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M A N U A L

IN ACCORDANCE WITH

**THE PROMOTION OF ACCESS TO
INFORMATION ACT (NO. 2 OF 2000)**

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agriculture
& environmental affairs

Department:
Agriculture
& Environmental Affairs
PROVINCE OF KWAZULU-NATAL

PAIA MANUAL

KWAZULU-NATAL

DEPARTMENT OF AGRICULTURE & ENVIRONMENTAL AFFAIRS

Compiled in compliance with the Promotion of
Access to Information Act (Act No. 2 of 2002) (PAIA)

EDITION: 2014/2015

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SECTION ONE

1. INTRODUCTION

1.1 PURPOSE OF THE MANUAL IN TERMS OF PAIA:

Section 32(1)(a) of the Constitution provides that everyone has the right of access to “*any information held by the state*” and section 32(2) of the Constitution creates an obligation on the State to enact national legislation to give effect to this right.

In compliance with section 32(2) of the Constitution the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (to be referred hereinafter as “the Act”) was enacted in order to give effect to the constitutional right of access to information.

Section 14 of the Act makes it imperative on each and every governmental entity to prepare a manual that would give guidance to the members of the public on how they can access records held by it.

This manual has been prepared in compliance with the provisions of section 14 of the Act in order to give guidance to the members of the public on how they can obtain access to any information that is held by the Department of Agriculture, Environmental Affairs and Rural Development (to be referred to hereinafter as “the Department”) so as to ensure that the Department conducts its business in a transparent manner and to enable the public to scrutinise the decisions taken by the Department.

Information is also very empowering for ordinary citizens. They need to know what services the Department offers and how they can be accessed. This is the only way that democracy can be strengthened and nurtured.

1.2 MANDATE OF THE DEPARTMENT:

Vision

“Optimal agricultural land use, sustainable food security, sound environmental management and comprehensive, integrated rural development”.

Mission

“The Department, together with its partners and communities, champions quality agricultural, environmental and conservation services and drives integrated comprehensive rural development for all the people of KwaZulu-Natal”.

1.3 STRATEGIC GOALS AND OBJECTIVES:

The strategic goals and strategic objectives of the Department:

Strategic Goals	Strategic Objectives
Sustainable Natural Resources Management	<ul style="list-style-type: none"> • Ensure Environmentally sustainable development • Mitigation impact and promote a safe, healthy environment • Manage Invasive Alien Species • To conserve indigenous biodiversity of KwaZulu-Natal
Rural Development, Agrarian Reform and social and economic infrastructure development	<ul style="list-style-type: none"> • Provide technical support, extension, specialist advisory services and progressive training and mentorship to households and farmers • Provide and develop support systems and infrastructure for sustainable land use, agricultural development and comprehensive rural development • Prevention, control and/or eradication of animal diseases • Creating and facilitating improved access to a stable and diversified food supply for improved nutrition wellbeing and improvement in household income • Undertake appropriate adaptive agricultural research, technology development and transfer to advance agriculture

Creation of decent work opportunities and ensuring economic growth and infrastructure development	<ul style="list-style-type: none"> • Creation of access to local and international markets for local agricultural products • Develop commercial farming entrepreneurs and agri-business • Enhance linkages with international entities partners, stakeholders and between spheres of government
Integrated and Transformed Service Delivery	<ul style="list-style-type: none"> • Provide effective and efficient corporate and strategic support services to MEC, HOD and Department • Provide effective Human Resource capacity • Provide effective, efficient and transparent financial and risk management systems

1.4 STRATEGIC PROGRAMMES:

The Department has taken stock of the situation that currently faces the Province, the policy direction of government as well as its mandate in order to come up with its 20 year programme. In this regard, the Department has identified five key strategic areas where it will focus its programmes which would be implemented over this period, *namely;*

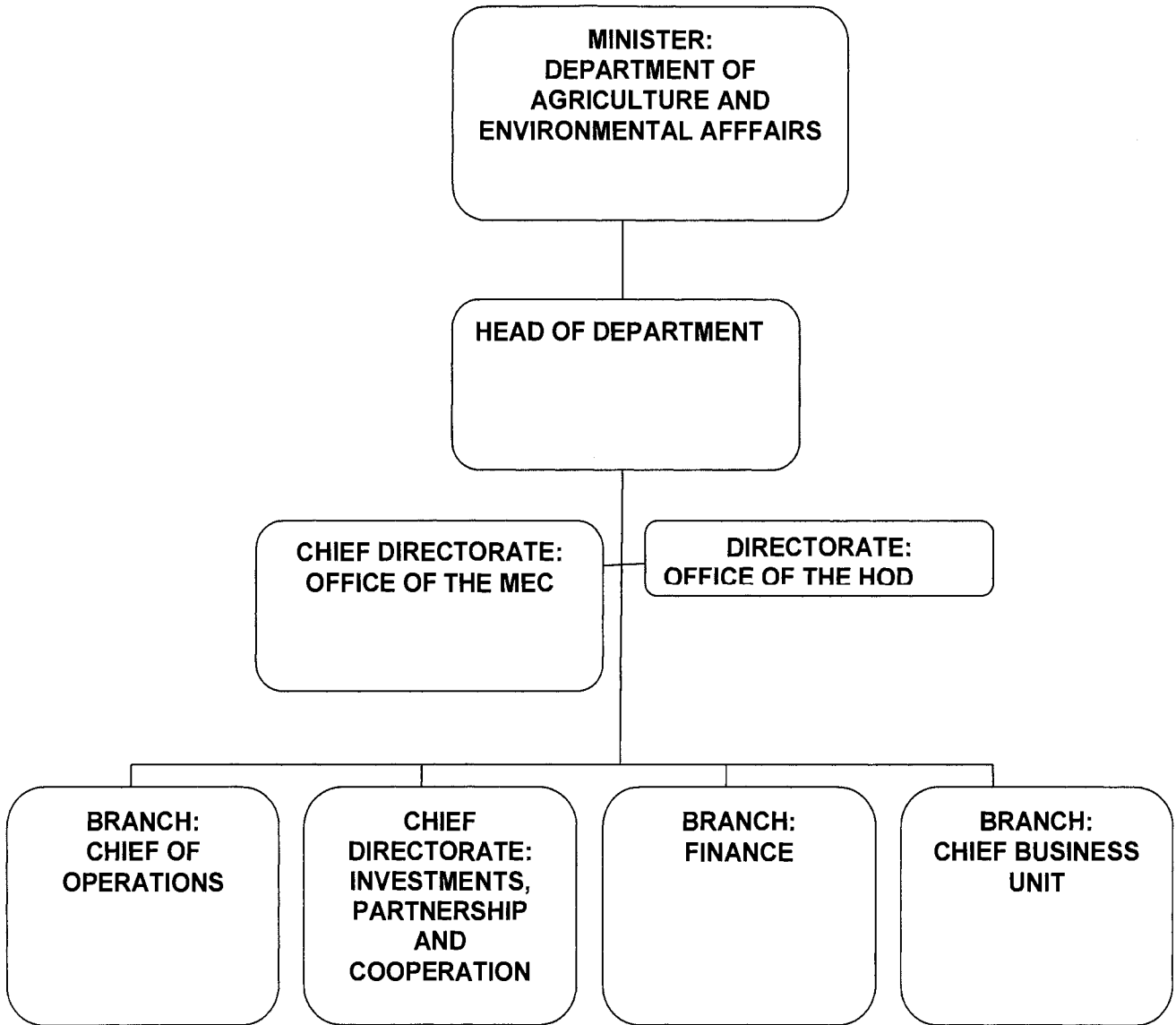
- Administration
- Crop Production
- Livestock Production
- Rural Development; and
- Environmental Management

