PROMOTION OF ACCESS TO INFORMATION ACT NO. 2 OF 2000 MANUAL

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1. Introduction

Section 32 of the Constitution of the Republic of South Africa, No. 108 of 1996 **("the Constitution")** provides:

(1) Everyone has the right of access to –

(a) any information held by the state; and

(b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

The Promotion of Access to Information Act, No.2 of 2000 **("the Act"),** was enacted on 3rd February 2002 to give effect to section 32 of the Constitution, that is giving effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights. Where a request is made in terms of this Act, the private or public body to whom the request is made is obliged to release the information, except where the Act expressly provides that the information must not be released. The Act sets out the requisite procedural issues attached to such request. The Act came into effect on 9 March 2001 with the exception of sections 10, 14,16 and 51 that were brought into operation on 15 February 2002.

2. Who May Request Information in terms of the Act

Any person, who requires information for the exercise or protection of any rights, may request information from a private body. Section 50 of the Act states that:

(1) A requester must be given access to any record of a private body if –

(a) that record is required for the exercise or protection of any rights;

(b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and (c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

3. Procedures for Obtaining Access

3.1 Contact Details

Any person who wishes to request any information from **THE SA HEART FOUNDATION NPC (REGISTRATION NUMBER 2015/378385/08) CC** ("SA Heart") withthe aim of protecting or exercising a right may contact the Chairman of the Board whose contact details are as follows:

Requests to be addressed to:	The Chairman of the Board / Dr Anthony Dalby
Street address:	Division of Cardiology 8th Floor, Green Lane (Room 1521), Tygerberg Hospital Fransie van Zyl Laan Tygerberg Cape Town 7505
Postal Address :	PO Box 3213 Matieland 7602
Phone number:	021 889 6129
E-mail address:	info@saheart.org

3.2 Prescribed Access Form

In terms of section 53, a request for access to a record of SA Heart must be made on the prescribed form to SA Heart at the address or electronic mail address given above. The form requires the requester to provide the following information:

- sufficient information to enable the Chairman of the Board to identify the requester;
- sufficient information to enable the Chairman of the Board to identify the record(s) requested;
- the requester's postal address, email, or fax number;
- identification of the right sought to be exercised or protected;
- an explanation on why the record is required to exercise or protect that right;
- the manner in which the requester wishes to be informed of the decision on therequest, if in a manner in addition to written notification; and
- if the request is made on behalf of a person, the submission of proof of the capacity in which the requester makes the request, to the satisfaction of the Chairman of the Board.

Refer to **Annexure A** to this manual for the format of the prescribed form. Requesters please note that all of the information as listed above should be provided, failing which the process will be delayed while SA Heart requests such additional information. The prescribed time periods will not commence until all pertinent information has been furnished to SA Heart by the requester.

3.3 Prescribed Fees

Payment of fees is regulated in terms of section 54 of the Act. The Regulations to the Act provide for two types of fees:

- **Request fee**: This is a non-refundable administration fee paid by all requesters, with the exclusion of personal requesters. (Refer to paragraph 3.3.2 below for the definition of personal requester). It is paid before the request is considered.
- **Access fee**: This is paid by all requesters only when access is granted. This fee is intended to reimburse the private body for the costs involved in searching for a record and preparing it for delivery to the requester.

SA Heart may withhold a record until the request fee and the deposit (if applicable) have been paid. Refer to **Annexure B** below for a list of applicable fees.

3.3.1 Requester other than Personal Requester

The Chairman of the Board must give written notice to a requester, other than a personal requester, of the request fee and amount to be paid before the request may be further processed.

If, in the Chairman of the Board's opinion, the search for a record, or preparation of the record for disclosure will require more than the prescribed hours, the Chairman of the Board may require the requester to pay a deposit, not being more than one third of the access fee that would be payable if the request is granted. If the request is declined, the deposit must be repaid to the requester.

The notice given by the Chief Executive Office must advise the requester that s/he has a right to apply to court against the payment of the request fee or deposit, and should also advise of the procedure of the application.

3.3.2 Personal Requester

A personal requester is described, in terms of the Act, as a requester

seeking access to a record containing information about the requester.

A personal requester is not liable to pay a request fee but is liable for payment of access fees in the event of a request being granted. A personal requester may not be required to pay a deposit before the granting of the record.

