

## PAIA Manual for Finbond Group Limited

Prepared in accordance with Section 51 of the Promotion of Access to Information Act, No 2 of 2000.

Last Updated: November 2017

### 1. INTRODUCTION

The Promotion of Access to Information Act, No 2 of 2000 (“**the Act**”) was enacted on 3 February 2000, 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 the Act, the body to whom the request is made is obliged to release the information, **except where the Act expressly provides that the information may or must not be released**. The Act sets out the requisite procedural issues attached to such request.

### 2. PURPOSE OF THE MANUAL:

This manual is intended to foster a culture of transparency and accountability within the Financial Services Industry as a whole, by giving effect to the right to information that is required for the exercise or protection of any right and to actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect their rights. In order to promote effective governance of private bodies, it is necessary to ensure that everyone is empowered and educated to understand their rights in terms of the Act in order for them to exercise their rights in relation to public and private bodies. Section 9 of the Act however recognises that such right to access to information cannot be unlimited and should be subject to justifiable limitations, including, but not limited to:

- Limitations aimed at the reasonable protection of privacy;
- Commercial confidentiality; and
- Effective, efficient and good governance;

and in a manner which balances that right with any other rights, including such rights contained in the Bill of Rights in the Constitution. This manual sets out to provide a generic manual to the Financial Services Industry to deal with the requests in a conforming manner, which will enable the requestors to obtain the records which they are entitled to in a quick, easy and accessible manner. This manual may be adapted by the individual role players in the Financial Services Industry to specifically meet their needs. Wherever reference is made to “institution” in this manual, it will refer to Finbond for whom this manual has been adapted and compiled.

## PART I

### 3. CONTACT DETAILS & GENERAL INFORMATION

#### Information Officer – Mr H Cloete – Head of Compliance

Physical Address: Rigel Park, 446 Rigel Avenue South, Erasmusrand, Pretoria, 0181

Postal Address: PO Box 2127, Brooklyn Square, Brooklyn, Pretoria, 0075

Tel: (012) 460 7288

Fax: (012) 460 7215

Website: [www.finbondmutualbank.co.za](http://www.finbondmutualbank.co.za)

Email (Information Officer): [compliance@finbond.co.za](mailto:compliance@finbond.co.za)

## PART II

### 4. GUIDE OF SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The South African Human Rights Commission has compiled the guide contemplated in Section 10 of the Act. The Guide is available at the following website: [www.sahrc.org.za](http://www.sahrc.org.za). The guide will contain such information as may reasonably be required by a person who wishes to exercise any right contemplated in the Act. Any enquiries regarding this guide should be directed to:

#### The South African HUMAN RIGHTS COMMISSION,

Private Bag X2700, Houghton, 2041;

Telephone Number: (011) 484-8300;

Facsimile Number: (011) 484-1360;

## PART III

### 5. RECORDS OF THE FINANCIAL SERVICES INDUSTRY

This clause serves as a reference to the records that the institutions within the financial services industry hold. It is recorded that the accessibility of the documents listed herein below, may be subject to the grounds of refusal set out hereinafter. The information is classified and grouped according to records relating to the following subjects and categories:

#### 5.1 PERSONNEL RECORDS

5.1.1 Personal records provided by personnel;

5.1.2 Records provided by a third party relating to personnel;

5.1.3 Conditions of employment and other personnel-related contractual and quasi-legal records;

- 5.1.4 Internal evaluation records and other internal records;
- 5.1.5 Correspondence relating to personnel; and
- 5.1.6 Training schedules and material;

“Personnel” refers to any person who works for, or provides services to or on behalf of the institution, and receives or is entitled to receive remuneration and any other person who assists in carrying out or conducting the business of the institution. This includes, without limitation, directors (executive and non executive), all permanent, temporary and part-time staff, as well as contract workers.

## **5.2 CUSTOMER RELATED RECORDS**

- 5.2.1 Records provided by a customer to a third party acting for or on behalf of the institution in the financial services industry;
- 5.2.2 Records provided by a third party;
- 5.2.3 Records generated by or within the institution in the financial services industry relating to its customers, including transactional records;

A “customer” refers to any natural or juristic entity that receives services from the institution.