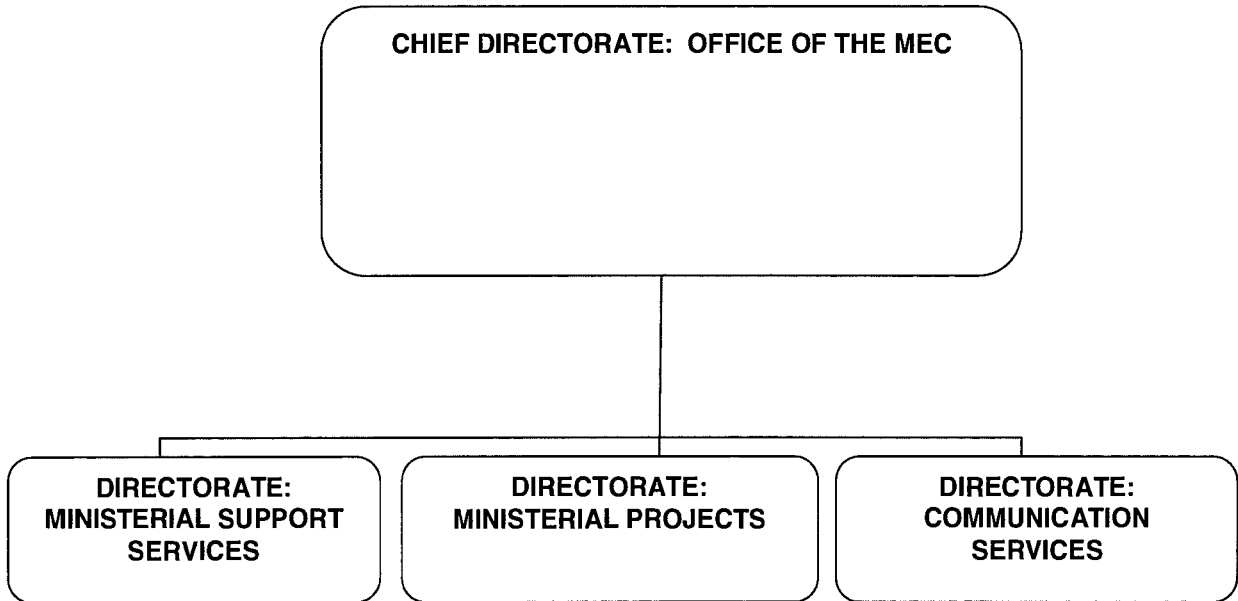
1.4.1 PROGRAMME AND SUBPROGRAMMES PLAN:

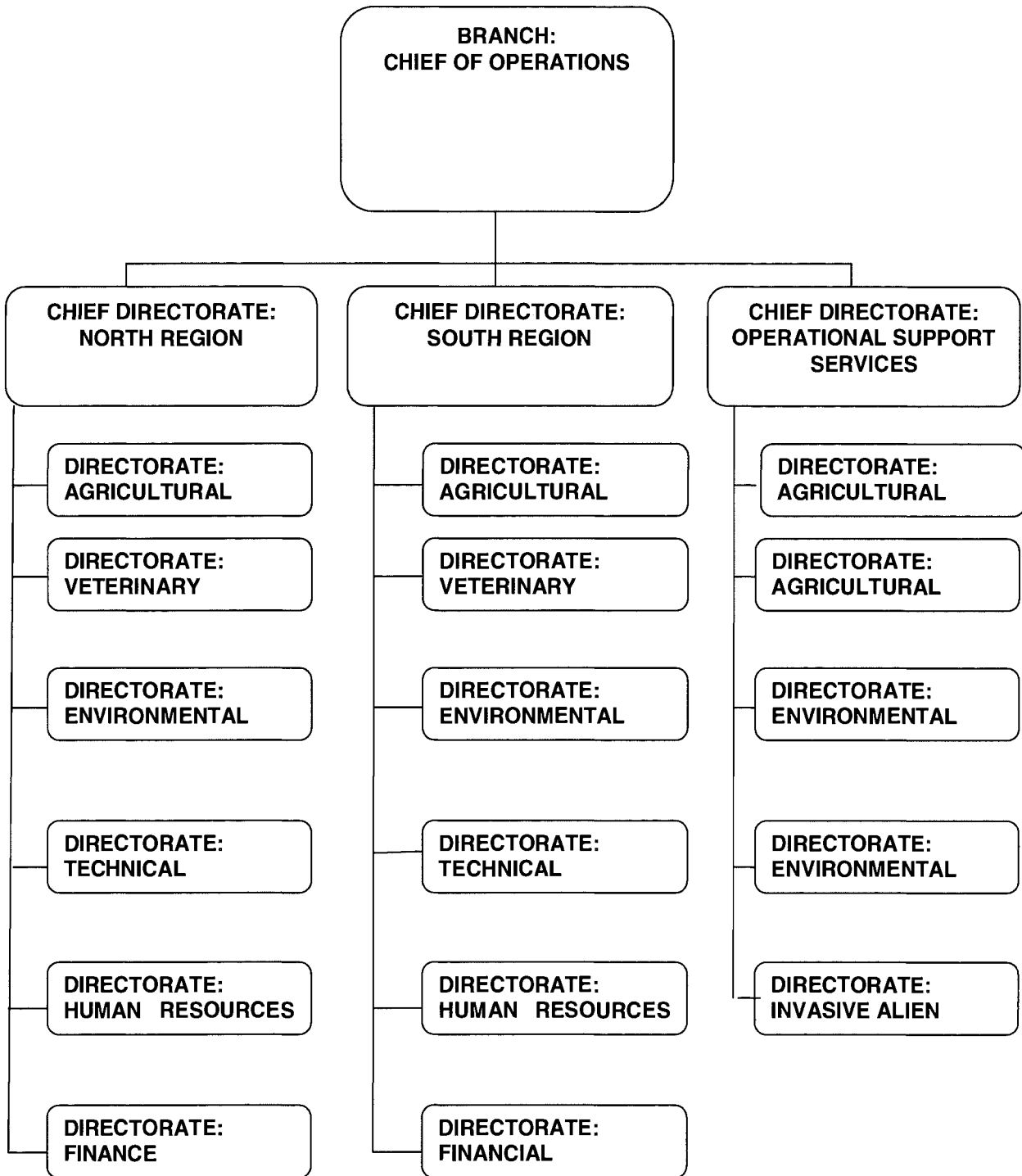
Programme Number	Name of Programme	Purpose of Programme	Services rendered (sub-programmes)
1	Administration	Programme 1 provides support to the line function components of the department in achieving their goals. The focus for programme 1 is the provision of finance, corporation and strategic support services to the department. These include, but not limited to financial management, human resource management, policy formulation, monitoring and evaluation, information management and information technology, legal services, management advisory services, data and knowledge management, labour relations as well as security and occupational health and safety.	1.1 Office of the MEC and HOD 1.2 Senior Management 1.3 Corporate Services 1.4 Strategic Support Services 1.5 Financial Management 1.6 Communication Services
2	Agriculture Development Services	To engage, empower and transform our communities to participate in sustainable agricultural and environmental practices in order to realize economic development and food security in the Province.	2.1 Sustainable Resource Management 2.2 Farmer Support and Development 2.3 Veterinary Services 2.4 Technical Research and Development Services 2.5 Agricultural Economic 2.6 Structured Agricultural Training