4. Information Regulator

The Information Regulator has compiled a guide intended to assist users in the interpretation of the Act. The guide contains a description of the aims of the Act, the contact details of the information officers of all the public bodies, particulars of the public bodies, the manner of access to the records of those public bodies and the remediesavailable in law regarding a breach of any of the provisions of the Act.

The Information Regulator's contact details are as follows:
JD House
27 Stiemens Street
Braamfontein
Johannesburg
2001
PO Box 31533, Braamfontein
2017
Tel: 010 0123 5200
Email: enquiries@inforegulator.org.za
Web-site: http://inforegulator.org.za

5. Categories of records

5.1 Human Resources Division

Records found in this division contain information of employees

that include the following:

(i) any personal records provided to SA Heart by employee/personnel
(ii) any records a third party has provided to SA Heart about its personnel
(iii) conditions of employment and other personnel-related contractual and quasi legal records
(iv) internal evaluation records
(v) other internal records and correspondence related to the particular employee

5.2 SA Heart records

This category of records relates, but is not limited to, the following information:

(i) Financial records
(ii) Operational records
(iii) Databases
(iv) Terms and Conditions concluded with clients
(v) Information technology
(vi) Marketing records
(vii) Internal correspondence
(viii) Product records
(ix) Statutory records
(x) Internal policies and procedures
(xi) Records held by officials of SA Heart

Each request will be evaluated on its own merits. If any record falls within any of thecategories of exemptions, then such a request will be refused.

5.3 Other Parties

SA Heart may possess records belonging to other parties such as clients and

candidates. Alternatively, such other parties may possess records that can be said to belong to SA Heart (eg. its accountants and auditors).

The following records fall under this category:

- Personnel, member or SA Heart records which are held by another party as opposed to being held by SA Heart; and
- Records held by SA Heart pertaining to other parties, including without limitation financial records, correspondence, contractual records, records provided by the other party, and records third parties have provided about the candidates and other third parties.

5.4 Records available in terms of other legislation

The requester may also request information that is available in terms of legislation, such asthe following:

- Basic Conditions of Employment Act (Act No. 75 of 1997)
- Companies Act (Act No 71 of 2008)
- Compensation for Occupational Injuries & Diseases Act (Act No. 130 of 1993)
- Employment Equity Act (Act No. 55 of 1998)
- Labour Relations Act (Act No. 66 of 1995)
- Occupational Health and Safety Act (Act No. 85 of 1993)
- Promotion of Equality and Prevention of Unfair Discrimination Act (Act No. 4 of2000)
- Protection of Personal Information Act 4 of 2013
- Skills Development Act (Act No. 97 of 1998)
- Skills Development Levies Act (Act No. 9 of 1999)
- South African Qualifications Authority Act (Act No. 58 of 1995)

In terms of the above legislation, information relating to personnel may be requested.

- Companies Act (Act No. 61 of 1973)
- Short-term Insurance Act (Act No. 53 of 1998)

Records relating to company reporting and Company related records as far as is allowed interms of these Acts may be requested.

- Income Tax Act (Act No. 58 of 1962 as amended)
- VAT Act (Act No. 89 of 1991)

Records relating to tax, employees and the company may be requested in terms of the above Acts.

The Chairman of the Board will take into consideration section 8 of the manual to decide on whether or not access to any of the information stated above should be given to the requester.

6. Decision-making process

6.1 In terms of Section 55, the Chairman of the Board will take all reasonable steps to find a record that has been requested. If the record cannot be found or does not exist, the Chairman of the Board must notify the requester by way of affidavit or affirmation, that it is not possible to give access to the record. This is deemed to be arefusal of the request. If, however, the record is later found, the requester must be given access if the request would otherwise have been granted.

6.2 Section 56 provides that the Chairman of the Board must within 30 days of receipt of a correctly completed request, notify the requester of the decision as to whether or not to grant the request. If the request is:

Granted: the notification must state the applicable access fee required to be paid, together with the procedure to be followed should the requester wish to apply

to court against such fee, and the form in which access will be given.

Declined: the notification must include adequate reasons for the decision, together with the relevant provisions of the Act relied upon, and provide the procedure to be followed should the requester wish to apply to court against the decision.