## **5.3 PRIVATE BODY RECORDS**

- 5.3.1 Financial records;
- 5.3.2 Operational records;
- 5.3.3 Databases;
- 5.3.4 Information Technology;
- 5.3.5 Marketing records;
- 5.3.6 Internal correspondence;
- 5.3.7 Product records;
- 5.3.8 Statutory records;
- 5.3.9 Internal Policies and Procedures;
- 5.3.10 Treasury-related records;
- 5.3.11 Securities and Equities; and
- 5.3.12 Records held by officials of the institution.

These records include, but are not limited to, the records which pertain to the institution’s own affairs.

## **5.4 OTHER PARTY RECORDS**

- 5.4.1 Personnel, customer or private body records which are held by another party, as opposed to the records held by the institution itself;
- 5.4.2 Records held by the institution pertaining to other parties, including without limitation, financial records, correspondence, contractual records, records provided by the other party, and records third parties have provided about the contractors/suppliers. The institution may possess records pertaining to other parties, including without limitation contractors, suppliers, subsidiary/holding/sister companies, joint venture companies, and service providers. Alternatively, such other parties may possess records that can be said to belong to the institution.

## **PART IV**

### **6. GROUNDS FOR REFUSAL OF ACCESS TO RECORDS**

The main grounds for the institution to refuse a request for information relates to the –

- 6.1 mandatory protection of the privacy of a third party who is a natural person, which would involve the unreasonable disclosure of personal information of that natural person;
- 6.2 mandatory protection of the commercial information of a third party, if the record contains –
  - 6.2.1 trade secrets of that third party;
  - 6.2.2 financial, commercial, scientific or technical information which disclosure could likely cause harm to the financial or commercial interests of that third party;
  - 6.2.3 information disclosed in confidence by a third party to the institution, if the disclosure could put that third party at a disadvantage in negotiations or commercial competition;
- 6.3 mandatory protection of confidential information of third parties if it is protected in terms of any agreement;
- 6.4 mandatory protection of the safety of individuals and the protection of property;
- 6.5 mandatory protection of records which would be regarded as privileged in legal proceedings;
- 6.6 the commercial activities of the institution, which may include –
  - 6.6.1 trade secrets of the institution;
  - 6.6.2 financial, commercial, scientific or technical information which disclosure could likely cause harm to the financial or commercial interests of the institution;
  - 6.6.3 information which, if disclosed could put the institution at a disadvantage in negotiations or commercial competition;
  - 6.6.4 a computer program which is owned by the institution, and which is protected by copyright.

- 6.7 the research information of the institution or a third party, if its disclosure would disclose the identity of the institution, the researcher or the subject matter of the research and would place the research at a serious disadvantage; Requests for information that are clearly frivolous or vexatious, or which involve an unreasonable diversion of resources shall be refused.
- 6.8 A record may not be refused insofar as it consists of information-
- 6.8.1 about an individual who has consented in terms of the Act or otherwise in writing to its disclosure to the requester concerned;
  - 6.8.2 already publicly available;
  - 6.8.3 that was given to Finbond by the individual to whom it relates and the individual was informed by or on behalf of Finbond, before it is given, that the information belongs to a class of information that would or might be made available to the public;
  - 6.8.4 about an individual's physical or mental health, or well-being, who is under the care of the requester and who is-
    - i. under the age of 18 years; or
    - ii. incapable of understanding the nature of the request, and if giving access would be in the individual's best interests;
  - 6.8.5 about an individual who is deceased and the requester is-
    - i. the individual's next of kin; or
    - ii. making the request with the written consent of the individual's next of kin; or
  - 6.8.6 about an individual who is or was an official of Finbond and which relates to the position or functions of the individual, including, but not limited to-
    - i. the fact that the individual is or was an official of Finbond;
    - ii. the title, work address, work phone number and other similar particulars of the individual;
    - iii. the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; and
    - iv. the name of the individual on a record prepared by the individual in the course of employment.
- 6.9 A record may also not be refused insofar as it consists of information about-
- 6.9.1 a third party who has consented in terms of section 72 or otherwise in writing to its disclosure to the requester concerned;
  - 6.9.2 the results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

- 6.10 Despite any other provision of this Manual, the CEO must grant a request for access to a record if-
- 6.10.1 the disclosure of the record would reveal evidence of-
    - i. a substantial contravention of, or failure to comply with, the law; or
    - ii. imminent and serious public safety or environmental risk; and
  - 6.10.2 the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.