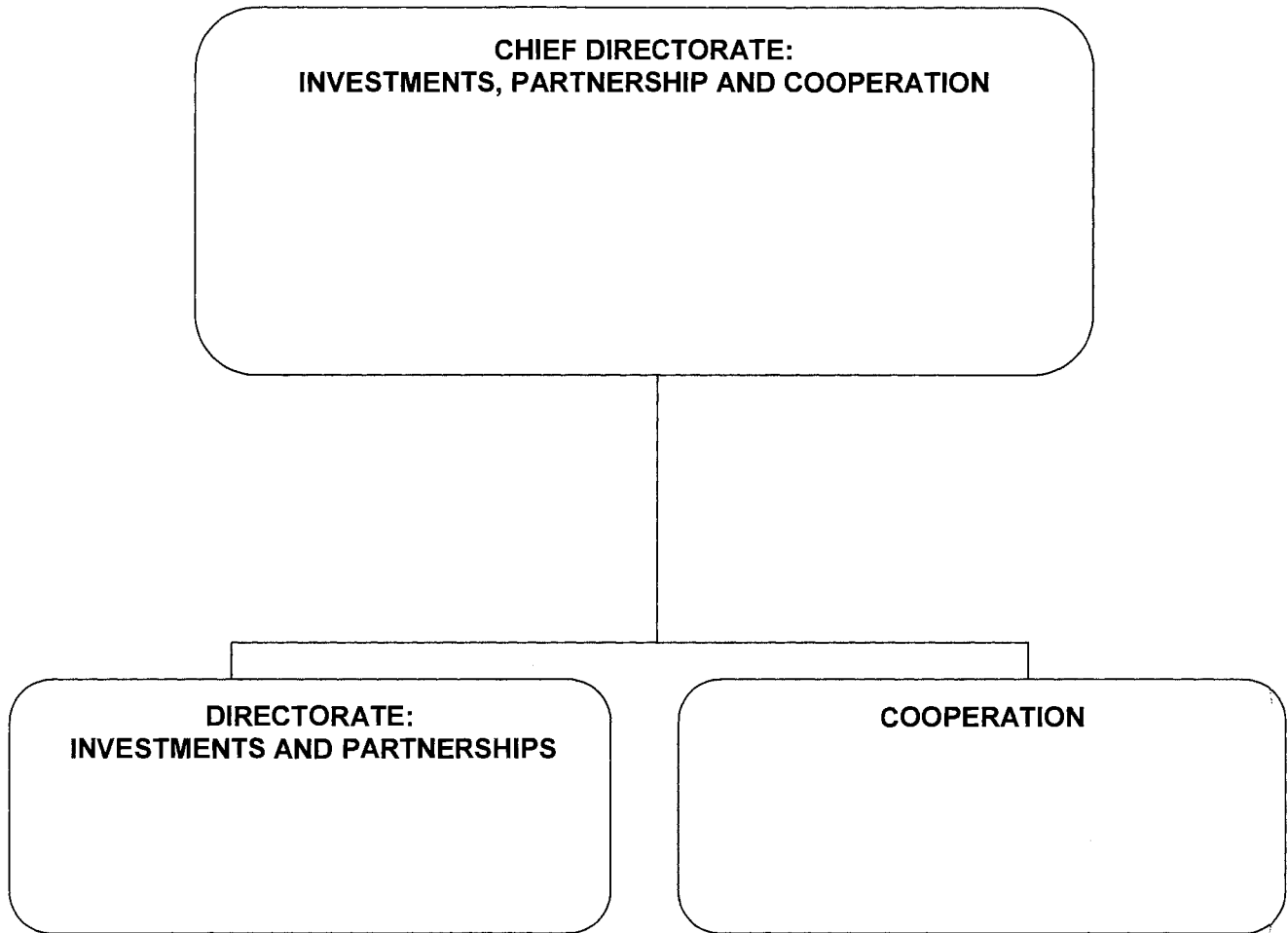
3	Environmental Management	The advancement of environmental sustainability for socio-economic development, through the promotion of sustainable use of the environment and ensuring a safe and healthy environment.	3.1 Green Economy 3.2 Biodiversity Management 3.3 Environmental Quality Management 3.4 Climate Change Mitigation and Adaptation 3.5 Environmental empowerment
4	Conservation	Conservation of natural resources (performed through public entities such as Ezemvelo KZN Wildlife and Oceanographic Research Institute).	Service rendered and sub-programmes are contained in manual of the respective organisations
5	Rural Development	Rural Development interventions are aimed at promoting integrated and coordinated developments, equitable distribution of land, optimisation of resources, sustainable use of resources and unlocking of untapped potential resources, intensify high value production, improve production, improve access to mechanisation services, foster cooperation between rural communities to identify common challenges and potential solutions and lastly exercise democratic oversight of Development plans and projects	Rural Development – this is a new mandate and its key products and services will be detailed in the 2010/15 strategic plan.

