



INFORMATION MANUAL OF THE FREEDOM OF EXPRESSION INSTITUTE (FXI)

***PRODUCED IN COMPLIANCE WITH SECTION 51 OF THE PROMOTION OF
ACCESS TO INFORMATION ACT***

February 2003

The Promotion of Access to Information Act 2 of 2000 gives 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; and to provide for matters connected therewith.

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A. Introduction to Freedom of Expression Institute

The FXI was established in 1994 to protect and foster the rights to freedom of expression and access to information, and to oppose all forms of censorship. The Institute was formed from a merger of three organisations: The Campaign for Open Media, the Anti Censorship Action Group and the Media Defence Trust.

The FXI undertakes a wide range of activities in support of these objectives, including lobbying, education, monitoring, research, publicity and litigation and the funding of legal cases that advance these rights. In the process, it networks with, and collaborates with, a wide range of organisations locally and internationally.

The FXI is a voluntary, non-governmental organisation managed by an executive committee, which is elected once every two years at the organisation's annual general meeting. The current executive committee is in its second year of office. In addition to the executive committee, the FXI has a staff of four full-time members and a part-time librarian.

The FXI is a member of the Media Institute of Southern Africa (Misa) which is a regional organisation devoted to the promotion of freedom of expression and a free, fair and independent media.

The FXI is also a member of the International Freedom of Expression Exchange (IFEX), which monitors freedom of the media and freedom of expression on a global scale. Through the IFEX Action Alert system, FXI publicises freedom of expression violations in South Africa and draws in other organisations to support its campaigns. The FXI also responds to other calls for support regarding violations in the region through writing letters, calling protests marches and other campaigns actions.

The FXI also runs an electronic mail distribution list, which acts as an immediate call for action or support in case of freedom of expression violations. The FXI contributes action alerts to the IFEX listserver, which serves more than 50 international human rights organisations.

The FXI has also established a partnership with the National Community Radio Forum (NCRF) to set up a Community Media Policy Unit. The Unit provides research to enable the community media sector to lobby effectively for laws and policies that promote participatory, democratic communications.

The following are the programmes of the FXI:

Media and ICT programme

The Media and ICT Programme of the Freedom of Expression Institute (FXI)

aims to increase pro-diversity and popular access to media, broadcasting and telecommunications policy in South Africa. The Programme will work closely with the Community Media Policy Unit that will be conducting research on most of the campaign themes of the Programme.

The Programme targets the public broadcaster, the South African Broadcasting Corporation (SABC), which is undergoing another round of restructuring and the broadcasting and telecommunications regulator, the Independent Communications Authority of South Africa (Icasa), whose independence is under ongoing threat. The programme also takes up public broadcasting and communications regulation on a regional level, and the former on an international level within the context of existing campaigns in defence of public broadcasting. There will also be lobbying on the review of ownership and control regulations, particularly focusing on the trend in the media industry towards vertical and horizontal concentration. The licensing of community radio by Icasa will also be evaluated to input into the regulator's review of the process in 2003 and the sustainability of community radio in South Africa will be fostered through implementation of the outcomes of the research of the Policy Unit. The FXI will lobby strongly for the establishment of the Media Diversity and Development Agency in a transparent way and free of all vested interests. The FXI will investigate and campaign further for implementation of affordable Universal Service in telecommunications, ensuring that this objective is not discarded due to financial or political considerations. The common thread that binds these various project issues is that freedom of expression can only be truly realised in a diverse media environment where people have access to the means of expression.

Anti-Censorship programme

The Anti-Censorship Programme aims to monitor the South African environment for freedom of expression violations and lobby against censorship and its causes. The work of this programme includes building support networks for victims of censorship and running education and awareness raising campaigns to increase levels of freedom of expression and protection of free speech. The programme will increase cooperation between the FXI and journalist unions, media associations, community media, and international freedom of expression organisations.

Community Media Policy Research Unit Programme

The Freedom of Expression Institute (FXI) and the National Community Radio Forum (NCRF) have joined forces to set up a Community Media Policy Research Unit due to the lack of a dedicated think-tank to guide the sector in policy issues. This Unit has been operating on an ad hoc basis since 2000 and has assisted the community radio sector in various policy processes thus far. The Unit will aim to conduct research for policy issues that affect community media assist the

sector in taking informed positions on such issues. The Unit will also act as a resource for the sector and contribute in developing advocacy and policy capacity in community media.

The Unit will have a strategic role and need to anticipate policy processes by monitoring the programmes of the regulator, government departments, the Parliamentary Portfolio Committee on Communications as well as the Media Diversity and Development Agency (MDDA). Within the short to medium term, this Unit will consider the restructuring of the SABC, the review of community radio licensing that will be conducted by the regulator, M-Net license renewal, establishment of the MDDA, ownership and control of the media, independence of the regulator, licensing in secondary cities, transformation of advertising and regulation of satellite broadcasting.

Freedom of Expression Defence Fund Programme

The purpose of the FXDF Programme is to promote the objectives of the FXI of freedom of expression and access to information through providing financial support to applicants involved in appropriate litigation and precedent setting cases. The FXDF aims to support applicants whose cases will contribute to a freer environment for freedom of expression and elimination of censorship. In this regard the FXDF will identify gaps in the legislative arena where precedents have not been set yet or where precedents need to be challenged to promote an environment free of censorship, tolerant of free expression and allowing access to information. The FXDF will also develop a network of lawyers prepared to assist on freedom of expression cases on a pro bono basis. The FXDF will also network closely with other litigation or legal assistance funds that exists locally and internationally. The overall impact of these activities will be to ensure an environment where the right to freedom of expression can be exercised more freely.