## 7. **THIRD PARTIES**

- 7.1 The CEO considering a request for access to a record, must take all reasonable steps to inform a third party to whom or which the record relates of the request.
- 7.2 The CEO must inform a third party -
- 7.2.1 as soon as reasonably possible, but in any event within 21 days after that request is received; and
  - 7.2.2 by the fastest means reasonably possible.
- 7.3 When informing a third party in terms of subsection (1), the CEO must-
- 7.3.1 state that he or she is considering a request for access to a record and describe the content of the record;
  - 7.3.2 furnish the name of the requester;
  - 7.3.3 describe the provisions of section 63(1), 64(1), 65 or 69(1) of the Act, as the case may be;
  - 7.3.4 in any case where the CEO believes that the provisions of section 70 might apply, describe those provisions, specify which of the circumstances referred to in section 70(a) in the opinion of the CEO might apply and state the reasons why he or she is of the opinion that section 70 might apply; and
  - 7.3.5 state that the third party may, within 21 days after the third party is informed-
    - i. make written or oral representations to the CEO why the request for access should be refused; or
    - ii. give written consent for the disclosure of the record to the requester.
- 7.4 The CEO must, as soon as reasonably possible, but in any event within 30 days after every third party is informed -
- 7.4.1 decide, after giving due regard to any representations made by a third party in terms of section 72, whether to grant the request for access;

- 7.4.2 notify the third party so informed and a third party not informed in terms of section 71, but that made representations in terms of section 72 or is located before the decision is taken, of the decision; and
- 7.4.3 notify the requester of the decision and, if the requester stated that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible, and if the request is-
  - i. granted, notify the requester in accordance with section 56 (2); or
  - ii. refused, notify the requester in accordance with section 56 (3).
- 7.5 If, after all reasonable steps have been taken, a third party is not informed of a request, any decision whether to grant the request for access must be made with due regard to the fact that the third party did not have the opportunity to make representations why the request should be refused.
- 7.6 If the request is granted, the notice must state-
  - 7.6.1 adequate reasons for granting the request, including the provisions of this Act relied upon to justify the granting;
  - 7.6.2 that the third party may lodge an application with a court against the decision of the CEO within 30 days after notice is given, and the procedure for lodging the application; and
  - 7.6.3 that the requester will be given access to the record after the expiry of the applicable period contemplated in paragraph (b), unless an application with a court is lodged within that period.
- 7.7 If the CEO decides in terms of subsection (1) to grant the request for access concerned, he or she must give the requester access to the record concerned after the expiry of 30 days after notice is given, unless an application with a court is lodged against the decision within that period.
- 7.8 The following information is required to be included in an acceptance response to grant access by the CEO:
  - 7.8.1 The form in which access to the records will be given/provided;
  - 7.8.2 Reason/s why access will be provided; and
  - 7.8.3 Reference must be made to the attached Information Request Fee Notice which should be attached to the response. The Fee notice should contain a clause providing the requester an option to lodge an application to court against the tender or payment of the request fee if the requester is dissatisfied.
- 7.9 The following information is required to be included in a refusal response to grant access by the CEO:
  - 7.9.1 Reasons for refusal, including the provisions of the PAIA act relied on ; and
  - 7.9.2 The requester has the right to approach a court with an application vested against the refusal or procedure

7.10 The following information is required to be included in a request for extension by the CEO to grant access to the requester:

7.10.1 Period of extension;

7.10.2 Reasons for the extension requested in reliance to sec 57(1) of the PAIA Act, Act no 2 of 2000; and

7.10.3 That the requester may lodge an application at a court against granting extension if dissatisfied

## **8. REMEDIES AVAILABLE WHEN A REQUEST FOR INFORMATION IS REFUSED**

### **8.1 INTERNAL REMEDIES**

The institution does not have internal appeal procedures. As such, the decision made by the Information Officer is final, and requestors will have to exercise such external remedies at their disposal if the request for information is refused, and the requestor is not satisfied with the answer supplied by the Information Officer.