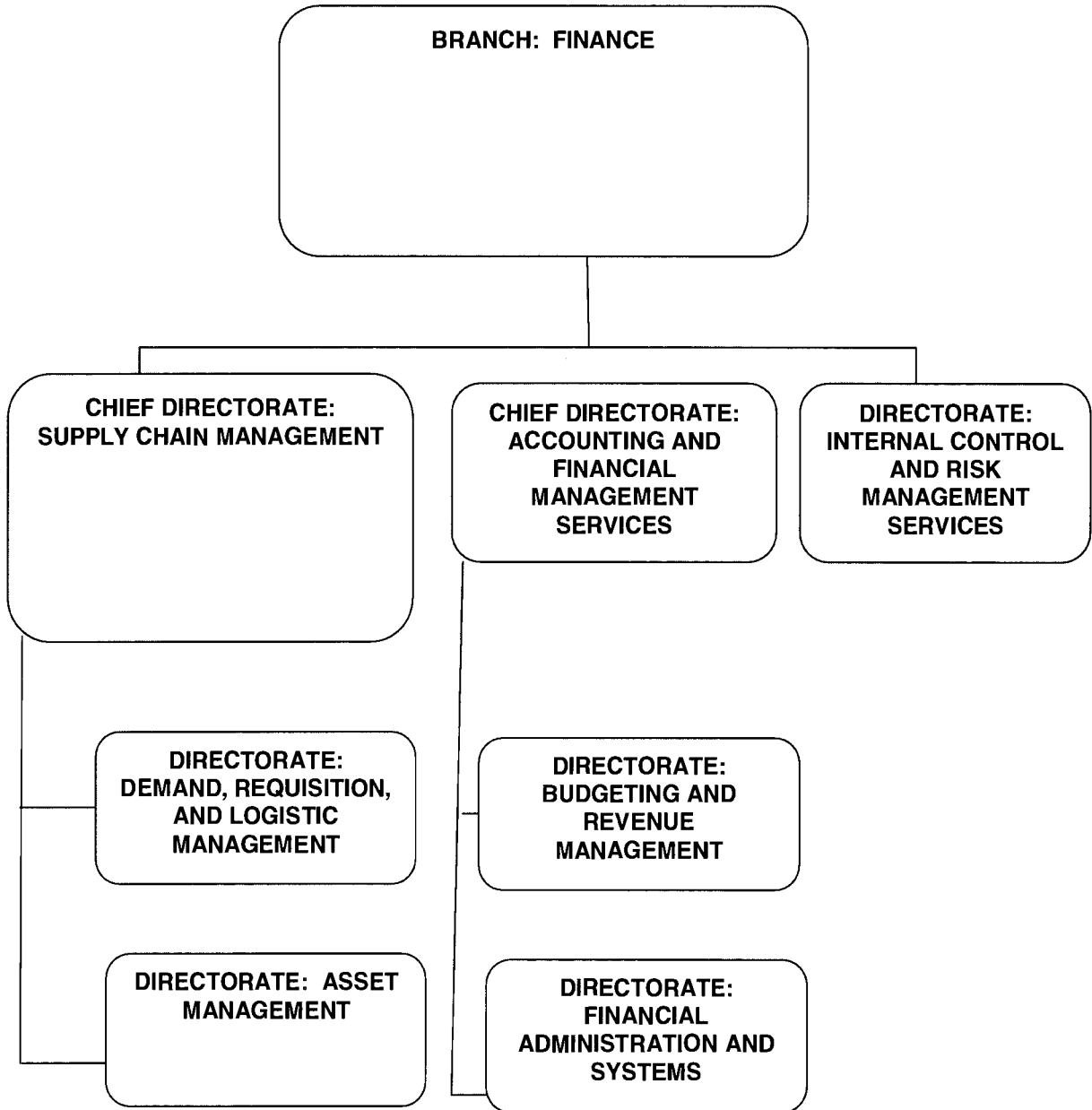
1.5 STRUCTURE AND FUNCTIONS

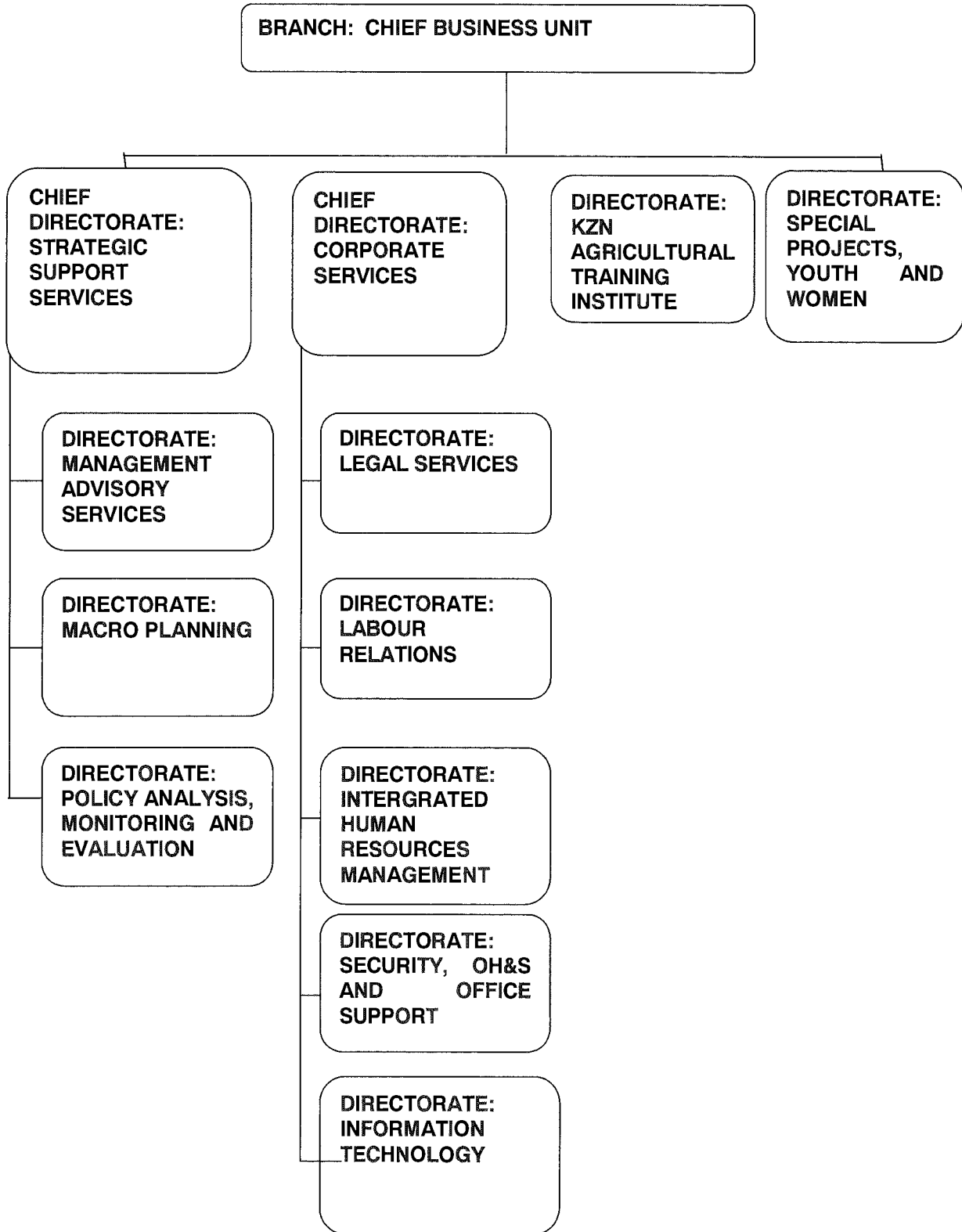












1.6 SOUTH AFRICAN HUMAN RIGHTS COMMISSION ("SAHRC") GUIDE ON THE ACT:

This guide to the Act and the rights of requesters is available from the SAHRC or from their website: www.sahrc.org.za.

Should you have any queries in this regard, please contact the SAHRC directly at: The South Human Rights Commission: PAIA Unit; The Research and Documentation Department; Postal Address: Private Bag X 2700, Houghton, 2041; Telephone: +27 11 484-8300; Fax: +27 11 484-0582; Website: www.sahrc.org.za; E-mail: paia@sahrc.org.za

1.7 OVERVIEW OF RECORDS HELD BY THE DEPARTMENT:

The Department of Agriculture, Environmental Affairs and Rural Development is using two uniform paper-based filing systems, namely General Filing System and Personnel Filing System. These systems are through out the Department.

Records which were used before 1994 by the former Department of Agriculture and Forestry (KwaZulu) and Agriculture (RSA) have been terminated and the disposal authority number 31-B3NA has been issued by the Provincial Archives.

This Department is slowly phasing in the Electronic Records system. The records in the Department are classified as follows:-

1.7.1 GENERAL FILING SYSTEM:

(i) Legislation and Procedures

- Policy
- Routine and Enquiries
- Promulgation of Acts and Regulations
- Interpretations and Legal Opinions
- Authorisation.

(ii) Organisation and Control

- Functions
- Delegation of Authority
- Establishment of New Sections and Offices
- Office Procedures and Instructions
- Management Advisory Services (Efficiency Research)
- Research, Reports and Implementation
- Records Management

- Disposal of Records
- Security Measures.

(iii) Financial Matters

- Estimates
- Accounting Responsibility
- Expenditure
- Revenue
- Authorities
- KZN Tender Board Exemptions
- Logis System
- Financial forecasts
- Budget planning – capital expenditure
- Budget planning – operating expenditure
- Movable asset management (inventory control)
- Reconciliations
- Journal vouchers
- Receipts
- Financial statements
- Setting of tariffs
- Financial reports
- Debtors accounts
- Sundry debtors
- Customer queries
- Creditors payments
- Creditors statements
- Payrolls and amendments
- Administration of payroll deductions
- Procurement (of goods and services)
- Contract administration
- Servitude administration
- Micro-business
- Inventory control
- Property administration
- Corporate insurances
- Individual insurance claims
- Communication and stationery services
- Office, building and garden services
- Fleet management services
- Legal records (agreements, contracts)
- Legal risk management

- Strategic planning
- Annual reports
- Annual Performance Plan
- Reports on Performance Information

(iv) Accommodation

- Acquisition of Sites and Erection of Buildings
- Office Accommodation
- Alterations and Repairs of Buildings
- Buildings and Grounds.

(v) Stores, Equipment and Services

- Acquisitions of stationery, furniture, labour saving devices, etc.
- Inspections and Reports
- Board of Survey
- Services
- Printing

(vi) Transport, Journeys and Major Plants

- Application and provision of motor vehicles
- Accidents
- Subsidised vehicles
- Major plants
- Maintenance
- Travelling bookings.

