

**MANUAL**

**FOR**

**THE OMBUDSMAN FOR BANKING SERVICES**

**(“the OBS”)**

**Prepared in accordance with section 51 of the *Promotion of Access to Information Act* 2 of 2000**

**Last Updated: 2 April 2007**

# 1. INTRODUCTION

**1.1** The *Promotion of Access to Information Act 2 of 2000* (“the Act”) was enacted on 3 February 2000, 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 the Act, the body to which the request is made is obliged to release the information, **except where the Act expressly provides that the information may or must not be released**. The Act sets out the requisite procedural issues attached to such request.

## 1.2 PURPOSE OF THE MANUAL

This manual is intended to foster a culture of transparency and accountability within the OBS as a whole, by giving effect to the right to information that is required for the exercise or protection of any right and to 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 their rights.

In order to promote effective governance of private bodies, it is necessary to ensure that everyone is empowered and educated to understand their rights in terms of the Act in order for them to exercise their rights in relation to public and private bodies.

Section 9 of the Act, however, recognises that such right to access to information cannot be unlimited and should be subject to justifiable limitations, including, but not limited to:

- limitations aimed at the reasonable protection of privacy;
- commercial confidentiality; and
- effective, efficient and good governance and in a manner which balances that right with any other rights, including such rights contained in the Bill of Rights in the Constitution.

This manual sets out to provide a manual to the OBS to deal with the requests in a conforming manner, which will enable the requestors to obtain the records which they are entitled to in a quick, easy and accessible manner.

# PART I

## 2. CONTACT DETAILS & GENERAL INFORMATION

### Information Officer - the Ombudsman for Banking Services

Postal address: P0 Box 5728, JOHANNESBURG, 2000

Physical Address: 5<sup>th</sup> Floor, 28 Harrison Street, JOHANNESBURG

Tel: (011) 838 0035

Fax: (011) 838 0043

E-mail: [info@obssa.co.za](mailto:info@obssa.co.za)

Website: [www.obssa.co.za](http://www.obssa.co.za)

## PART II

### 3. GUIDE OF SOUTH AFRICAN HUMAN RIGHTS COMMISSION

The guide contains such information as may reasonably be required by a person who wishes to exercise any right contemplated in the Act. Any enquiries regarding this guide should be directed to:

The South African Human Rights Commission

at PAIA Unit (The Research and Documentation Department)

Private Bag X2700, HOUGHTON, 2041

Tel: (011) 484-8300

Fax: (011) 484-1360

E-mail Address: [PIAI@sahrc.org.za](mailto:PIAI@sahrc.org.za)

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

## **PART III**

### **4. RECORDS OF OMBUDSMAN FOR BANKING SERVICES**

This clause serves as a reference to the records that the OBS holds.

It is recorded that the accessibility of the documents listed below may be subject to the grounds of refusal set out hereinafter.

The information is classified and grouped according to records relating to the following subjects and categories:

#### **4.1 PERSONNEL RECORDS**

- 4.1.1 Personal records provided by personnel.
- 4.1.2 Records provided by a third party relating to personnel.
- 4.1.3 Conditions of employment and other personnel-related contractual and quasi-legal records.
- 4.1.4 Internal evaluation records and other internal records.
- 4.1.5 Correspondence relating to personnel.
- 4.1.6 Training schedules and material.

*“Personnel”* refers to any person who works for, or provides services to or on behalf of the OBS, and receives or is entitled to receive remuneration and any other person who assists in carrying out or conducting the business of the OBS. This includes, without limitation, directors, executive and non-executive, commission members, all permanent, temporary and part-time staff, as well as contract workers.

#### **4.2 COMPLAINANT RELATED RECORDS**

- 4.2.1 Records provided by a customer to a third party acting for or on behalf of the OBS.
- 4.2.2 Records provided by a third party.
- 4.2.3 Records generated by or within the OBS relating to the banks and complainants, including transactional records.

A *“complainant”* refers to any natural or juristic entity that receives services from the OBS.

