As the Auditor-General expect the auditees to properly manage their information and records as a basis for audit process, the Auditor-General must lead by example in that regard and be subjected to the same law.</p>
	<p>Management of information and records</p> <p>18. (1) The Auditor-General must manage and take care of information obtained in terms of section 15(1), (2) or (3) or (16) or generated in pursuance of its mandate subject to section 13 of the National Archives and Records Service of South Africa Act 43 of 1996 as amended.</p> <p>(2) The Auditor-General must take precautionary steps to guard against the disclosure of secret or classified information obtained in terms of section 15(1), (2) or (3) or 16.</p> <p>(3) Steps taken in terms of subsection (1) may not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act or the Municipal Finance Management Act or the Municipal Finance Management</p>
<p>3. Protection of information</p> <p>18. (1) The Auditor-General must take precautionary steps to guard against the disclosure of secret or classified information obtained in terms of section 15(1), (2) or (3) or 16.</p> <p>(2) Steps taken in terms of subsection (1) may not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act or the Municipal Finance Management Act, or any other legislation as applicable to the auditee which is the subject of the audit, or on any other irregular or criminal conduct relating to the financial affairs of an auditee, but any such disclosure may not include facts the disclosure of which would harm the national interest.</p> <p>(3) The Auditor-General, an authorised auditor or an assistant or other person referred to in section 17, is competent but may not be compelled to disclose information obtained in the course of official duties in any proceedings in which the Auditor-General is not a party, before—</p> <p>(a) a court in a civil matter; or</p>	

	<p>Act, or any other legislation as applicable to the auditee which is the subject of the audit, or on any other irregular or criminal conduct relating to the financial affairs of an auditee, but any such disclosure may not include facts the disclosure of which would harm the national interest.</p> <p>(4) The Auditor-General, an authorised auditor or an assistant or other person referred to in section 17, is competent but may not be compelled to disclose information obtained in the course of official duties in any proceedings in which the Auditor-General is not a party, before—</p> <p>(a) a court in a civil matter; or</p> <p>(b) any other body or institution established in terms of legislation.</p> <p>(5) Subsection (3) does not apply in any proceedings before—</p> <p>(a) a legislature or an internal committee of a legislature; or</p> <p>(b) a court in a criminal matter.</p>	<p>(b) any other body or institution established in terms of legislation.</p> <p>(4) Subsection (3) does not apply in any proceedings before—</p> <p>(a) a legislature or an internal committee of a legislature; or</p> <p>(b) a court in a criminal matter.</p>
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