(vi) Publications and Publicity

- Media
- Speeches
- Communications
- Press Releases.

(vii) Composition and Meetings of Bodies, Committees, Conferences and other Gatherings

- Minutes and Reports.

(viii) Reports and Statistical Returns

- Reports and Returns
- Progress Reports and Strategic Planning.

(ix) Environmental Impact Management (EIA)

- Register of all applications for environmental authorization in terms of environmental Impact Assessments Regulations, 2010
- Files supporting all applications received under the above Environmental Authorizations
- EIA Regulations
- EIA Guideline Document, DEA 2010
- Database of all Environmental Consultants
- EIA Process & Procedure (2010)
- Pre-application checklist of listed activities requiring environmental Authorizations

Environmental Planning, Governance and Information Management

- KZN State of the environment Report, 2004
- Adopted Environmental Management Frameworks (EMF)
- Adopted Strategic Environmental Assessment (SEA)
- KZN Environmental Implementation Plan (EIP)
- Environmental Implementation Plan (EIP) Handbook
- Environmental Implementation Plan Annual Compliance Report
- Environmental Legislation Compendium for Municipalities
- Environmental Toolkit for KZN, DEA 2007

Pollution and Waste Management

- Register of all Waste Management Licenses (WML) in terms of the Integrated Waste Management Act, 2009
- Files supporting all application received under the above Waste Licenses
- KZN Integrated Waste Management Plan (in progress)
- KZN Hazardous Waste Management Plan (in progress)
- Waste Inspections and Audits Reports
- Reports on investigation into environmental incidents as per Section 30 of NEMA (archived in districts)

Compliance, Monitoring & Enforcement (CME)

- Complaints Register
- Compliance Notices
- Compliance Directives
- National Compliance and Enforcement Report (Yearly)
- NEMA Section 30 Emergency Incidents Reports

Air Quality and Climate Change

- Register for Atmospheric Emission Licenses (AEL) in terms of NEM Air Quality Act, 2004 (For municipality that don't have capacity to deal with AEL)
- Files supporting all application received under the above
- Atmospheric Emission Licenses (AEL)
- Sugar burning Policy
- The Vulnerability of Impacts of Climate change in KZN
- Cedara Energy Audit, 2009
- KZN Climate Change Response Strategy, 2009

Biodiversity and Coastal Management

- KZN Coastal Erosion Guide
- Coastal Management Policy
- Understanding our Coast Guide
- Ulwandle (1 issue per quarter)

Environmental Empowerment

- Publications
 - Environmental Empowerment & Sustainable Livelihoods/Advisory
 - Reducing Climate Change together
 - Act Today, Ensure Tomorrow (Available in Zulu & English)
 - Caring for our Environment (Available in Zulu & English)
 - Global Warming – Causes, Effects & Solutions

(x) Internal Control

- Corporate policies and procedures
- Internal audit charter
- Audit procedure manual
- Audit programmes
- Audit investigations

1.7.2 PERSONNEL FILING SYSTEM:**List of Main Series**

- Legislation and Procedures
- Post Establishment and Control
- Conditions of Services
- Human Resources Planning and Provisioning
- Training and Skills Development
- Performance Evaluation
- Labour Relations
- Special Programmes
- Finance
- Supply Chain and Accommodation
- Composition of meetings and other gatherings
- Reports, returns and statistics

SECTION TWO**2. CONTACT INFORMATION (Section 14 (1)(b))**

- 2.1 Information Officer: Ms. Y.E. Bacus – Acting Head of Department
- 2.1.1 Physical Address Department of Agriculture and Environmental Affairs
Cedara
- Postal Address Private Bag X9059
PIETERMARITZBURG
3200
- E-mail HODPA@KZNDAE.GOV.ZA
- Tel. No. (033) 355 9690
- Fax No. (033) 355 9293
- 2.2 Deputy Information Officer: Mrs Grace Mavundla
- 2.2.1 Physical Address Department of Agriculture and Environmental Affairs
Cedara
- Postal Address Private Bag X9059
PIETERMARITZBURG
3200
- E-mail Grace.Mavundla@kzndae.gov.za
- Tel. No. (033) 343 8227
- Fax No. (033) 355 9582

- 2.3 Deputy Information Officer: Ms Nishee Seegobin- Senior Manager: Legal Services
- 2.3.1 Physical Address Department of Agriculture and Environmental Affairs
Cedara
- Postal Address Private Bag X9059
PIETERMARITZBURG
3200
- Tel. No. (033) 355 9118
- Fax No. (033) 355 9370
- E-mail Nishi.Seegobin@kzndae.gov.za
- And
- 2.4 Deputy Information Officer: Mr Richard Stuurman (Senior Legal Administration Officer)
- 2.4.1 Physical Address Department of Agriculture and Environmental Affairs
Cedara
- Postal Address Private Bag X9059
PIETERMARITZBURG
3200
- Tel. No. (033) 343 8005
- Fax No. (033) 355 9370
- E – mail Richard.Stuurman@kzndae.gov.za

SECTION THREE**3. ACCESS TO RECORDS HELD BY DEPARTMENT OF AGRICULTURE AND ENVIRONMENTAL AFFAIRS (Section 14 (1)(d))****3.1 Automatic Disclosure of records**

Section 15 of the PAIA prescribes that the Department must by way of a notice in the Government Gazette publish the schedule (list) of records that are automatically available in the Department without the requester having to request access thereto in terms of the Act. The requestor is not required to fill out the prescribed Form A that is utilised to request information. There is also no requestor fees payable for these records. Fees will only be payable if copies of the record are to be made, irrespective of the format (hard copy, compact disc, stiffer or cassette recording, etc).

The following table contains the list of such records:

RECORDS AUTOMATICALLY AVAILABLE	MANNER OF ACCESS
<ul style="list-style-type: none"> • Strategic Plan and Annual Performance Plans • Departmental Mission, Vision and Strategic Objectives • Values of the Department • Legislative Mandate of the Department • Service Commitment Charter (SCC) • Service Delivery Improvement Plan (SDIP) • Quarterly Expenditure Reports • Policies regarding Internal Practices • Budget Vote of the MEC and other Speeches • Departmental Publications • Annual Reports • GIS mapping • Mid term reviews • Legislation • Delegations • Circulars • KZN Librarian newsletters • Internal Newsletters • Media Releases (Umvelo, daily media 	<ul style="list-style-type: none"> • Available on www.kzndae.gov.za

monitoring)	
<ul style="list-style-type: none"> • Brochures (Ulwandle) 	<ul style="list-style-type: none"> • Free access via any of the regional offices of the Department.
Archavalia	<ul style="list-style-type: none"> • Free access via any of the Archives Repositories

3.2 ACCESS TO OTHER RECORDS:

3.2.1 Submission of Request for Access to Information / Record Request Procedures

3.2.1.1 A request for access to a record held by the Department must meet the following requirements:

- (a) it must be submitted in a prescribed form (which is attached to this manual as **(Form A in Appendix 2)**;
- (b) it must be submitted to the Information Officer of the Department or the Deputy Information Officer at his or her contact details stipulated in subparagraph 2.1 of this manual;
- (c) it must provide sufficient particulars to enable the official of the Department to identify the record or records requested and the identity of the requester;
- (d) it must state whether the record concerned is preferred in a particular language;
- (e) it must specify a postal address or fax number of the requester;
- (f) if in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, it must state that manner and the necessary particulars to be so informed and;
- (g) if the request is made on behalf of a person, proof of the capacity in which the requester is making the request, must be provided to the reasonable satisfaction of the Information Officer.

