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OVERVIEW: SOUTH AFRICAN HUMAN RIGHTS COMMISSION: PAIA 2011/12 ANNUAL REPORT

'The Promotion of Access to Information Act, passed twelve years ago was intended to set standards for transparency and accountability that would in theory, enable citizens to access records from government and business. However, the section 32 reports analysed in this Annual Report shows that while there is an increase in requests for information from the public, government readiness to meet the demand for information remains consistently low.'¹

1. INTRODUCTION

The South African Human Rights Commission has a specific mandate set out by the Promotion of Access to Information Act 2 of 2000 (PAIA), to promote the right to access information and monitor compliance with the legislation. The Commission's mandate in respect of PAIA as set out in section 83 of the Act is to; promote the right of access (through a guide and awareness raising); assist public and private bodies to comply; conduct training for Information and Deputy Information officers and inform and monitor legislative development.

Provisions of PAIA with specific relevance are sections 14 and 51 which require all public bodies and private bodies respectively to submit manuals – road maps detailing the records held and services provided in respect of PAIA. As well as Section 32 PAIA reports which provide a 'statistical snapshot' of responses to access to information requests during the reporting cycle. All public bodies have an obligation to submit to the Commission a report on requests for information processed over a particular period. The Commission collates the data from public bodies and produces statistics on an annual basis.

In its 2011 Budget Review and Recommendation Report the Portfolio Committee requested that the Commission report on its PAIA mandate separately.

2. ACTIVITIES 2011/12

The Commission reports that it achieved its strategic objectives in respect of PAIA for 2011/12 through the following:

- Promotion; through training, media interventions hosting the National and Provincial Information Officers Forums, publications and stakeholder engagements.
 - 33 workshops were held and 1065 Deputy Information Officers (DIO) were reached (31 workshops and 930 DIO's reached in 2010/11).
 - 2 Provincial Information Officer Forums were held and 1 National Information Officers Forum as well as the Golden Keys Award Ceremony. (Best overall institution was the Limpopo Treasury and the DIO of the Limpopo Treasury was best DIO. Consistent top performer was the Theewaterskloof Municipality.)

¹ PAIA 2011/12 Annual Report, p3



- In order to get buy-in from executive management at public institution 'briefing sessions' were held (this had a positive impact in respect of the Departments of Labour, Communications and the IDC and NRF.)
- A community development initiative was held at Diepsloot to educate community members about the Act.
- A community tool on access to information was developed which simplifies PAIA to be used as a training guide.
- A PAIA newsletter is published every quarter for Deputy Information Officers.
- Monitoring compliance and implementation; through compliance audits and formal monitoring in terms of sections 14, 32 and 51 of the Act.
 - Compliance audits; 13 institutions were audited (compliance is based on submission of section 32 reports and section 14 manuals). 90% of the institutions audited were not compliant with section 32 and 14 nor did they have systems in place to monitor PAIA. A lack of awareness of PAIA was identified from the audit process. PAIA was not being considered as a deliverable and included in operational and strategic plans
 - General compliance rates in respect of **section 32 reports** have improved by 7% nationally and 11 % provincially.
 - National compliance was 62% in 2010/11 and is 69.77% in 2011/12 (18 National Departments were complaint in 2010/11 and 30 in 2011/12.) The Departments of Basic Education, Home Affairs and Health were previously not compliant; however in 2011/12 they submitted their section 32 reports. There are thirteen non-compliant government bodies. Key departments remaining non-compliant are Social Development and Water Affairs.
 - Provincial compliance was 53% in 2010/11 (56 of 104 provincial departments) and improved to 61% in 2011/12 (64 of 104 provincial departments). The Free State and Western Cape achieved 100% compliance and KZN 70%. However, the North West remains a cause for concern with no compliance.
 - Eastern Cape – 1 department was compliant and 12 non-compliant.
 - Free State – 100% compliance.
 - Gauteng – 8 department's complaint and 3 non-compliant.
 - KZN – 11 department's complaint and 3 non-compliant.
 - Limpopo - unclear
 - Mpumalanga – 2 department's complaint and 10 non-compliant.
 - North West – 100% non-compliance
 - Northern Cape – 4 department's compliant and 8 non-compliant
 - Western Cape – 100% compliance.
 - Local government compliance remains abysmally low although there has been some improvement: in 2010/11 20 municipalities submitted section 32 reports and in 2011/12 this increased to 69.
 - General compliance with **section 14** reveals that:



