

**Executive Summary**

The promotion of Access to Information Act ("Proatia") deals with granting third parties access to your records in certain circumstances and has serious implications for all business in South Africa. Business need to carefully consider the impact of Proatia on their business and take the appropriate action to ensure that they comply with the provisions of the Proatia.

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**THE PROMOTION OF ACCESS TO INFORMATION ACT - THE IMPLICATIONS FOR YOU**

**INTRODUCTION**

The Promotion of Access to Information Act ("Proatia") was introduced in February 2000 to give effect to the provisions of section 32 of the Constitution which provides for the right of access to "any information held by the state" and to "any information that is held by another person and that is required for the exercise or protection of any right". Therefore Proatia allows third parties access to your records in certain circumstances.

According to the Department of Justice a phased approach will probably be adopted for the implementation of Proatia and this process is likely to begin at the end of September or the beginning of October. The Department of Justice has accepted and is currently considering requests or suggestions from business on the implementation of Proatia. The Department of Justice will probably publish another notice containing the proposed date for implementation, the sections that are to be implemented first and a copy of the draft regulation. The notice will also probably request further comments from interested parties.

All businesses in South Africa should be determining what the implications of Proatia are on their business and considering making suggestions or comments to the Department. Business should also be making preparations to ensure that they can give effect to the provisions of Proatia.

**IS PROATIA APPLICABLE TO YOU?**

Yes! Proatia applies to both public and private bodies as they are defined in Proatia. Without looking at these definitions it is safe to say that the ambit of these definitions is very wide and would include all businesses from the green grocer on the corner to Anglo American.

**WHAT ARE THE IMPLICATIONS OF PROATIA ON BOTH PUBLIC AND PRIVATE BUSINESS?**

☞ **ACCESS TO RECORDS**

The most important implication is that bodies will be required to allow access to records held by them under certain circumstances. For example, an employee may be entitled to request access to information detailing what their fellow employees get paid, or possibly what the directors of the company get paid!

Although there are requirements which the person requesting the information must meet and you will have certain grounds specified in Proatia on which you will be able to refuse access to the information, the essence of Proatia is that people have a right to access information that you hold.

Some examples of the grounds for refusal specified in Proatia are the privacy of a third party, commercial information, confidential information, records that privileged and safety of individuals.

☞ **A MANUAL**

A further implication is that within six months of commencement you must compile a manual containing certain specified information. The manual

should explain to the public at large how to make a request for access to information held by you and a description of the information that you hold.

A public body is also obliged to include in the manual “a description of all remedies available in respect of an act or failure to act by the body”. Therefore public bodies must provide the public at large with not only the target, but the cannon and the cannon balls as well.

“Each manual must be made available as prescribed”. I suggest that the Internet is one method of effectively making the manual publicly available. Business should consider making suggestions in this regard.

#### ☞ INFORMATION AUDIT AND DOCUMENT RETENTION POLICIES

In order to provide the information required to be included in the manual, you will need to conduct an audit of information which is currently held by you, regardless of when the record of information came into existence. Bodies will need to determine the subjects and categories of information they hold.

Document Retention Policies (“DRP”) will need to be reviewed in order to ensure that information or records that come into existence in the future fall within the determined subjects and categories. You should consider carefully which information you wish to hold. Considering that e-mail falls within the definition of a “record” your Electronic Communication Policy (“ECP”) should tie in with the DRP.

#### ☞ AUTOMATICALLY AVAILABLE INFORMATION

The information audit will also help you establish the categories of records that will automatically be made available without a person having to request access according to Proatia. This obligation is compulsory for public bodies and optional but probably advisable for private bodies.

#### ☞ HUMAN INFRASTRUCTURE

All business will have to designate and appoint suitable people within their organisation to deal with and implement the provisions of Proatia.

Considering that these people are required by Proatia to perform several important functions, one of which is to decide on whether access to information should be granted, the relevant people should be properly trained. The cost of making these resources available and the training of these people could be substantial.

#### ☞ REPORT TO HUMAN RIGHTS COMMISSION

The information officer of each public body is required to annually submit to the Human Rights Commission a report, containing certain information which is stipulated.

#### ☞ INFORMATION COURTS

If you decide to refuse access to information that you hold, the requester is entitled to apply to court to force you to provide access to the relevant information. This court will be the High Court (as an interim measure)

which is costly and time consuming. In the next 18 months Information Courts will be created to deal with matters relating to Proatia, which should be accessible, cheap, simple, informal and expeditious. However no litigation is good litigation and you should therefore take steps to avoid it if at all possible.

#### ☞ SANCTION

There is no general provision relating to the contravention of the duties imposed by Proatia. Section 90 only makes certain acts in respect of records criminal offences. The consequence of your failure to comply with the provisions of Proatia will be that you end up either giving access to information against your will or opposing applications in court.

#### ACT NOW!

Proatia has far reaching implications for business, both public and private. Now is the time to act. To comply with the provisions of Proatia you should consider the implications of Proatia for you, make suggestions to the Department relating to the implementation if necessary and start make preparations for implementation.

#### RESOURCES

The full text of Proatia in pdf format can be found at [South African Government Information Site](#) while a useful indexed and searchable version of Proatia can be found at [Acts Online](#). For a copy of the latest notice in the Government Gazette relating to Proatia click [here](#).

Sites on the Internet of interest are the [Freedom of Information in the European Union and Elsewhere](#), the [Open Democracy Act for South Africa](#) section on the Wits University web site and the the Freedom of Expression Institute's web page on [Freedom of information - Guiding principles for access to information laws](#).

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The eFiles is a monthly newsletter which is distributed free of charge to anyone who wishes to receive articles on legal issues relating to Information Technology, e-Business and the Internet.

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