3.2.1.2 Notwithstanding subsection 3.2.1.1 of this manual, the Information Officer of the Department shall endeavour, in any means possible, to assist a requester to ensure that the requester's request conforms with the requirements mentioned in section 3.2.1.1 above by –

- (a) reducing oral requests into writing on behalf of those requesters who, as a result of illiteracy or disability, are unable to reduce their request in writing into the prescribed formats;

- (b) providing the requester with information that will enable the requester to make a proper request;
- (c) assisting the requester to file his request with the relevant public body if it is apparent to the Information Officer that the request received should have been submitted to another public body; and
- (d) transferring the request to the relevant public body if it is apparent to the Information Officer that the request received should have been submitted to another public body or to any of the Department's public entities.

3.2.2 Validation and acknowledgment

Once the Information Officer has satisfied herself or himself that the request meets the requirements mentioned in 3.2.1.1 above, he or she shall within reasonable time, by notice to the requester acknowledge receipt of the application and indicate that the requester will be required to pay the following prescribed fees, namely –

- (a) a request fee of **R35,00** (a standard fee applicable to all requests for access to information, it can however be waived if the information requested relates to the requester's own personal information); and
- (b) an access fee (a fee comprising of reproduction and administrative costs. The amount payable as access fee shall vary from one request to the other depending on the volume of the information requested and time spent in preparing such information. Please see **Appendix 1** for the list of prescribed fees).

3.2.3. Processing of Requests

Subsequent to the notice mentioned in 3.2.2 above, the Information Officer shall finalise the processing of a request as soon as reasonably possible but not later than **30 days** of receipt of the said request. The Information Officer may, depending on the circumstances of each application –

- (a) transfer the request to another public body;
- (b) defer access to a record;
- (c) extend the time period of dealing with the request;
- (d) call for representations from third parties;
- (e) grant access to the information; or
- (f) refuse access to the information.

3.2.3.1 Transfer of Request to another Public Body

- (a) A request for access to information submitted to the Information Officer may be transferred to another public body if one or more of the following prevails:
- (i) if the information or record requested is not under in the possession or control of the Department but is in possession of another government department or government entity;
 - (ii) if the information requested is more closely connected with the functions of another government department than to the functions of the Department; or
 - (iii) if the information requested contains commercial information (to which access is prohibited in terms of section 42 of the Act) in which any other government department has a greater interest.
- (b) If the requested information falls within the ambit of sub- paragraph (a) above, the Information Officer shall –
- (i) transfer the request to the relevant government department, as soon as reasonably possible but not later than **14 days** after the request is received; and
 - (ii) forward the requested information or record to the transferee department, if the Information Officer has possession of such a document and if he or she considers it helpful to do so.
- (c) Upon transfer of the request, the Information Officer of the Department shall immediately notify the requester of –
- (i) the transfer, including the identity and contact details of the transferee Information Officer to whom the request has been transferred to;
 - (ii) the reasons for the transfer; and
 - (iii) the period within which the request must be dealt with.

3.2.3.2 Deferral of Access to a Record

- (a) If the Information Officer decides to grant access to a record that –
- (i) will be published within **90 days** of receipt of a request;
 - (ii) is required by law to be so published but is yet to be published; or

- (iii) has been prepared for submission to legislature or a particular person but is yet to be submitted, he or she may defer giving access to the said record for a reasonable period.
- (b) If access to a record has been deferred, the Information Officer shall give a notice to the requester concerned advising the requester:
 - (i) that the requester may within **30 days** of receipt of the said notice, make a representation to the Information Officer why the information is required before the pending submission or publication; and
 - (ii) of the likely period for which access is deferred.
- (c) The Information Officer may grant access to a deferred record if, upon consideration of the representations made by the requester, he or she is satisfied that the requester will suffer substantial prejudice if access to a record is deferred.

3.2.3.3 Extension of a period to deal with a request

- (a) The Information Officer may extend the prescribed period of **30 days** for dealing with a request to a further period not more than **30 days** if the following circumstances exist –
 - (i) if the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the Department
 - (ii) if the request requires a search for records in, or collection thereof from, an office of the Department not situated in the same town or city as the office of the Information Officer that cannot reasonably be completed within the original period;
 - (iii) if consultation among divisions of the Department or with another Government Department or Government Entity is necessary to decide upon the request that cannot reasonably be completed within the original period;
 - (iv) if more than one of the above-mentioned contemplated circumstances exist making compliance with the original period not reasonably possible; or
 - (v) the requester consents to the extension.
- (b) If any of the circumstances contemplated in sub-paragraph (a) above exist; hence the need to extend the original **30 days** period, the

Information Officer shall as soon as reasonably possible but within **30 days** of receipt of the request, issue a notice to the requester advising him or her –

- (i) of the period of extension;
- (ii) of adequate reasons for extension; and
- (iii) that the requester may lodge an internal appeal or an application with a court, as the case may be, against the extension and the procedure for lodging the internal appeal or the application.

3.2.3.4 Calling of Representations from Third Parties

The Information Officer considering a request for access to a record that might be a record concerning –

- (a) privacy of third parties;
- (b) certain records of South African Revenue Service;
- (c) commercial information of third parties;
- (d) confidential information of third parties; or
- (e) research information of third parties or of a public body, shall inform the third party to whom the information relates and shall call upon the third party to make written representations to the Information Officer on either of the following:
 - (i) why the request should be refused; or
 - (ii) give written consent for the disclosure of the record to the requester concerned.

3.3. GRANTING OR REFUSAL OF REQUESTS:

3.3.1 If access to information has been granted the requester will be notified –

- (a) that the request has been granted;
- (b) of any outstanding access fee to be paid;
- (c) of the form in which access will be given; and
- (d) that he or she lodge an internal appeal against the access fee to be paid or the form of access granted and the procedure and period for lodging such an appeal.

3.3.2 A request for access to information held by the Department may be denied if the requested information falls within the category of information that cannot be disclosed in terms of section 34(1), 35(1), 36(1), 37(1), 38(a), 39(1), 40, 41(1), 41(2) and 45 of the Act. If the request for access to information has been denied, the Information Office shall notify the requester that –

- (a) the request has been refused and the reasons for the refusal; and
- (b) the requester may lodge an internal appeal in terms of the appeal procedure mentioned in paragraph 7 of this manual or may approach court for an appropriate relief.

3.3.3 If the Information Officer has not responded to the requester's request within **30 days** of receipt of the said request, it must be deemed that the request has been refused.

3.3.4 If all reasonable steps have been taken to find a record requested and there are reasonable grounds for believing that the record is in possession of the Department but cannot be found or does not exist, the Information Officer shall by way of an affidavit notify the requester that it is not possible to give access to the said record. For the purposes of the Act, this notice will be regarded as a decision to refuse access. If the record is subsequently found, the requester concerned will be given access to it unless access thereto is refused in terms of the Act.

3.4 PRESCRIBED FEES:

3.4.1 Fees payable for a request and notification of decision on access:

- A Requester who seeks access to a record containing personal information about the Requester is not required to pay the request fee. The fees payable by every Requester is listed in section 6 of this Manual.
- The **Information Officer** must notify the Requester of the fee and deposit (if any) before further processing the request.
- The Requester may lodge an internal appeal, to the MEC where appropriate, or an application to the court against the tender or payment of a fee.
- After the **Information Officer** has made a decision on the request the requester must be notified of such a decision in the way in which the requester wanted to be notified in.
- If the request is granted then a further **access** fee must be paid for the reproduction and for search and preparation for any time required in excess of stipulated hours to search and prepare the records for disclosure.
- **Access** to a record will be withheld until all the applicable fees have been paid.

