

PROMOTION OF ACCESS TO INFORMATION ACT MANUAL

*In terms of section 51 of the Promotion of Access to Information Act
Act 2 of 2000*

1 INTRODUCTION

Section 32 of the Constitution of the Republic of South Africa, No. 108 of 1996 (“**the Constitution**”) provides:

- (1) **Everyone has the right of access to –**
 - (a) **any information held by the state; and**
 - (b) **any information that is held by another person and that is required for the exercise or protection of any rights.**

- (2) **National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.**

The Promotion of Access to Information Act, 2 of 2000 (“**the Act**”), was enacted on 3 February 2002 to give effect to section 32 of the constitution, that is giving effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights. Where a request is made in terms of this Act, the private or public body to whom the request is made is obliged to release the information, except where the Act expressly provides that the information must not be released. The Act sets out the requisite procedural issues attached to such request.

The act came into effect on 9 March 2001 with the exception of sections 10, 14, 16 and 51 which sections were brought into operation on 15 February 2002.

2 WHO MAY REQUEST INFORMATION IN TERMS OF THE ACT

Any person, who requires information for the exercise or protection of any rights, may request information from a private body. Section 50 of the Act states that;

- (1) **A requester must be given access to any record of a private body if –**
 - (a) **that record is required for the exercise or protection of any rights;**
 - (b) **that person complies with the procedural requirements in this Act relating to a request for access to that record; and**
 - (c) **access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.**

3 PROCEDURES FOR OBTAINING ACCESS

3.1 Contact Details

Any person who wishes to request any information from Midnight Star Trading 378 cc ta MS IT Solutions with the object of protecting or exercising a right may contact the Information officer whose contact details are as follows;

The Information Officer – Bradley W. Botten

Midnight Star Trading 378 cc ta MS IT Solutions
Unit 5 & 6 Easylife Park
390 Fabriek Street
Strijdompark
Randburg

Tel: 011 278 2121
Fax: 086 502 5822
e-mail: bradley@msits.co.za
Website: www.msits.co.za

3.2 Prescribed Access Form

In terms of section 53, a request for access to a record of Midnight Star Trading 378 cc ta MS IT Solutions must be made in the prescribed form to Midnight Star Trading 378 cc ta MS IT Solutions at the address, fax number or electronic mail address given above.

If the request is made on behalf of a person, the submission of proof of the capacity in which the requestor makes the request, to the satisfaction of the information officer.

For a specimen of the request form see **ANNEXURE A** to the manual. The prescribed time periods will not commence until all pertinent information has been furnished on the private body by the requestor.

3.3 Prescribed Fees

Payment of fees is regulated in terms of section 54 of the Act. The Regulations to the Act provide for two types of fees:

- Request fee: This is a non- refundable administration fee paid by all requestors with the exclusion of personal requestors. It is paid before the request is considered.
- Access fee: This is paid by all requestors only when access is granted. This fee is intended to reimburse the private body for the costs involved in searching for a record and preparing it for delivery to the requestor.

Midnight Star Trading 378 cc ta MS IT Solutions may withhold a record until the request fee and the deposit (if applicable) have been paid. A schedule of the prescribed fees is attached as **ANNEXURE B** to the manual.

3.3.1 Requestor other than Personal Requestor

The information officer must give written notice to a requestor other than a personal requestor of the request fee and amount to be paid before the request may be further processed.

If in the information officer's opinion the search for a record, or preparation of the record for disclosure will require more than the prescribed hours, the information officer may require the requestor to pay a deposit, not being more than one third of the access fee that would be payable if the request is granted. If the request is declined, the deposit must be repaid to the requestor.

The notice given by the information officer must advise the requestor that s/he has a right to apply to court against the payment of the request fee or deposit, and also advise of the procedure of the application.

3.3.2 Personal Requestor

A personal requestor is described in terms of the Act as a requestor seeking access to a record containing information about the requestor.

A personal requestor is not liable to pay a request fee, is liable for payment of access fees in the event of a request being granted, but may not be required to pay a deposit before the granting of the record.

4 HUMAN RIGHTS COMMISSION GUIDELINE

In terms of section 10 of the Act, the Human Rights Commission must compile a guide by 14 August 2003. This guide is intended to assist users in the interpretation of the Act. The guide will contain a description of the objects of the Act, the contact details of the information officers of all the public bodies, particulars of the public bodies, the manner of access to the records of those public bodies and the remedies available in law regarding a breach of any of the provisions of the Act.