6.3 The Chairman of the Board may extend the period of 30 days by a further period not exceeding 30 days if:

- the request is for a large number of records or requires a search through a large number of records;
- the request requires a search for records located in a different office of SA Heart not situated in the same city;
- consultation between divisions of SA Heart, or withanother private body is required; or
- the requester consents to the extension.

The requester must be notified within the initial 30-day period in writing of the extension, together with reasons therefore, and the procedure involved should the requester wish to apply to court against the extension. The Chairman of the Board's failure to respond to the requester within the 30-day period constitutes a deemed refusal of the request.

6.4 Section 59 provides that the Chairman of the Board may sever/redact a record and grant access only to that portion which the law does not prohibit access to.

If access is granted, access must be given in the form that is reasonably required by the requester, or if the requester has not identified a preference, in a form reasonably determined by the Chairman of the Board.

7. Third Parties

If the request is for a record pertaining to a third party, the Chairman of the Board must take all reasonable steps to inform that third party of the request. This must be done within 21 days of receipt of the request. The manner in which this is done must be in the fastest means reasonably possible, but if orally, the Chairman of the Board must thereafter give the third party a written confirmation of the notification. The third party may within 21 days thereafter either make representation to SA Heart as to why the request should be refused, alternatively grant written consent to the disclosure of the record. The third party must be advised of the decision taken by the Chairman of the Board on whether to grant or decline the request and must also be advised of his/her/its right to appeal against the decision by way of application to court within 30 days after the notice.

8. Grounds for Refusal of a Request

Notwithstanding compliance with section 50, the request may be declined in accordance with one of the prescribed grounds in terms of the Act, namely:

8.1 Section 63 of the Act prohibits the unreasonable disclosure of the personal information of natural-person third parties to requesters. This includes the personal information of deceased persons. However, Section 63(2) does provide exceptions to this.

8.2 Section 64 states that a request must be refused if it relates to records containingthird party information pertaining to:

- trade secrets;
- financial, commercial, scientific or technical information where disclosure would belikely to cause harm to the commercial or financial interests of that third party; or
- information, supplied in confidence by the third party, the disclosure of

which could reasonably be expected to put the third party at a disadvantage in contractual or other negotiations, or prejudice the third party in commercial competition.

The information must, however, be released if it pertains to the results of product or environmental testing, the disclosure of which would reveal a serious public safetyor environmental risk.

8.3 Section 65 prohibits disclosure of information if such disclosure would constitute a breach of any duty of confidentiality owed to a third party in terms of an agreement.

8.4 In terms of section 66, SA Heart must refuse a request for access to a record of the body if disclosure could reasonably be expected to:

- endanger the life or physical safety of an individual;
- prejudice or impair the security of a building, structure or system, including but not limited to a computer or communication system, means of transport or any other property;
- SA Heart may also refuse a request for access to information that would prejudice methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme or safety of the public.

8.5 Section 67 mandates the refusal of a request if the record is privileged from production in legal proceedings, unless the person entitled to the privilege has waived the privilege.

8.6 Section 68 pertains to records containing information about SA Heart itself and unlike the other provisions pertaining to decline of a request, is not mandatory, but rather discretionary. SA Heart may refuse access to a record if the record:

- contains trade secrets of SA Heart;
- contains financial, commercial, scientific or technical information, the disclosure of which would be likely to cause harm to the commercial or financial interests of SA Heart;
- contains information which, if disclosed, could reasonably be expected to putSA Heart at a disadvantage in contractual or other negotiations, or prejudice SA Heart in commercial capacity; or
- consists of a computer program owned by SA Heart.

Notwithstanding the above, the information must be released if it pertains to the results of product or environmental testing, the disclosure of which would reveal aserious public safety or environmental risk.

8.7 Section 69 prohibits the disclosure of information about research where disclosure is likely to expose the third party, the person conducting the research on behalf of the third party, or the subject matter of the research to serious disadvantage. Disclosure is discretionary if such research pertains to SA Heart itself.

Notwithstanding any of the above-mentioned provisions, Section 70 provides that a record must be disclosed if its disclosure would:

- reveal evidence of a substantial contravention of or failure to comply withthe law, imminent and serious public safety or environmental risk; and
- if the public interest in the disclosure clearly outweighs the harm.

