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**Department:  
Public Works; Roads and Transport  
North West Provincial Government  
Republic of South Africa**

**LEGAL RELATED POLICY**

**POLICY TITLE : PROMOTION OF ADMINISTRATION OF JUSTICE (PAJA) POLICY**

**DEPARTMENT : PUBLIC WORKS, ROADS AND TRANSPORT**

<b>Contents</b>		<b>Page</b>
<b>Preamble</b>		<b>3</b>
1.	Definitions and abbreviations .....	3
2.	Purpose and objectives .....	3
3.	Principles .....	3 – 6
3.1	General .....	3
3.2	Legislated .....	3
3.3	Eligibility .....	4
3.4	Categories .....	4
3.5	Package options .....	6
4.	Legislative framework .....	6
4.1	Legislation .....	6
4.2	Departmental .....	6
5.	Scope of application .....	6
6.	Responsibilities and obligations .....	7
7.	Dispute resolution .....	7 - 8
7.1	Usage .....	7
7.2	Payments .....	8
7.3	Service terminations .....	8
7.4	Suspensions .....	8
7.5	Asset management .....	8
7.6	Loss, theft and breakage .....	8
8.	Commencement .....	9

## **PART 1**

### **1. DEFINITIONS**

### **2. PURPOSE**

The purpose of this policy is to have procedures that will improve the relationship between the Department of Public Works Roads and Transport (the Department) and the public and other institutions be it private or public.

### **3. BACKGROUND**

For most South Africans past, administrative decisions have been difficult to obtain. Ordinary people have never known why decisions have been taken that go against them or even how such decisions were taken.

Recent legislation (the Constitution and the Promotion of Administration Justice Act and the Batho Pele White Paper) has tried to change this.

#### **1. SCOPE OF APPLICATION:**

The policy shall apply to all employees within the North-West Department of Public Works Roads and Transport. This includes (Road Workers – Road camps) if any Construction, engineering and/or, Administration Staff etc.

### **4. OBJECTIVE**

The Promotion of Access to Information Act (the Act) gives effect to Section 32 of the Constitution, which provides that everyone has the right to access any information held by the State or any information that is held by another person, where such information is required for the exercise or the protection of any rights.

The Act creates mechanisms to facilitate access to records held by public and private bodies irrespective of their size and the nature of their business.

The Act provides various procedures to be followed by persons requesting information (called requesters and the Information Officers).

Any person may request access including an employee, the public including other government departments, private entities and parastatals.

### **5. LEGISLATIVE FRAMEWORK**

- i. The Constitution of South Africa, 1996
- ii. The Promotion of Administrative Justice Act (the PAJA) and
- iii. The Batho Pele White Paper
- iv.

#### **5.1. The Constitution**

South Africa is governed by the constitution of the Republic of South Africa (the Constitution). As the highest law in the country, all laws and all people (including Parliament, the President, Ministers, Premiers, Head of Departments, Chief Directors up to Clerks) must follow and obey it.

## **SECTION 195**

It sets out the basic values and principles governing the public administration, i.e.

- i. People must be encouraged to participate in policy development;
- ii. The administration must cater to people's needs;
- iii. The administration must be accountable and transparent and the public must be given information that is timeous, easy to find and accurate;
- iv. Services must be provided in a way that is impartial, fair and without bias.

### **Section 33 of the Bill of Rights**

- 1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair
- 2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons
- 3) National legislation must be enacted to give effect to these rights and must
  - a) Provide for the review of administrative action by a Court Order, where appropriate, an impartial tribunal

### **2. Promotion of Administrative Justice Act (PAJA)**

- i. It sets out the rules and guidelines that administrators must follow;
- ii. Requires Administrators to inform people about their right to review or appeal and their right to request reasons
- iii. Gives members of the public the right to challenge the decisions of Administrators in Court

### **3. The Batho Pele White Paper (People First)**

- i. Since 1<sup>st</sup> October 1997, the South African Public Service has been guided by a new Service Delivery Policy (Batho Pele)
- ii. It sets out eight national service delivery principles, which deals with administration.

## **PART 2**

### **1. Appointment of an Information Officer**

The Head of Department (the HOD) or the Deputy Director General of the Department is generally the person responsible for dealing with requests for information and facilitating such requests on behalf of the Department.

Such responsibility may however be delegated to an appointed Information Officer.

## 2. Access to Records

A request for access to records must be made by a requester in the prescribed form, Access must be granted if:

- i. the procedural requirements of the Act have been fulfilled by the requester, and
- ii. the records are required for the protection of or the exercise of any rights, and
- iii. the department is not entitled to refuse access on the grounds set out in the Act

## 3. Grounds for Refusal

Grounds on which access to a record must be refused are:

- i. Where it would amount to an unreasonable disclosure of personal information;
- ii. Where it is likely to harm the commercial interests of a third party;
- iii. Where the Department has entered into an agreement with a third party and disclosure would result in a breach of duty of confidence owed to third party in terms of that agreement;
- iv. Where it is a record, which is privileged from production in legal proceedings;
- v. Where it constitutes, research information of a third party or a private body;
- vi. If it would endanger the safety of an individual or State Security

3.1 The Act provides for the Department to notify third parties in such an event and allow such third parties to give consent

3.2 Notwithstanding the above grounds of refusal, the Act provides that if the information is of such a nature that it would be in the public interest that the information be disclosed and access to information the harm that would arise as a result of granting access to the information, such information must be disclosed.

