

COMMITTEE SECRETARY

The Portfolio Committee on Justice and Constitutional
Development

Our reference: COM0109
Your reference

Dear Mr Ramaano

Date: 13 November 2008

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**PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 ("The Act"). RULES OF
PROCEDURE FOR APPLICATION TO COURT IN TERMS OF THE IN TERMS OF THE
PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000**

We thank you for the granting us an opportunity to comment on the abovementioned and while we accept the introduction of the said rules, we wish to point out the following:

The Act does not provide for an internal appeal process where the public body concerned is as defined in terms of paragraph (b) of the definition of a public body in the Act. That being the case, a reasonable inference to draw would be that these rules will also not apply where the application to Court is an application against a decision made by a paragraph (b) public body.

We believe this could not have been the intention of the drafters of the rules and implore the Portfolio Committee to seriously take a look at this lacuna which we believe can only be corrected by removing the limitation in Section 74(1) of the Act. This would then allow for the rules to apply to all applications contemplated in terms of Section 78 of the Act.

Presently, Section 74(1) reads as follows;

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Eskom Holdings Limited Reg No 2002/016527/09



"Right of internal appeal to relevant authority"

74. (1) A requester may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of "public body" in section 1—

(a) to refuse a request for access; or

(b) taken in terms of section 22, 26(1) or 29(3), in relation to that requester with the relevant authority.

(2) A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of "public body" in section 1 to grant a request for access."

The proposed amendment to the said section will lead to the said section readings as follows:

Right of internal appeal to relevant authority

74. (1) A requester may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of "public body" in section 1—

(a) to refuse a request for access; or

(b) taken in terms of section 22, 26(1) or 29(3), in relation to that requester with the relevant authority.

(2) A third party may lodge an internal appeal against a decision of the information officer of a public body referred to in paragraph (a) of the definition of "public body" in section 1 to grant a request for access."

Hope that the above will meet with your favourable consideration.

Yours Faithfully



Willie Du Plessis
GENERAL MANAGER (LEGAL)