### **8.2 EXTERNAL REMEDIES**

A requestor that is dissatisfied with an Information Officer's refusal to disclose information may, within 30 days of notification of the decision, apply to a Court for relief. Likewise, a third party dissatisfied with an Information Officer's decision to grant a request for information may, within 30 days of notification of the decision, apply to a Court for relief. For purposes of the Act, the Courts that have jurisdiction over these applications are the Constitutional Court, the High Court or another court of similar status.

## **9. REQUEST PROCEDURE**

9.1 The requester must comply with all the procedural requirements contained in the Act relating to the request for access to a record.

9.2 The requester must complete the prescribed form enclosed herewith in **Appendix 1**, and submit the form as well as payment of a request fee and a deposit, if applicable, to the Information Officer at the postal or physical address, fax number or electronic mail address as stated in part1 of section 2 above.

9.3 The prescribed from must be filled in with enough particularity to at least enable the Information Officer to identify –

9.3.1 The record or records requested;

9.3.2 The identity of the requester;

9.3.3 Which form of access is required, if the request is granted;

9.3.4 The postal address or fax number of the requester.

- 9.4 The requester must state the he requires the information in order to exercise or protect a right, and clearly state what the nature of the right is so to be exercised or protected. In addition, the requester must clearly specify why the record is necessary to exercise or protect such a right.
- 9.5 The institution will process the request within 30 days, unless the requestor has stated special reasons which would satisfy the Information Officer that circumstances dictate that the above time periods not be complied with.
- 9.6 The requester shall be informed by the Information Officer whether access has been granted or denied in writing within 30 days after receipt of the information request. If, in addition, the requester requires the reasons for the decision in any other manner, he must state the manner and the particulars so required.
- 9.7 If a request is made on behalf of another person, then the requester must submit proof of the capacity in which the requester is making the request to the reasonable satisfaction of the Information Officer.
- 9.8 If an individual is unable to complete the prescribed form because of illiteracy or disability, such a person may make the request orally. The Information Officer is required to confirm all details pertaining to the oral discussion in accordance to the prescripts of section 9 of this manual in writing.
- 9.9 The requester must pay the prescribed fee, before any further processing can take place.
- 9.10 If-
- 9.10.1 all reasonable steps have been taken to find a record requested; and
- 9.10.2 there are reasonable grounds for believing that the record-
- i. is in the private body's possession but cannot be found; or
- ii. does not exist,
- the CEO will, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record. Steps taken to find records and the circumstances under which the records could not be found are to be noted in the affidavit or affirmation.
- 9.11 If, after notice is given in terms above, the record in question is found, the requester concerned must be given access to the record unless access is refused on a ground for refusal.

## 10. ACCESS TO RECORDS HELD BY THE INSTITUTION

- Records held by the institution may be accessed by requests only once the prerequisite requirements for access have been met.
- A requester is any person making a request for access to a record of the institution.

There are two types of requesters:

#### 10.1 **PERSONAL REQUESTER**

10.1.1 A personal requester is a requester who is seeking access to a record containing personal information about the requester.

10.1.2 The institution will voluntarily provide the requested information, or give access to any record with regard to the requester's personal information. The prescribed fee for reproduction of the information requested will be charged.

#### 10.2 **OTHER REQUESTER**

This requester (other than a personal requester) is entitled to request access to information on third parties. However, the institution is not obliged to voluntarily grant access. The requester must fulfil the prerequisite requirements for access in terms of the Act, including the payment of a request and access fee.

### 11. **FEES**

11.1 The Act provides for two types of fees, namely:

11.1.1 A request fee, which will be a standard fee; and

11.1.2 An access fee, which must be calculated by taking into account reproduction costs, search and preparation time and cost, as well as postal costs.

11.2 When the request is received by the Information Officer, such officer shall by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing of the request.

11.3 If the search for the record has been made and the preparation of the record for disclosure, including arrangement to make it available in the requested form, requires more than the hours prescribed in the regulations for this purpose, the information officer shall notify the requester to pay as a deposit the prescribed portion of the Access fee which would be payable if the request is granted.

11.4 The Information Officer shall withhold a record until the requester has paid the fees as indicated in **Appendix 1E**.

11.5 A requester whose request for access to a record has been granted, must pay an access fee for reproduction and for search and preparation, and for any time reasonably required in excess of the prescribed hours to search for and prepare the record for disclosure including making arrangements to make it available in the request form.