9. Rights of Appeal

A requester that is dissatisfied with the Chairman of the Board's refusal to grant access to any information may, within 30 days of notification of the decision, apply to court for relief. Likewise, a third party dissatisfied with the Chairman of the Board's decision to grant a request may, within 30 days of notification of the decision, apply

to court for relief. It should be noted that notwithstanding any provision in this Act, the court may examine the record(s) in question. No record may be withheld from the court on any grounds. The court may not, however, disclose the contents of the record(s).

The court is empowered to grant any order that is just and equitable, including:

- confirming, amending or setting aside the Chairman of the Board's decision;
- requiring the Chairman of the Board to take any action, or refrain from taking any action as identified by the court within a specified period;
- granting an interdict, interim or special relief, declaratory order or compensation;
- an order as to costs.



Signed: Anthony Dalby

SA Heart® Board chair

ANNEXURE A

Request for access to record

[Regulation 7]

Note: *1 Proof of identity must be attached by the requester.* *2 If requests made on behalf of another person, proof of such authorisation, must be attached to this form.*	
TO:	The information officer _____ _____ _____ _____ (Address)
E-mail address: Fax number:	_____ _____ _____ _____
Mark with an 'X'	
Request is made in my own name	Request is made on behalf of another person

PERSONAL INFORMATION

Full names:				
Identity number:				
Capacity in which request is made *(when made on behalf of another person):*				
Postal Address:				
Street Address:				
E-mail Address:				
Contact numbers:	Tel (B):		Facsimile:	
	Cellular:			
Full names of person on whose behalf request is made *(if applicable):*				
Identity number:				

Postal Address:				
Street Address:				
E-mail Address:				
Contact numbers:	Tel (B):		Facsimile	
	Cellular:			
PARTICULARS OF RECORD REQUESTED *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. (If the provided space is inadequate, please continue on a separate page and attach it to this form. All additional pages must be signed.)*				
Description of record or relevant part of the record:				
Reference number, if available:				

Any further particulars of record:	

TYPE OF RECORD *(Mark the applicable box with an 'X')*	
Record is in written or printed form	
Record comprises virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Record consists of recorded words or information which can be reproduced in sound	
Record is held on a computer or in an electronic, or machine-readable form	

FORM OF ACCESS *(Mark the applicable box with an 'X')*	
Printed copy of record *(including copies of any virtual images, transcriptions and information held on computer or in an electronic or machine-readable form)*	

Written or printed transcription of virtual images *(this includes photographs, slides, video recordings, computer-generated images, sketches, etc)*	
Transcription of soundtrack *(written or printed document)*	
Copy of record on flash drive *(including virtual images and soundtracks)*	
Copy of record on compact disc drive *(including virtual images and soundtracks)*	
Copy of record saved on cloud storage server	

MANNER OF ACCESS *(Mark the applicable box with an 'X')*

Personal inspection of record at registered address of public/private body *(including listening to recorded words, information which can be reproduced in sound, or information held on computer or in an electronic or machine-readable form)*	
Postal services to postal address	
Postal services to street address	
Courier service to street address	
Facsimile of information in written or printed format *(including transcriptions)*	
E-mail of information *(including soundtracks if possible)*	
Cloud share/file transfer	
Preferred language: *(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)*	

PARTICULARS OF RIGHT TO BE EXERCISED OR PROTECTED *If the provided space is inadequate, please continue on a separate page and attach it to this Form. The requester must sign all the additional pages.*	
Indicate which right is to be exercised or protected:	
Explain why the record requested is required for the exercise or protection of the aforementioned right:	

FEES	
A request fee must be paid before the request will be considered. *You will be notified of the amount of the access fee to be paid.* *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.* *If you qualify for exemption of the payment of any fee, please state the reason for exemption.*	
Reason:	

You will be notified in writing whether your request has been approved or denied and if approved the costs relating to your request, if any. Please indicate your preferred manner of correspondence:

Postal address	Facsimile	Electronic communication *(Please specify)*

Signed at _____ this _____ day of _____ 20 _____
_____ *Signature of requester /person on whose behalf request is made*

FOR OFFICIAL USE

Reference number:	
Request received by: *(state rank, name and surname of information officer)*	
Date received:	
Access fees:	

Deposit (if any):	

Signature of information officer

ANNEXURE B

FEES IN RESPECT OF PRIVATE BODIES

Fees will be quoted by SA Heart after receipt of request for a record. SA Heart will send its bank details for electronic funds transfer (EFT) payment of quoted fees.