A *“bank”* refers to any bank that is a member of the Banking Council of South Africa.

#### **4.3 PRIVATE BODY RECORDS**

- 4.3.1 Financial records.
- 4.3.2 Operational records.

- 4.3.3 Databases.
- 4.3.4 Information technology.
- 4.3.5 Marketing records.
- 4.3.6 Internal correspondence.
- 4.3.7 Product records.
- 4.3.8 Statutory records.
- 4.3.9 Internal policies and procedures.
- 4.3.10 Treasury-related records.
- 4.3.11 Securities and equities.
- 4.3.12 Records held by officials of the OBS.

These records include, but are not limited to, the records which pertain to the OBS's own affairs.

#### **4.4 OTHER PARTY RECORDS**

- 4.4.1 Personnel, complainant, bank or private body records which another party, as opposed to the records held by the OBS itself, holds.
- 4.4.2 Records held by the OBS 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.

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

## **PART IV**

### **5. GROUNDS FOR REFUSAL OF ACCESS TO RECORDS**

The main grounds for the OBS to refuse a request for information relates to the;-

- 5.1 Mandatory protection of the privacy of a third party who is a natural person, which would involve the unreasonable disclosure of personal information of that natural person.
- 5.2 Mandatory protection of the commercial information of a third party, if the record contains.
  - 5.2.1 Trade secrets of that third party.
  - 5.2.2 Financial, commercial, scientific or technical information which disclosure could likely cause harm to the financial or commercial interests of that third party.
  - 5.2.3 Information disclosed in confidence by a third party to the OBS, if the disclosure could put that third party at a disadvantage in negotiations or commercial competition.
- 5.3 Mandatory protection of confidential information of third parties if it is protected in terms of any agreement.
- 5.4 Mandatory protection of the safety of individuals and the protection of property.
- 5.5 Mandatory protection of records which would be regarded as privileged in legal proceedings.
- 5.6 The commercial activities of the OBS, which may include:
  - 5.6.1 trade secrets of the OBS;
  - 5.6.2 financial, commercial, scientific or technical information which disclosure could likely cause harm to the financial or commercial interests of the OBS;
  - 5.6.3 information which, if disclosed could put the OBS at a disadvantage in negotiations or commercial competition; and
  - 5.6.4 a computer program which is owned by the OBS, and which is protected by copyright.
- 5.7 The research information of the OBS or a third party, if its disclosure would disclose the identity of the OBS, the researcher or the subject matter of the research and would place the research at a serious disadvantage.

Requests for information that are clearly frivolous or vexatious, or which involve an unreasonable diversion of resources shall be refused.

## **6. REMEDIES AVAILABLE WHEN THE OBS REFUSES A REQUEST FOR INFORMATION**

### **6.1 INTERNAL REMEDIES**

The OBS does not have internal appeal procedures. As such, the decision made by the Information Officer is final, and requestors will have to exercise such external remedies at their disposal if the request for information is refused, and the requestor is not satisfied with the answer supplied by the Information Officer.

### **6.2 EXTERNAL REMEDIES**

A requestor that is dissatisfied with an Information Officer's refusal to disclose information, may within 30 days of notification of the decision, apply to a Court for relief.

Likewise, a third party dissatisfied with an Information Officer's decision to grant a request for information may, within 30 days of notification of the decision, apply to a Court for relief. For purposes of the Act, the Courts that have jurisdiction over these applications are the Constitutional Court, the High Court or another court of similar status.

## **7. REQUEST PROCEDURE**

- 7.1 The requester must comply with all the procedural requirements contained in the Act relating to the request for access to a record.
- 7.2 The requester must complete the prescribed form enclosed herewith in Appendix 1, and submit same as well as payment of a request fee and a deposit, if applicable, to the Information Officer at the postal or physical address, fax number or electronic mail address as stated in 2.1 above.
- 7.3 The prescribed form must be filled in with enough particularity to at least enable the Information Officer to identify:
  - 7.3.1 The record or records requested.
  - 7.3.2 The identity of the requester.
  - 7.3.3 Which form of access is required, if the request is granted.
  - 7.3.4 The postal address or fax number of the requester.
- 7.4 The requester must state that he requires the information in order to exercise or protect a right, and clearly state what the nature of the right is to be exercised or protected. In addition, the requester must clearly specify why the record is necessary to exercise or protect such a right.
- 7.5 The OBS will process the request within 30 days, unless the requestor has stated special reasons

which would satisfy the Information Officer that circumstances dictate that the above time periods not be complied with.

