
ANNEXURE TO COMPLAINT IN TERMS OF SECTION 77A

1. The Organisation Undoing Tax Abuse (“OUTA”) hereby lodges a complaint in terms of section 77A of the Promotion of Access to Information Act, 2000 (“PAIA”) against the National Nuclear Regulator’s (“NNR”) refusal to grant OUTA access to the records it requested in terms of a request for access to information and/or the NNR’s dismissal of OUTA’s internal appeal.

2. For ease of reference, the chronology of OUTA’s request for access to information is follows:
 - 2.1. **13 September 2022** – OUTA submits its request for access to information (Form 2). OUTA’s request is attached hereto and marked “**Annexure A1**” and “**Annexure A2**”.
 - 2.2. **26 September 2022** – The NNR provides OUTA with its formal response (refusal) to OUTA’s request for access to information. Note that due to OUTA using the incorrect form in its initial request, OUTA was advised by the Information Regulator to resubmit the request using Form 2 (thus the request was effectively resubmitted on 13 September 2022). Attached hereto is the NNR’s letter reiterating its initial refusal marked “**Annexure B1**” as well the initial refusal as referred to in paragraph 2 of the letter, marked “**Annexure B2**”.
 - 2.3. **7 November 2022** – OUTA lodges its internal appeal in terms section 75 to the NNR’s refusal. OUTA’s internal appeal is attached hereto and marked “**Annexure C1**” and “**Annexure C2**”. To date, OUTA has not received a formal response to its internal appeal and therefore considers the internal appeal as having been refusal.

3. OUTA considers the NNR’s reliance on section 44(1)(a)(ii) and dismissal (confirmation of the refusal) of OUTA’s internal appeal as arbitrary and unsubstantiated. For the sake of brevity and to avoid repetition, we kindly refer the Information Regulator to OUTA’s internal appeal as referred to in paragraph 2.3 above.

ORGANISATION UNDOING TAX ABUSE NPC

Reg No.: 2012/064213/08

Directors: WL Duvenage (CEO), Adv. S Fick,

Non-Executive Directors: W Modisapodi (Chair), P Majazi, LJJ Pauwen, T Pillay Van Graan, Dr H Volmink, T Skweyiya, S Ndlovu, Z Mukwevho

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4. In cognisance of the NNR legislative mandate, role as administrator in relation to administrative decision making as well as the significance of the public interest in all decision-making process, we contend that the ambit of section 46 of PAIA overrides any arbitrary refusal posed by the NNR. Moreover, it is impossible for OUTA to consider any harm that would result upon the disclosure of the records requested as the NNR has clearly failed to illustrate what such harm would entail.
5. We further contend that arbitrary citing of section 44(1)(a)(ii) by the NNR intentionally defeats the objects of PAIA, which is to “...*foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information; 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 all of their rights...*”
6. The importance of access to information held by the state or public or state entity as a means to secure accountability and transparency justifies the approach adopted in section 32(1)(a) of the Bill of Rights and in PAIA, namely, that unless one of the specially enumerated grounds of refusal obtains, citizens are entitled to information held by the state or state or public entity as a matter of right. We reiterate that the grounds provided by the NNR is capricious and does not take into consideration the very nature of its operations, which will always have either a direct or indirect effect on the public.
7. The NNR has not shown that it is probable that the disclosure (even of confidential information) would cause harm or compromise its operational and decision-making processes. Any individual or entity relying on this provision must show that harm is not simply possible, but probable. In the circumstances, the NNR has not put up any reasons that justify the refusal of access to the records.
8. The requirements for the granting of access under section 46 are the following:
 - 8.1. If the disclosure of the record would reveal evidence of a substantial breach of the law or an imminent and serious public safety or environmental risk; and
 - 8.2. Where the public interest in the disclosure clearly outweighs the harm contemplated in the section relied upon to refuse access.

9. It is the law that if one or more of the requirements set out in section 46 are present, then despite the fact that disclosure could be validly refused in terms of sections 34(1), 36(1), 37(1)(a) or (b), 38(a) or (b), 39(1)(a) or (b), 40, 41(1)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45 of PAIA, the information officer of a public body must still grant a request for access to a record of the body contemplated. Accordingly, OUTA has made out a case for access to the information sought in terms of the above principles. The unsubstantiated defences raised by the NRR have no prospect of success, should this the matter proceed to litigation.
10. This complaint is rooted in freeing the NNR from the chains of lack of transparency and be of assistance in managing the publics fear in respect of the doors of the NNR being firmly closed to public opinion.
11. The mandate carried by both the NNR and OUTA should be aligned in the best interest of civil society, if that remains the case then lengthy litigation should be avoided between the parties and resolve amicably reached.
12. We therefore seek the Information Regulator's reconsideration and guidance in line with Chapter 1A of Part 4 of PAIA (sections 77A to 77K).

ORGANISATION UNDOING TAX ABUSE

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