SECTION FIVE

5. REMEDIES AVAILABLE IN RESPECT OF ACTS OR FAILURES TO ACT

- 5.1.1 If an Information Officer refuses a request for a record, then the Requester can lodge an internal appeal against that decision (s74 (1)(a). He or she may not go to court before following this route. After exhausting the internal appeal remedy an application may be lodged with a court (section 78 – 82).
- 5.1.2 A person may apply for an interdict (A remedy through which a person can ask the court to compel a person to take or not to take a particular action).
- 5.1.3 Constitutional Damages (Where a person's right is unjustifiably infringed he or she can claim constitutional damages).
- 5.1.4 Lodge a complaint to Public Protector
- 5.1.5 Institute proceedings in a court or a tribunal for the judicial review of the administrative action in terms of Section 6 of the Promotion of Administrative Justice Act (Act 3 of 2000)

5.1 INTERNAL APPEALS:

- 5.1.1 A requester may lodge an internal appeal to the MEC against a decision of the Information Officer —
 - (a) to refuse a request for access to information held by the Department; with regard to the payment of the request fee and access fee; or
 - (c) with regard to the extension of time period described in subsection 3.2.3.3 **above**, or
 - (d) with regard to the form of access if granted in a different form than requested.
- 5.1.2 A third party may also lodge an internal appeal against the decision of the Information Officer against his or her decision to grant a request for access.

- 5.1.3 An internal appeal must comply with the following requirements:
- (a) It must be lodged in the prescribed form (see **Form B Appendix 3**).
 - (b) It must be lodged within **60 days**.
 - (c) If notice to a third party is required, within **30 days** after notice is given to the appellant of the decision appealed against, or if the notice to the third party is not required, after the decision was taken.
 - (d) It must be delivered to the Information Officer as per the contact details set out in sub-paragraph 3 of this manual.
 - (e) It must identify the subject of the appeal and state the reasons for the internal appeal and any other information known to the appellant.
 - (f) If, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, it must state such manner and provide the necessary particulars to be so informed.
 - (g) If applicable, it must be accompanied by the prescribed appeal fee.
 - (h) It must specify a postal address or fax number (if available).
- 5.1.4 If an appeal is lodged after the expiry of the period referred to in sub-paragraph 5.1.3 above, the MEC must, on good cause shown, allow the late lodging of the appeal. If the MEC disallows the late lodging of the appeal, he or she shall give notice of that decision to the person who lodged the appeal.
- 5.1.5 A requester lodging the appeal against the refusal of his or her request for access must pay the prescribed appeal fee (if any). If the prescribed fee is payable in respect of an internal appeal, the decision on the appeal may be deferred until the fee is paid.
- 5.1.6 As soon as reasonably possible, within **10 working days** of receipt of an internal appeal, the Information Officer must submit the following information to the MEC —
- (a) the internal appeal together with his or her reasons for the decision concerned; and
 - (b) if the appeal is against the refusal or granting of a request for access, the name, postal address, phone and fax number and electronic mail address, whichever is available, of any third party that must be notified of the request.

- 5.1.7 If the MEC is considering an internal appeal against a refusal of a request for access to a record containing any of the following information —
- (a) privacy of third parties;
 - (b) certain records of South African Revenue Service;
 - (c) commercial information of third parties;
 - (d) confidential information of third parties;
 - (e) research information of third parties or of a public body,
- the MEC must, by way of a notice, as soon as possible but within **30 days** after the receipt of the appeal, inform the third party to whom the record relates.
- 5.1.8 A third party that is informed of an internal appeal may within **21 days** after having been informed of the internal appeal, make written representations to the MEC as to why the request for access should not be granted.
- 5.1.9 If the MEC is considering an appeal against the granting of a request for access, the MEC must as soon as reasonably possibly but within **30 days** after the receipt of the appeal, notify the requester of the appeal and state in the notice that —
- (a) the third party may within **21 days** after notice is given make written representations to the MEC as to why that request should not be granted; and
 - (b) the requester may within **21 days** after the notice is given, make written representations to the MEC as to why the request for access should be granted.
- 5.1.10 The MEC shall make his decision on the appeal as soon as reasonably possible, however within **30 days** of receipt of the appeal.
- 5.1.11 When deciding the internal appeal, the MEC may confirm the decision appealed against or may substitute the said decision.
- 5.1.12 The MEC, shall immediately after the decision on appeal, give notice to the appellant, third parties and to the requester if the appeal was lodged against granting of access. The said notice shall contain sufficient reasons for the decision including the provisions of the Act relied upon. The notice shall further advise the appellant, third party or a requester —
- (a) that they may lodge an application with a court against the decision on internal appeal;
 - (b) of the time period within which such an application may be lodged; and

- (c) of the procedure for lodging the said application.

5.1.13 If the MEC does not give any notice of his decision on the appeal within **30 days** of the receipt of the appeal, it must be deemed that the internal appeal was dismissed.

5.2 APPLICATION TO COURT:

5.2.1 A requester or third party may only apply to Court for an appropriate relief after he or she has exhausted the internal appeal procedure.

5.2.2 A requester or a third party who has been unsuccessfully in the internal appeal must within **30 days** of the decision of the MEC approach the appropriate court with jurisdiction for an appropriate relief. This application must follow the procedure stipulated in section 79 of the Act and /or any rules developed in terms thereof.

5.2.3 The court hearing an application may grant an order that is just and equitable including orders —

- (a) confirming, amending, or setting aside the decision of the Information Officer or the MEC;
- (b) requiring from the Information Officer or the MEC to take such action or refrain from taking such action as the court considers necessary within a period mentioned in the order;
- (c) granting an interdict or specific relief, a declaratory order or compensation; or
- (d) for costs.

5.3 LODGEMENT OF COMPLAINTS WITH THE PUBLIC PROTECTOR:

Section 6 of the Public Protector Act 23 of 1994 as amended by section 91 of the Act enables the Public Protector on his or her own initiative or on receipt of a complaint relating to the operation or administration of the Act, or in his or her sole discretion to resolve any dispute by —

- (a) mediation, conciliation or negotiation;
- (b) advising, where necessary, any complainant regarding appropriate remedies; or
- (c) any other means that may be expedient in the circumstances.

5.4 DECLARING A DISPUTE UNDER THE LABOUR RELATIONS ACT:

- 5.4.1 A person may use labour remedies regarding official acts or omissions of a labour nature, namely disputes of rights (the Public Service Act, 1994, and the Labour Relations Act, 1995);
- 5.4.2 A person may lodge a complaint with a labour inspector concerning any alleged contravention of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997 – section 78(1)9a)), or the Employment Equity Act, 1998 (Act No. 55 of 1998 – section 34(e)).

5.5 LODGEMENT OF COMPLAINTS WITH THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC):

A person may lodge a complaint with the SAHRC concerning an official act or omission that is suspected to constitute a violation or threat to any fundamental right (Human Rights Commission Act, 1994 (Act No. 54 of 1994)).

5.6 OTHER REMEDIES:

- 5.6.1 A public service employee may lodge a grievance or complaint for investigation by the Public Service Commission concerning an official act or omission (section 35 of the Public Service Act, 1994);
- 5.6.2 A person may make use of other legal remedies such as the institution of proceedings for the judicial review of an administrative action in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- 5.6.3 A person may request reasons for an administrative action in terms of the Promotion of Administrative Justice Act, 2000 (section 5);
- 5.6.4 A person may request access to records of government departments or other public body in terms of the Promotion of Access to Information Act, 2000 (section 11).