- 7.6 The requester shall be informed whether access has been granted or denied in writing. If, in addition, the requester requires the reasons for the decision in any other manner, he must state the manner and the particulars so required.
- 7.7 If a request is made on behalf of another person, then the requester must submit proof of the capacity in which the requester is making the request to the reasonable satisfaction of the Information Officer.
- 7.8 If an individual is unable to complete the prescribed form because of illiteracy or disability, such a person may make the request orally.
- 7.9 The requester must pay the prescribed fee before any further processing can take place.

## **8. ACCESS TO RECORDS HELD BY THE OBS**

- 8.1 Records held by the OBS may be accessed by requests only once the prerequisite requirements for access have been met.
- 8.2 A requester is any person making a request for access to a record of the OBS. There are two types of requesters:
  - 8.2.1 Personal requester.
    - 8.2.1.1 A personal requester is a requester who is seeking access to a record containing personal information about the requester.
    - 8.2.1.2 The OBS will voluntarily provide the requested information, or give access to any record with regard to the requester's personal information. The prescribed fee for reproduction of the information requested will be charged.
  - 8.2.2 Other requester.
    - 8.2.2.1 This requester (other than a personal requester) is entitled to request access to information on third parties. However, the OBS is not obliged to voluntarily grant access. The requester must fulfill the prerequisite requirements for access in terms of the Act, including the payment of a request and access fee.

## **9. FEES**

- 9.1 The Act provides for two types of fees, namely:
  - 9.1.1 a request fee, which will be a standard fee; and

- 9.1.2 an access fee, which must be calculated by taking into account reproduction costs, search and preparation time and cost, as well as postal costs.
- 9.2 When the Information Officer receives the request, such officer shall by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before further processing of the request.
- 9.3 If the search for the record has been made and the preparation of the record for disclosure, including arrangement to make it available in the requested form, requires more than the hours prescribed in the regulations for this purpose, the Information Officer shall notify the requester to pay as a deposit the prescribed portion of the access fee which would be payable if the request is granted.
- 9.4 The Information Officer shall withhold a record until the requester has paid the fees as indicated in Appendix 2.
- 9.5 A requester whose request for access to a record has been granted, must pay an access fee for reproduction and for search and preparation, and for any time reasonably required in excess of the prescribed hours to search for and prepare the record for disclosure including making arrangements to make it available in the request form.
- 9.6 If a deposit has been paid in respect of a request for access, which is refused, then the Information Officer concerned must repay the deposit to the requester.

## **10. DECISION**

- 10.1 The OBS will, within 30 days of receipt of the request, decide whether to grant or decline the request and give notice with reasons (if required) to that effect.
- 10.2 The 30 day period with which the OBS has to decide whether to grant or refuse the request, may be extended for a further period of not more than thirty days if the request is for a large amount of information, or the request requires a search for information held at another office of the OBS and the information cannot reasonably be obtained within the original 30 day period. The OBS will notify the requester in writing should an extension be sought.

## **11. LIST OF APPLICABLE LEGISLATION**

A table of legislation setting out a description of the records of the OBS, which is available in accordance with other legislation, is annexed hereto marked Appendix 3.

## **12. AVAILABILITY OF THE MANUAL**

- 12.1 This manual is made available in terms of Regulation Number R187 of 15 February 2002.
- 12.2 The manual of the OBS will also be available on our website ([www.obssa.co.za](http://www.obssa.co.za)).

**Appendixes attached below in “pdf” format**



Appendixes.pdf