



**MANUAL FOR THE  
MBOMBELA LOCAL MUNICIPALITY  
IN ACCORDANCE WITH THE PROMOTION OF ACCESS TO  
INFORMATION ACT NO: 2 OF 2000**

**(Updated 06 November 2015)**

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# **MANUAL IN ACCORDANCE WITH THE PROMOTION OF ACCESS TO INFORMATION ACT No. 2 OF 2000**

## **1. INTRODUCTION**

The Mbombela Local Municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998.

As a public entity performing a public function, Mbombela Local Municipality is bound by the provisions of the Constitution of the Republic of South Africa, No. 108 of 1996 ("the Constitution"). Section 32 of 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 of 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") came into operation on 09 March 2001 to give effect to the constitutional right of access to any information held by any private or

public body and any information that is held by another person that is required for the exercise 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 provides a procedure for requests and decisions regarding access to information to be carried out within certain prescribed time limits. It further sets out the requirements for requests for access to information that must be complied with, and also provides for grounds for refusal.

## **2. THE STRUCTURE OF THE MBOMBELA LOCAL MUNICIPALITY**

The Mbombela Local Municipality ("Municipality") consists of 78 Councillors who were elected through ward and proportional representations systems.

An administrative staff headed by the Municipal Manager carries out the administrative functions of the Municipality. The Municipality further performs its functions through the various Committees within its jurisdiction as it was determined by the Demarcation.

### **3. CONTACT DETAILS**

**Name of body:** Mbombela Local Municipality

**Executive Mayor:** Mr S P Mathonsi

**Municipal Manager:** Mr Noko Seanego

**Physical Address:** Civic Centre  
1 Nel Street  
Nelspruit

**Postal address:** P.O. Box 45  
**NELSPRUIT**  
1200

**Telephone No:** (013) 759 9111

**Fax No.:** (013) 759 2070

**E-mail address:** registry@mbombela.gov.za

**Deputy Information Officer:** Mr Manie Ferreira (013) 7592102

### **4. PROCEDURES FOR OBTAINING ACCESS**

#### **4.1 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 the Municipality.

The Act grants a requestor access to records of the Municipality, if the record is required for the exercise or protection of any rights. If a public

body lodges a request, the public body must be acting in the public interest.

Requests in terms of the Act must be made in accordance with the prescribed procedures, at the rates provided in terms of Government Notice R187 of 15 February 2002.

## **4.2 PRESCRIBED ACCESS FORM**

In terms of section 53, a request for access to a record of the Municipality must be made in the prescribed form to Municipality at the address, fax number or electronic mail address given above **[Govt. Notice R187- 15 February 2002 Form A]**.

To facilitate the processing of a request, the requestor must:

- 4.2.1 Use the prescribed form;
- 4.2.2 Address the request to the Municipal Manager;
- 4.2.3 Provide sufficient details to enable the Board to identify:
  - (a) The record(s) requested;
  - (b) The requestor (and if an agent is lodging the request, proof of capacity);
  - (c) The form of access required;
  - (d) The postal address or fax number of the requestor;
  - (e) If the requestor wishes to be informed of the decision in any manner (in addition to written) the manner and particulars thereof; and

- (f) The right which the requestor is seeking to exercise or protect with an explanation of the reason the record is required to exercise or protect the right.

### **4.3 PRESCRIBED FEES.**

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

- Request fee: This is a non-refundable administration fee paid by all requestors with the exclusion of personal requestors. It is paid before the request is considered.
- Access fee: This is paid by all requestors only when access is granted. This fee is intended to re-imburse the Municipality for the costs involved in searching for a record and preparing it for delivery to the requestor.

The Municipality may withhold a record until the request fee and the deposit (if applicable) have been paid.

### **4.4 REQUEST OTHER THAN PERSONAL REQUESTOR**

The information officer must give written notice to a requestor other than a personal requestor of the request fee and amount to be paid before the request may be further processed.

If in the information officer's opinion, the search for a record, or preparation of the record for disclosure will require more than the

prescribed hours, the information officer may require the requestor 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 requestor.

The notice given by the information officer must advise the requestor that s/he has a right to apply to court against the payment of the request fee or deposit, and also advise of the procedure of the application.

#### **4.5 PERSONAL REQUESTOR**

A personal requestor is described in terms of the Act as a requestor seeking access to a record containing information about the requestor.

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

### **5. SOUTH AFRICAN HUMAN RIGHTS COMMISSION GUIDELINE**

In terms of section 10 of the Act, the South African Human Rights Commission must compile a guideline by not later than August 2003. This guideline is intended to assist users in the interpretation of the Act. The guideline will contain a description of the objects of the Act, details of the information officers of all public bodies, particulars of the public bodies, the manner of access to the records of those public bodies and

the remedies available in law regarding a breach of any of the provisions of the Act.

The South African Human Rights Commission's contact details are as follows:

Private Bag 2700

Houghton

2041

Tel: (011) 484-8300

Fax: (011) 484-1360

E-mail:

Website: [www.sahrc.org.za](http://www.sahrc.org.za)

## **6. TYPES OF RECORDS**

For the purposes of this Manual and the Act, the records held by the Municipality are categorised by the nature of the contents thereof as follows:

### **6.1 PERSONAL RECORDS**

These will include but not limited to:

- Any personal records provided to the Municipality by its present, past and prospective personnel and members;
- Any records a third party has provided to the Municipality about any of their personnel;

- Conditions of employment and other personnel-related contractual and quasi-legal records;
- Internal personnel performance appraisal records; and
- Other internal general “house-keeping” records and correspondence.