SECTION 6**PUBLIC PARTICIPATION IN THE FORMULATION OF POLICY AND EXERCISE OF POWER OR PERFORMANCE OF THE DEPARTMENT**

The members of public can influence the formulation of policy or legislation and the exercising of powers or performance of duties by the Department in that —

- (a) Before any bill is submitted to the Legislature for final debate and approval, hearings and workshops are conducted, where the public is given an opportunity to make representation on such bills;
- (b) Draft Bills are also published in the Government Gazette for public comment before they are introduced in Parliament;
- (c) Members of the public are also afforded an opportunity to make representations on the policies that impact on the public as well as the Department's service delivery and quality thereof through various forums such as workshops and Provincial Izimbizos.

APPENDIX 1

FEES IN RESPECT OF PUBLIC BODIES

Part ii of Government Gazette Notice 187 of 15 February 2002

1. The fee for a copy of the manual as contemplated in regulation 5(c) is R0.60 for every photocopy of an A4-size page or part thereof.
2. The fees for reproduction referred to in regulation 7(1) are as follows:

	R
(a) For every photocopy of an A4-size page or part	0,60
(b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine readable form	0,40
(c) For a copy in a computer-readable form on –	
(i) stiffy disc	5,00
(ii) compact disc	40,00
(d) (i) For a transcription of visual images, or an A4-size page or part thereof	22,00
(ii) For a copy of visual images	60,00
(e) (i) For a transcription of an audio record, or an A4-size page or part thereof	12,00
(ii) For a copy of an audio record	17,00
3. The request fee payable by every requester, other than a Personal Requester, referred to in regulation 7(2) is R35, 00.
4. The access fees payable by a requester referred to in regulation 7(3) are as follows:

	R
(1)(a) For every photocopy of an A4-size page or part thereof	0,60
(b) For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	0,40

- | | | |
|-----|--|--|
| (c) | For a copy in a computer-readable form on – | |
| | (i) stiffy disc | 5,00 |
| | (ii) compact disc | 40,00 |
| (d) | (i) For a transcription of visual images, for an A4-size page of part thereof | 22,00 |
| | (ii) For a copy of visual images | 60,00 |
| (e) | (i) For a transcription of an audio record, for an A4-size page or part thereof | 12,00 |
| | (ii) For a copy of an audio record | 17,00 |
| (f) | To reach for and prepare the record for disclosure, R15, 00 for each hour or part of an hour, excluding the first hour, reasonably required for such search and preparation. | |
| (2) | For purposes of section 22(2) of the Act, the following applies: | |
| | (a) | Six hours as the hours to be exceeded before a deposit is payable; and |
| | (b) | One third of the access fee is payable as a deposit by the requester. |
| (3) | The actual postage is payable by the requester when a copy of a record must be posted to a requester. | |

APPENDIX 2

FORM A

PRESCRIBED FORMS FOR ACCESS TO INFORMATION

REQUEST FOR AN ACCESS TO RECORD OF PUBLIC BODY

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

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.....

SIGNATURE OF INFORMATION OFFICER/DEPUTY INFORMATION OFFICER

A. PARTICULAR OF PUBLIC BODY:

NAME OF PUBLIC BODY	
Designated Information Officer	
Designated Deputy Information Officers (if any)	
E-mail address of information Officer/ Deputy Information Officer	
Postal address	
Street address	
Phone number	
Fax number	

B. PARTICULARS OF PERSON REQUESTING ACCESS TO THE RECORD:

- (a) The particulars of the person who requests access to the record 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 requests is made, if applicable, must be attached.

Full names and surname: _ Identity number: Postal address:

Fax number: Telephone number: E-mail address:

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

C. PARTICULARS OF PERSON ON WHOSE BEHALF REQUEST IS MADE:

This part 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 RECORDS:

- (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 particular of record:

E. FEES:

- | |
|--|
| <ol style="list-style-type: none"> (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 searching for and preparing 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:

F. FORMS 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
NOTES:	
<ol style="list-style-type: none"> (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. 	

Mark the appropriate box with an "X".

1. If the record is in written or printed form -				
<input type="checkbox"/>	Copy of record*	<input type="checkbox"/>	Inspection of record	
2. If record consists of visual images- (this includes photographs, slides, video recordings, computer-generated images Sketches, etc.)				
<input type="checkbox"/>	View the images	<input type="checkbox"/>	Copy of the images*	<input type="checkbox"/>
				Transcription of the images*
3. If record consists of records words or information which can be reproduced in sound-				
<input type="checkbox"/>	Listen to the soundtrack (audio cassette)	<input type="checkbox"/>	Transcription of soundtrack* (written or printed document)	
4. If record is held on computer or in an electronic or machine-readable form-				
<input type="checkbox"/>	Printed copy of record*	<input type="checkbox"/>	Printed copy of information derived from the record*	<input type="checkbox"/>
				Copy in computer readable form* (magnetic or optical disc)
*If you requested a copy or transcription of a record (above), do you prefer, access may be granted in the language in which the record is available.				
In which language would you prefer the record?				

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 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 _____ 20_____

“SIGNATURE OF REQUESTER / PERSON ON BEHALF OF WHOM THE REQUEST IS MADE”

APPENDIX 3

FORM B

NOTICE OF INTERNAL APPEAL

(Section 75 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 8]

STATE YOUR REFERENCE NUMBER:

A. PARTICULARS OF PUBLIC BODY:

The Information Officer/Deputy Information Officer:

B. PARTICULARS OF REQUESTER / THIRD PARTY WHO LODGES THE APPEAL:

(a) The particulars of the person who lodge the internal appeal must be recorded below.
(b) Proof of the capacity in which the request is made, if applicable, must be attached.
(c) If the Appellant is a third party person and not the person who originally requested the information, the particulars of the requester must be given at C below.

Full names and surname:.....
Identity number:.....
Postal address:.....
Fax number: Telephone number:.....
E-mail address:.....
Capacity in which request is made, when made on behalf of another person:
.....

C. PARTICULARS OF REQUESTER:

This section must be completed ONLY if a third party (other than the requester) lodges the internal appeal.

Full names and surname:.....
Identity number:.....

D. THE DECISION AGAINST WHICH THE INTERNAL APPEAL IS LODGED:

Mark the decision against which the internal appeal is lodged with an X in the appropriate box.

	Refusal of request for access.
	Decision regarding fees in terms of section 22 of the Act.
	Decision regarding the extension of the period within which the request must be dealt with in terms of section 26(1) of the Act.
	Decision in terms of section 29(3) of the Act to refuse access in the form requested by the requester.
	Decision to grant request for access.

E. GROUNDS FOR APPEAL:

If the provided space is inadequate, please continue on a separate folio and attach it to this form. You must sign all the additional folios.

State the grounds on which the internal appeal is based:

State any other information that may be relevant in considering the appeal:

F. NOTICE OF DECISION ON APPEAL:

You will be notified in writing of the decision on your internal appeal. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

State the _____

Particulars of Manner: _____

Signed at _____ this _____ day of _____ 20 _____

SIGNATURE OF APPELLANT

FOR DEPARTMENTAL USE:

OFFICIAL RECORD OF INTERNAL APPEAL:

Appeal received by..... Rank....., on this.....of
.....20.....

At.....

Appeal accompanied by the reasons for the information officer's / deputy information officer's decision and where applicable, the particulars of any third party to whom or which the record

relates, submitted by the information officer / deputy information officer on (date) to the relevant authority.

OUTCOME OF APPEAL:

**DECISION OF INFORMATION OFFICER / DEPUTY INFORMATION OFFICER
CONFIRMED /NEW DECISION SUBSTITUTED**

NEW DECISION_____

RELEVANT AUTHORITY_____

DATE_____

**DATE RECEIVED BY INFORMATION OFFICER / DEPUTY INFORMATION OFFICER FROM THE
RELEVANT AUTHORITYON:**