

Constitutional Litigation Unit

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PBO No. 930003292
NPO No. 023-004



13 June 2017

For the attention of:

Department of Justice and Constitutional Development
c/o The Deputy Information Officer
By email: mrswiswi@justice.gov.za

And to:

State Security Agency
c/o The Information Officer
By email: paia@ssa.org.za

Dear Madam / Sir

Access to information request in terms of the Promotion of Access to Information Act 2 of 2000

1. I am an attorney at the Legal Resources Centre (LRC), a non-profit organisation and registered law clinic acting in the public interest, with offices in Johannesburg, Cape Town, Durban and Grahamstown. I submit this request in the course and scope of my employment at the LRC.
2. Please find enclosed an access to information request submitted in terms of the Promotion of Access to Information Act, 2000 (PAIA). The documents sought concern international data-sharing arrangements between South Africa and any other country. The arrangements through which the South African government shares and receives foreign intelligence surveillance with other governments dramatically implicate the privacy of every person, both nationals and non-nationals. However, to date, those arrangements are largely shrouded in secrecy.
3. In terms of this access to information request, the following records are sought:
 - 3.1. All agreements, memoranda of understanding and/or other arrangements with foreign countries concerning the sharing between South Africa and/or its agencies and any other country and/or its agencies of information and intelligence.

- 3.2. All policies, guidelines, opinions, reports and memoranda concerning:
 - 3.2.1. The circumstances in which South Africa may share information and intelligence with another country and/or its agencies.
 - 3.2.2. Any limitations on the sharing of information and intelligence with other countries and/or its agencies.
 - 3.2.3. The circumstances in which South Africa and/or its agencies may request or otherwise acquire from another country and/or its agencies information and intelligence.
 - 3.2.4. Any limitations on the acquisition (whether by request or otherwise) of information and intelligence from another country and/or its agencies.
 - 3.2.5. Any limitations on South Africa's retention, use, or dissemination of information and intelligence requested or otherwise acquired from another country and/or its agencies, including the use of such data or data derived from it in civil, criminal, administrative, or other proceedings.
 - 3.2.6. The circumstances, if any, in which South Africa and/or its agencies may request or otherwise acquire information and intelligence from another country.
- 3.3. Any request for information relating to the LRC and/or any of its members received from or on behalf of any foreign government and/or its agencies, and any responses provided in response thereto.
- 3.4. Any request for any order or direction sought in terms of the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002, including but not limited to section 16 thereof, relating to the LRC and/or any of its members, and any order or direction obtained in terms thereof.
4. It must be emphasised that:
 - 4.1. I submit that I am lawfully entitled to the information sought both in terms of the Constitution and PAIA. Any refusal would undermine the values of accountability, openness and responsiveness articulated as South Africa's founding values under section 1(d) of the Constitution.
 - 4.2. It is submitted that there are no justifiable grounds of refusal as contemplated under PAIA.

- 4.3. In the event that any ground of refusal is sought to be relied upon in response to this request:
- 4.3.1. We remind you of the Constitutional Court’s decision in *President of the Republic of South Africa and Others v M&G Media Limited*,¹ in which the Constitutional Court held that any justification for non-disclosure must be described “with reasonably specific detail for the request of information to be able to mount an effective case against the agency’s claim for exemption”, and that mere repetition of the wording of PAIA, or sweeping or vague claims, would not suffice; and
- 4.3.2. Furthermore, even if a ground of refusal were to be relied upon, we submit that the public interest in the disclosure of this information would override the harm contemplated in the provision in question.²
- 4.4. The provisions of PAIA apply to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of a record, and is materially inconsistent with an object or provision of PAIA.³
- 4.5. If the record is in the possession of another public body, you are obliged to transfer this request to the information officer of that public body as soon as reasonably possible, and at most within 14 days after receiving this request.⁴
5. As such, I submit that I am entitled to the complete record of the information sought. Please find enclosed together with this letter: (i) a completed copy of Form A as contemplated under PAIA; (ii) an addendum to Form A setting out the record of information sought.
6. Should you require any further information, please contact us at avani@lrc.org.za / tsanga@lrc.org.za / shireen@lrc.org.za. I look forward to hearing from you.
7. All rights are reserved.