More details on this Act may be requested from The South African Human Rights Commission's whose contact details are;

Private Bag 2700
Houghton
2041
Tel: 011 484 8300
Fax 011 4841360

5 TYPES OF RECORDS

The requestor may request access to the following types of documents;

- 5.1 Personnel Records
- 5.2 Customer-related records
- 5.3 Private body records
- 5.4 The requestor may also request information which may be available under other legislation.

The Information officer will take into considerations section 8 of the manual to decide on whether or not access to any of the information stated above should be given to the requestor.

6 DECISION-MAKING PROCESS

- 6.1 The information officer will take all reasonable steps to find a record that has been requested.

6.2 The information officer will respond within 30 days, or if need be 60 days.

We will advise you if we decline your request.

7 THIRD PARTIES

If the request is for a record pertaining to a third party, the information officer will need to communicate with the third party first before responding.

8 GROUNDS FOR REFUSAL OF A REQUEST

The information officer may, in certain circumstances, not be able to meet your request. If this is the case the information officer will inform you in writing of our refusal of your request and the reason for it.

9 RIGHTS OF APPEAL

A requestor that is dissatisfied with the information officer's refusal to grant access to any information may, within 30 days of notification of the decision, apply to court for relief. Likewise, a third party dissatisfied with the information officer's decision to grant a request may, within 30 days of notification of the decision, apply to court for relief.

ANNEXURE A

FORM B

REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

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(Section 53(1) of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000)

(Regulation 4)

9.1.1 Particulars of private body

The Head:

9.1.2 Particulars of person requesting access to the record

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

Full name and surname:

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Identity number:

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Postal Address:

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Telephone number:

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Fax number:

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E-mail address:

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

A. 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 :

B. 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

9.1.3 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 therefore.*

Reason for exemption from payment of fees

9.1.4 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 hereunder, state your disability and indicate in which form the record is required.

Disability	Form in which record is required

Mark the appropriate box with an “X”
NOTES:

(a) *Your indication as to the required form of access depends 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:			
	Copy of record*		Inspection of record

2. If record consists of visual images: (this includes photographs, slides, video recordings, computer-generated images, sketches, etc)					
	View the images		Copy of the images*		Transcription of the mages*

3. If record consists of recorded words or information which can be reproduced in sound:			
	Listen to the soundtrack (audio cassette)		Transcription of soundtrack* (written or printed document)

4. If record is held on computer or in an electronic or machine-readable form:						
	Printed copy of record		Printed copy of information derived from the record*		Copy in computer readable form* (stiffy or compact disc)	
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you?					YES	NO
A postal fee is payable.						

C. Particulars of right to be exercised or protected:

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.

Indicate which right is to be exercised or protected:

1. Explain why the requested record is required for the exercising or protection of the aforementioned right:

H. Notice of decision regarding request for access:

You will be notified in writing whether your request has been approved / denied. If you wish to be informed thereof 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 _____ this ____ day of _____

**SIGNATURE OF REQUESTER/PERSON ON
WHOSE BEHALF REQUEST IS MADE**

ANNEXURE B

Reproduction fees

Where a private body has voluntarily provided the Minister with a list of categories of records that will automatically be made available to any person requesting access thereto, the only charge that may be levied for obtaining such records, will be a fee for reproduction of the record in question.

The applicable fees for reproduction as referred to above are:

*	For every photocopy of an A4-size page or part thereof	R 1.10
*	For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine readable form	R 0.75
*	For a copy in a computer-readable form on:	
	- stifty disc	R 7.50
	- compact disc	R 70.00
*	- A transcription of visual images, for an A4-size page or part thereof	R 40.00
	- For a copy of visual images	R 60.00
*	- A transcription of an audio record, for an A4-size page or part thereof	R 20.00
	- For a copy of an audio record	R 30.00
*	To search for a record that must be disclosed, R30,00 per hour or part of an hour reasonably required for such search	
*	Where a copy of a record needs to be posted the actual postal fee is payable.	

Deposits

Where a private body receives a request for access to information held on a person other than the requester himself / herself and the information officer upon receipt of the request is of the opinion that the preparation of the required record for disclosure will take more than 6 (six) hours, a deposit is payable by the requester.

The amount of the deposit is equal to 1/3 (one third) of the amount of the applicable access fee.