**NB** A requester may approach the Court for an Order to Compel disclosure once they have exhausted all avenues of internal remedy within the Department.

## 4. Non Compliance with the Act

- i. No criminal or civil liability exist for anything done in good faith in the exercise or the performance of any power or duty in terms of the Act.
- ii. However, the Act contains penal provisions for the intentional and fraudulent concealment or falsification of records and provides that a person acting in such a manner is guilty of an offence and liable to a fine or imprisonment for a period not exceeding two years.

### **PART 3**

#### **The Eight Steps Process**

- i. Am I empowered to Act?
- ii. Check which conditions in the empowering provision must be met?
- iii. Check what consequences will be
- iv. Make a preliminary decision
- v. The "Third Party" notice or first notice
- vi. Making the decision
- vii. The second notice

STEP 1 – Am I empowered to Act



→ Check your empowering provision

- i. This will tell you whether the Department in general must act, and will tell you as an administrator whether you have authority to Act, e.g. legislation
- ii. This provision may say that the person authorised to act is allowed to delegate this authority to someone else.

† The question will be whether this power has been properly delegated to you. If the answer is no then should send the application to an authorised official

- Check whether the application is sent to the correct institution.
- Whether you are the right person to make the decision. If not check whether the authority can be delegated to you
- Whether the action you are expected to take falls within the geographical area or jurisdiction that you are empowered to Act.

#### STEP 2 – Check which procedure must be followed

If you are empowered to Act

- i. Whether or not the person making an application has followed the proper procedures
- ii. If not then you must return the application to the requester and advise them what procedures must be followed.
- iii. If still not followed then the application must be rejected and the person must be notified of the decision.

#### STEP 3 – Check which conditions in the empowering provisions must be met

- † The Applicant must show that he is entitled to receive the information.
- † The Information Officer must look at: -
  - i. How such decision have been made with your Department.
  - ii. How the Courts have interpreted these words in the past.

Where a person has not supplied either sufficient proof or has not given enough information to meet the conditions in the empowering provision, it is good administrative practice for you to write to that person and request additional information.

- iii. Letter to Applicant (Specimen)

#### STEP 4 – Check what the consequences will be

There are two types of empowering provisions: -

- i. Mandatory provisions
- ii. Discretionary provisions

#### 1 Mandatory Provisions

→ Where a provision is mandatory, you have no choice in the matter, instead, you must strictly follow the provision

e.g. If A, B, C cast, the administrator must do D, E, F, or must not do G, H, I

#### 1 Discretionary Provisions

→ They give the administrator a choice as to what to do

e.g. If A, B, C then the administrator may do D, E, F

1 An empowering provision never gives you an unfettered discretion – that is the power to make a decision entirely on your own and without any restriction on what you decide.

- i. Even if they don't, the constitution and the PAJA demand that this decision be exercised in a way.
- ii. That is fair
- iii. That takes relevant factors into account
- iv. That exclude irrelevant factors

### STEP 5 – Make a preliminary decision

If it is clear that:

- (a)
  - i. The person has complied with all the procedures;
  - ii. The person meets the conditions in the empowering provision;
  - iii. The person is clearly entitled to what they are applying for; and
  - iv. No-one else's rights could be affected by the decision.
- (b) If anyone's rights may be adversely affected by this decision, a notice must now be sent before a decision is taken.

Adversely affects means

- i. Require someone to do something, or not to do something or to tolerate something
- ii. Limit or remove someone's rights, or
- iii. Decide that someone does not have a right to something.

### STEP 6 – The first notice

Before taking a decision that might adversely affect someone's right, you must send them a first notice giving them: -

- i. Adequate notice of the nature and purpose of the administrative action; and
- ii. A reasonable opportunity to make representations.

**NB** In urgent matters you may take an administrative decision. However once he/she has acted, you must immediately notify anyone whose rights may be affected.



The notice must be as follows :-

i. **Adequate notice of the nature and purpose of the action**

- You must give a person enough time to respond
- You must give the person enough information to be able to work how to respond to the proposed action.

ii. indicate the nature of the action

iii. indicate the purpose (why the action is being proposed)

(c) A reasonable opportunity to make representations

- The enabling statute gives guidelines in this regard if not, you should at least allow people enough time to raise objections, provide new information, or answer charges.
- In the notice there must be a deadline for making representations.

Adequate Notice

Must mention the following nature

- i. who will take the decision?
- ii. what decision will be taken?
- iii. when will the decision be taken?
- iv. where will the decision be taken?

**Purpose**

- i. How is the decision going to be taken?
- ii. Why is the decision going to be taken?

**Representations**

- i. By when should representations be made?
- ii. How should they be made?
- iii. To whom should they be addressed?
- iv. Where should they be sent?

Diarise the file and if no representations then a decision can be taken.

STEP 7 – Making the Decision

- i Once all representations have been received (or once deadline set for them has passed), you must now decide.
- i The actual process of making a decision involves comparing facts presented by Applicant with the conditions that are set in the empowering provision.
- i If the decision is now in favour of the person and no one else's rights will be affected; you may take it and notify the person.