¹ 2012 (2) SA 50 (CC).

² Section 46 of PAIA.

³ Section 5 of PAIA.

⁴ Section 20 of PAIA.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Avani Singh', with a stylized flourish at the end.

LEGAL RESOURCES CENTRE
Per: **AVANI SINGH**



J750

REPUBLIC OF SOUTH AFRICA

FORM A
REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY
(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))
[Regulation 6]

FOR DEPARTMENTAL USE

Reference number:

Request received by (state rank,
name and surname of information officer/deputy information officer) on (date)
at (place).

Request fee (if any): R

Deposit (if any): R

Access fee: R

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SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. Particulars of public body

The Information Officer/Deputy Information Officer

(1) Department of Justice and Constitutional Development
For the attention of: The Deputy Information Officer
By email: mraswiswi@justice.gov.za

(2) State Security Agency
For the attention of: The Information Officer
By email: paia@ssa.org.za

FORM A: REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

B. Particulars of person requesting access to the record

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

Full names and surname: Avani Singh

Identity number:

8	6	0	9	0	4	0	2	3	4	0	8	0
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Postal address: Floor 16, Bram Fischer Towers, 20 Albert Street, Marshalltown, Johannesburg

Telephone number: (011) 836 9831 Fax number: (011) 8384273

E-mail address: avani@lrc.org.za / tsanga@lrc.org.za / shireen@lrc.org.za

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

C. 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:

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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 record or relevant part of the record:

Please see addendum attached.
.....
.....

FORM A: REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

2. Reference number, if available: N/A

3. Any further particulars of record:

Please see addendum attached.

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 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 for exemption.

Reason for exemption from payment of fees:

I make this request in the course and scope of my employment at the Legal Resources Centre (LRC), a non-profit organisation and registered law clinic. The LRC requests to be exempted from payment of any access fees, as this request is made in the public interest in exercise of the constitutional right of access to information. The requested records are not intended to be used for commercial purposes by the LRC.

F. 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 below, 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) Compliance with your request for access in the specified form may depend 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:					
x	copy of record*	x	inspection of record		
2. If record consists of visual images - (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.):					
x	view the images	x	copy of the images*	x	transcription of the images*

FORM A: REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

3. If record consists of recorded words or information which can be reproduced in sound:

x	listen to the soundtrack (audio cassette)	x	transcription of soundtrack* (written or printed document)		
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4. If record is held on computer or in an electronic or machine-readable form:

x	printed copy of record*	x	printed copy of information derived from the record*	x	copy in computer readable form* (stiffy or compact disc)
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*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES	x	NO
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Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record? In the original language

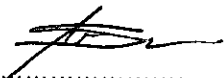
G. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved / denied. If you wish to be informed 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?

By email: tsanga@lrc.org.za / shireen@lrc.org.za

Signed at Johannesburg this day 13th of June year 2017



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SIGNATURE OF REQUESTER /
PERSON ON WHOSE BEHALF REQUEST IS MADE

Addendum: Section D of Form A - Request for access to information of public body

Request submitted by Avani Singh (Attorney, Legal Resources Centre)

1. This addendum relates to section D of Form A, and provides the particulars of the record sought.
2. I am an attorney at the Legal Resources Centre (LRC), a non-profit organisation and registered law clinic acting in the public interest, with offices in Johannesburg, Cape Town, Durban and Grahamstown. I submit this request in the course and scope of my employment at the LRC.
3. In terms of this access to information request, the following records are sought:
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Signed at Johannesburg on this the 13th day of June 2017.



Avani Singh | Attorney
Legal Resources Centre