- 11.6 If the request for access is refused, a notice will be served and will-
- 11.6.1 state adequate reasons for the refusal, including the provisions of this Act relied on;
  - 11.6.2 exclude, from any such reasons, any reference to the content of the record; and
  - 11.6.3 state that the requester may lodge an application with a court against the refusal of the request, and the procedure (including the period) for lodging the application. If a deposit has been paid in respect of a request for access, which is refused, then the Information Officer concerned must repay the deposit to the requester.

## 12. **DECISION**

- 12.1 The institution will, within 30 days of receipt of the request, decide whether to grant or decline the request and give notice with reasons (if required) to that effect.
- 12.2 The 30 day period with which the institution has to decide whether to grant or refuse the request, may be extended for a further period of not more than 30 days if the request is for a large number of information, or the request requires a search for information held at another office of the institution and the information cannot reasonably be obtained within the original 30 day period. The institution will notify the requester in writing should an extension be sought.
- 12.3 If a request for access is made containing information which may or must be refused in terms of the Act, every part of the record which-
- 12.3.1 does not contain; and
  - 12.3.2 can reasonably be severed from any part that contains, any such information must, despite any other provision of the Act, be disclosed.
- 12.4 If access is granted to a record, the CEO will, as soon as reasonably possible after notification, give access in-
- 12.4.1 such form as the requester reasonably requires; or
  - 12.4.2 if no specific form of access is required by the requester, such form as the CEO reasonably determines.

## 13. **LIST OF APPLICABLE LEGISLATION:**

A table of legislation setting out a description of the records of the institution which are available in accordance with other legislation is annexed hereto marked "**Appendix 2**".

**14. AVAILABILITY OF THE MANUAL**

14.1 This manual is made available in terms of Regulation Number R. 187 of 15 February 2002.

14.2 The manual of the institution is available from the Compliance Division and the Information Officer.

**APPENDIX - 1**

**PRESCRIBED FORM TO BE COMPLETED BY A REQUESTER**

**FORM B**

**REQUEST FOR ACCESS TO RECORDS OF PRIVATE BODY**

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

**A. Particulars of private body**

The Head:

**B. Particulars of Person requesting access to the record**

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

Full Name and Surname: \_\_\_\_\_

Identity Number: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

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

**C. Particulars of person of 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 the Record or relevant part of the record:

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2. Reference number, if available: \_\_\_\_\_

3. Any further particulars of the record:

4. State in which format the records are required:

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5. State reasons why the records are required in relation to exercising or protecting a right

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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 of the request fee.*
- (c) *The **fee payable for access** to a record depends on the form in which the 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 of payment of the fee:

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**F. Form of Access to the 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:

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Form in which record is required:

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## **APPENDIX - 2**

### **RECORDS AVAILABLE IN ACCORDANCE WITH SOUTH AFRICAN LEGISLATION**

Finbond Mutual Bank, a member of Finbond Group Limited, has records available in terms of the following legislation:

- i. Banks Act 94 of 1990
- ii. Basic Conditions of Employment Act No. 75 of 1997
- iii. Companies Act No 71 of 2008
- iv. Compensation for Occupational Injuries and Diseases Act No 130 of 1993
- v. Competition Act No 89 of 1998
- vi. Electronic Communications Act No 36 OF 2005
- vii. Electronic Communications and Transactions Act 25 of 2002
- viii. Estate Duty Act 45 Of 1955
- ix. Financial Advisory Intermediary Services Act 37 of 2002
- x. Financial Intelligence Centre Act No 38 of 2001
- xi. Income Tax Act 58 of 1962
- xii. Inspection of Financial Institutions Act 80 of 1998
- xiii. Labour Relations Act 66 of 1995
- xiv. Mutual Banks Act No 124 of 1993
- xv. National Credit Act 34 of 2005
- xvi. National Payment System Act No 78 of 1998
- xvii. Occupational Health & Safety Act No 6 of 1983
- xviii. Prevention of Organised Crime Act 121 Of 1998
- xix. Promotion of Access to Information Act No 2 of 2000
- xx. Protection of Information Act No 84 of 1982
- xxi. Rental Housing Act No 50 of 1999
- xxii. South African Reserve Bank Act 90 of 1989
- xxiii. Value Added Tax Act 89 of 1991