- Nationally, 25 Departments out of 44 complied (57%) (In 2010/11 20 National departments complied). Although all national departments have websites some Departments such as Human Settlement, Correctional Services, Public Enterprises and Basic Education have not updated their manuals since 2006. This is a breach of the Act which states that information manuals should be updated annually.
 - Provincially, 55 of 108 Departments complied (51%). Western Cape and Free State were 100% compliant with a serious need for intervention in Mpumalanga and the North West.
 - Locally, 33 municipalities of 276 complied (12%); Gauteng has the highest number of compliant municipalities (10 of 12). The North West has been non-compliant for three years. This is despite a meeting with officials from the Office of the Premier.
 - General compliance with **section 51** which requires private institutions to compile an information manual placed an onerous burden on the Commission and smaller business enterprises. This resulted in the Department of Justice extending the moratorium on submission of section 51 manuals from 31 December 2011 to December 2015. During the latter half of 2011, before the extension of the moratorium was announced the Commission received over 200000 manuals and assisted over 10000 requestors.
 - Overall compliance remains a challenge with resource constraints lack of awareness and buy-in cited as particular challenges. The Commission contends it should be given powers to penalise non-compliance and inaccurate reporting. The Commission has identified an ongoing problem with inaccurate reporting in respect of section 32. (The Commission provides an example of LASA.) The Commission recommends a review of section 32 reporting to ensure more substantive reporting, an extension of powers to penalise and a duty on heads of public bodies to report on section 32 in reports to Parliament
- Protection; through assistance to requestors; monitoring and responding to emerging legislation that may threaten PAIA and making recommendations to the Executive and Parliament.
 - Assistance was provided to 138 DIO's (this is increasing which shows growing awareness); 154 private individuals; 35 662 private bodies (mainly around section 51 compliance and in response generic templates were developed to assist institutions with their manuals.)²
 - Monitoring of legislation focused on largely on submissions made in respect of the Protection of State Information Bill.
 - Recommended amendments to PAIA in respect of;
 - Section 51 and the need for a clear directive to be issued on categories of private sector actors required to submit the section 51 manuals given the impact of this section on small business entities and the challenges facing the Commission which does not have the resources to receive the section 51 manuals. The Commission made vigorous enquiries to the

² Different statistics are provided in the SAHRC 2011/12 Annual Report



Department of Justice in 2010 and 2011 around the section 51 moratorium which was to expire in December 2011. The extension of the moratorium a day before the expiry date did not help the Commission which has been inundated with 200000 manuals.

- Section 32 places an obligation on public bodies to make annual Submissions to the Commission on PAIA requests. Compliance remains low and it is recommended that section 90 of the Act be amended to provide for a penalty provision against an information officer who does not comply with section 32.
 - Section 46 the requirements for information to be released in the public interest are unduly restrictive and thus the clause should be reviewed.
 - Definition of an information officer creates confusion and requires review.
- Institutional Compliance; through an Annual Report submitted to Parliament

3. TRENDS OVER 2011/12

Requestor trends:

- 24857 requests were lodged with national government departments. The bulk of requests were submitted to SAPS (23 539 requests), the Department of Justice and Constitutional Development (792 requests) and Department of Home Affairs (139 requests). Nationally there were 164 refusals (SAPS with the majority at 113). There were no court applications that resulted. The Commission raises red flags around the need for public bodies to ensure PAIA requests are properly recorded and responded to because inaccurate reporting is a problem.
- 11 972 requests were lodged with provincial departments. The bulk being in KZN, at 10912 with the Department of Health processing 9809 requests. In total 1627 requests were refused. The highest number of refusals was recorded in KZN at 1553. There were four court applications.
- 747 requests were lodged with local municipalities. The bulk in the Western Cape with 375 requests. In total 117 requests were refused. The highest number of refusals was recorded in the Western Cape at 62. There were no court applications that resulted.
- It remains a concern that PAIA requests are not being properly recorded.

Sources

SAHRC Annual Report 2010/11
SAHRC Annual Report 2011/12
SAHRC PAIA Report 2011/12

