

Legislation and Access

The **Constitution of South Africa (Act No 108 of 1996, as amended)** in Chapter 2 section 32: **Access to information**, states the following:

“(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.”

Flowing from this mandate various legislation were enacted which includes:

- The National Archives and Records Service of South Africa Act (NARSSA Act) (Act No 43 of 1996 as amended):
- The Promotion of Access to Information Act (PAIA) (Act No.2 of 2000 as amended)
- The Protection of Personal Information Act (POPIA) (Act No.4 of 2013)
- The Minimum Information Security Standards (MISS) (which is a directive and will soon be replaced by the Protection of State Information Act).

The **National Archives and Records Service of South Africa Act (NARSSA Act)** in its turn states in Section 12 (1)(b):

“Subject to any other Act of Parliament which deals with access to public records access to a public record in respect of which a period of less than 20 years has elapsed since the end of the year in which the record came into existence may be given by the National Archivist upon request”

This actually makes the NARSSA Act subservient to other Acts in terms of Access.

One of the most important Acts on access is the **Promotion of Access to Information Act (PAIA)**. Unfortunately, in terms of this Act, certain information will always be excluded from access and the reasons are set out in Chapter 4 of the Act. Grounds for refusal would include: mandatory protection of privacy of a third person; mandatory protection of safety of individuals; defence, security and international relations of the Republic, and so on.

The **Protection of Personal Information Act (POPIA)** was partially enacted in November 2013. The Act refers to "Personal Information" and defines it as "any information or combination of information that can be used to identify an individual or juristic person": such as name and physical address, ID number or company registration number, email address, etc. The Act states that such information can only be used for the purpose for which it was collected and therefore places restrictions on access to that information.

In addition to sensitive records, which may or may not be classified, the Sensitive Records Section also deals with classified records (e.g. Security Police Archival

Records). In terms of the **Minimum Information Security Standards (MISS)** only the institution which created the records are allowed to declassify them (Chapter 4, par. 1.2). So when a researcher requests access to these records the National Archives has to request the creating institution to declassify the records before access is provided. In these cases the decision to provide access or not, rests with the creating institution and not the National Archives. MISS will be replaced by the **Protection of State Information Bill** when it is enacted. This Act will set out criteria and processes in terms of which information which is protected from disclosure and which is classified may be declassified and therefore be made accessible.