## **6.2 CUSTOMER–RELATED RECORDS**

A customer includes any entity that receives services from the Municipality or provides a service to the Municipality. Customer–related information includes the following:

- Any records a customer has provided to a third party acting for or on behalf of the Municipality;
- Any records a third party has provided to the Municipality; and
- Records generated by or within the Municipality pertaining to the customer including transactional records.

## **6.3 MUNICIPALITY RECORDS**

This includes but is not limited to the following:

- Booklets, Pamphlets, Posters and Newsletters;
- Annual and Research Reports;
- Financial records;
- Reports, findings and opinions on language rights violations;
- Database and Information technology;
- Marketing records/brochures;
- Internal correspondence;
- Statutory records;
- Internal policies, business plans, systems and procedures;
- Records held by officials of the Municipality.

### **Website**

The Municipality Website ([www.mbombela.gov.za](http://www.mbombela.gov.za)) is accessible to anyone who has access to the internet. The Website contains information in various categories relating to the Board and its activities.

## **6.4 RECORDS OF OTHER PARTIES**

The Municipality may possess records pertaining to other parties, including without limitation, contractors, suppliers and service providers. Alternatively, such other parties may possess records, which can be said to belong to the Municipality.

The following records fall under this category:

- Personnel, customer or Municipality records which are held by another party as opposed to being held by the Municipality; and
- Records held by the Municipality 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 contractors/suppliers.

## **6.5 RECORDS AVAILABLE IN TERMS OF OTHER LEGISLATION**

The requestor may also request information, which is available in terms of legislation, such as the following:

- Basic Conditions of Employment Act (75 of 1997);
- Compensation for Occupational Injuries & Diseases Act (130 of 1993);
- Companies Act (61 of 1973);
- Employment Equity Act (Act 55 of 1998);
- Labour Relations Act (66 of 1995);
- Income Tax Act (58 of 1998);
- Occupational Health and Safety Act (85 of 1993);
- Pan South African Language Board Act (59 of 1995) and the regulations promulgated thereunder;

- Public Finance Management Act (1 of 1999);
- Regional Services Councils Act (109 of 1985);
- Skills Development Act (97 of 1998);
- Skills Development Levies Act (9 of 1999);
- Value Added Tax Act (89 of 1991);
- Unemployment Insurance Act (63 of 2001); and
- Municipal Structures Act of 2002.

The above records are of a public nature and are thus available automatically without a person having to request access thereto in terms of the Act. The legislations quoted are not an exhaustive list.

## **7. DECISION-MAKING PROCESS**

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

Section 56 provides that the information officer must within 30 days of receipt of a correctly completed request notify the requestor 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 requestor 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 requestor wish to apply to court against the decision.

The information officer 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;
- Consultation with another body is required ; or
- The requestor consents to extension.

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

Section 59 provides that the information officer may sever 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 requestor, or if the requestor has not identified a preference, in a form reasonably determined by the information officer.

## **8. THIRD PARTIES**

If the request is for a record pertaining to a third party, the information officer 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 the fastest means reasonably possible, but if orally, the information officer must thereafter give the third party a written confirmation of the notification.

The third party may within 21 days thereafter, either make a representation to the Municipality 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 information officer 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.

## **9. GROUNDS FOR REFUSAL OF A REQUEST**

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

- 9.1 Section 63 of the Act prohibits the unreasonable disclosure of the personal information of natural person third parties to requestors. This includes the personal information of deceased persons. However Section 63(2) provides exceptions.
- 9.2 Section 64 states that a request must be refused if it relates to records containing third party information pertaining to:

- Trade secrets;
- Financial, commercial, scientific or technical information where disclosure would be likely 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 party in commercial competition.

The information must, however, be released if it pertains to the results of product safety or environment risk.

9.3 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.

9.4 In terms of section 66, the Municipality may refuse a request for access to a record of the Municipality 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;
- Prejudice methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme or safety of the public.

9.5 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.

9.6 Section 68 pertains to records containing information about the Municipality itself and unlike the other provisions pertaining to declining a request, is not mandatory, but rather discretionary. The Municipality may refuse access to a record if the record:

- Contains financial, commercial, scientific or technical information, the disclosure of which would be likely to cause harm to the financial interests of Municipality.
- Contains information which, if disclosed, could reasonably be expected to put the Board at a disadvantage in contractual or other negotiations; or
- Consists of a computer program owned by Municipality.

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 a serious public safety or environment risk.

9.7 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 Municipality 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 with the law, imminent and serious public safety or environment risk; and
- If the public interest in the disclosure clearly outweighs the harm.

## **10. RIGHT OF APPEAL**

A requestor that is dissatisfied with the information officer's refusal to grant access to any information 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 information officer's decision;
- Requiring the information officer to take any action, or refrain from taking any action as identified by the court within a specified period;
- Granting an interdict or special relief, declaratory order or compensation; or costs.

## **11. AVAILABILITY OF THE MANUAL**

Regulation 187 of 15 February 2002 prescribes in section 4(1) that the manual of a public body must be made available in each of three official languages at the following places:

- At every place of legal deposit as defined in section 6 of the Legal Deposits Act, 1997;
- The South African Human Rights Commission; and
- The office of the Public Body i.e. Mbombela Local Municipality in this instance.