B. PARTICULARS IN TERMS OF THE SECTION 51 MANUAL

1. Head of the organisation for the purposes of the Act [Section 51(1)(a)]

1.1 Who is the head of the FXI?

Jane Duncan, Executive Director, is the information officer of the FXI.

1.2 Postal and street address of information officer

Freedom of Expression Institute
PO Box 30668
Braamfontein
2017

5th floor
Argon House
87 Juta Street
Braamfontein
2017

1.3 Contact numbers for information officer

Tel: (011) 403-8403
Fax: (011) 403-8309

1.4 Electronic mail address of the information officer

E-mail: jduncan@fxi.org.za

1.5 Website

<http://www.fxi.org.za/>

2. The section 10 Guide on how to use the Act [Section 51(1)(b)]

The Promotion of Access to Information Act ("the Act") requires the South African Human Rights Commission to compile a guide in terms of section 10(1) of the Act. This guide is to help people understand the provisions of the Act, its objects and how to make use of the provisions in the Act. To date this guide has not been compiled and the SAHRC believes it will be completed by August 2003. As soon as it is available it will form part of this manual.

Please direct any queries regarding the Guide to:

The South African Human Rights Commission:

PAIA Unit

The Research and Documentation Department

Postal address: Private Bag 2700
Houghton
2041

Telephone: +27 11 484-8300
Fax: +27 11 484-0582
Website: www.sahrc.org.za
E-mail: PAIA@sahrc.org.za

3. Records available in terms of any other legislation [Section 51(1)(d)]

Records held by the FXI in accordance with the following legislation:

- Basic Conditions of Employment Act 75 of 1997 - Section 29(4) and 31
- Compensation for Occupational Diseases Act 120 of 1993 - Section 81
- Employment Equity Act 55 of 1998 - Section 26
- Income Tax Act - Section 75(1)
- Labour Relations Act 66 of 1995 - Sections 98, 99 and 205
- Skills Development Levies Act 9 of 1999 - Section 13

4. Access to the records held by the private body in question [Sections 51(1)(c) and 51(1)(e)]

4.1 The latest notice regarding the categories of records of the FXI, which are available without a person having to request access in terms of this Act in terms of section 52(2) [Section 51(1)(c)]

The following categories of information are automatically available:

- All information available in the FXI resource centre (Addendum 1)
- FXI Annual Reports and audited financial statements
- Back copies of FXI Update
- Back copies of Southern African Media Law Briefing (a joint publication of the FXI, the Media Institute of Southern Africa and Article 19)
- FXI constitution
- FXI submissions and research reports
- FXI media statements
- FXI conference and seminar papers
- FXI's six monthly publication

4.2 Records that may be requested. A description of the subjects of the records held by the FXI and the categories in which these subjects are classed:

Operational documents:

- FXI Executive Committee minutes
- FXI Annual General Meeting minutes
- FXI funding proposals and funding contracts
- FXI staff policies and procedures manual
- FXI evaluation report
- FXI annual strategic planning reports
- FXI workplans
- FXI programme reports
- FXI membership information

4.3 The request procedures:

4.3.1 The first step in the process is to obtain the request form (addendum 2)

Form of request:

- You must use the prescribed form to make the request for access to a record. This must be made to the head of the private body. This request must be made to the address, fax number or electronic mail address of the body concerned [s 53(1)].
- You must provide sufficient detail on the request form to enable the head of the private body to identify the record and the requester. You should also indicate which form of access is required. You should also indicate if any other manner is to be used to inform the requester and state the necessary particulars to be so informed [s 53(2)(a) and (b) and (c)].
- You must identify the right that is sought to be exercised or to be protected and provide an explanation of why the requested record is required for the exercise or protection of that right [s 53(2)(d)].
- If a request is made on behalf of another person, then you must submit proof of the capacity in which the requester is making the request to the satisfaction of the head of the private body [s 53(2)(f)].

4.3.2 The list of applicable fees are also available in this manual (addendum 3). The Minister may exempt certain persons from having to pay the fees referred to in the Act. To date, no such exemptions have been published.

Fees:

If you seek access to a record containing personal information about yourself, you are not required to pay the request fee. Every other requester, who is not a personal requester, must pay the required request fee:

- The Executive Director (other than a personal requester) by notice, requiring the requester to pay the prescribed fee (if any) before further processing the request [s 54(1)].
- The fee that you must pay to a private body is R50. You may lodge an application to the court against the tender or payment of the request fee [s 54(3)(b)].
- After the Executive Director has made a decision on the request, you must be notified in the required form.
- If the request is granted then a further access fee must be paid for the search, reproduction, preparation and for any time that has exceeded the prescribed hours to search and prepare the record for disclosure [s 54(6)].

4.3.3 Once you have filled in the form you need to submit it.

4.3.4 If the record you have requested exists and allowing access to it does not affect a third party your request will be processed within 30 days. CE for a further 30 days if:

- 4.3.4.1 the request is for a large number of records or requires a search through a large number of records and compliance with the original period would unreasonably interfere with the activities of the FXI;
- 4.3.4.2 the request requires a search for records in, or collection thereof from, an office of the FXI not situated in the same town or city as the office of the information officer and this search cannot reasonable be completed within the original 30 days;
- 4.3.4.3 consultation among divisions of the FXI or with another private body is necessary or desirable to decide upon the request and this consultation cannot reasonably be completed within the original period;
- 4.3.4.4 more than one of the circumstances contemplated in paragraphs 4.3.4.1, 4.3.4.2 and 4.3.4.3 exist in respect of the request making compliance with the original period not reasonably possible; or
- 4.3.4.5 you, as the requester, consents in writing to such extension.

4.3.5 There are various grounds upon which your request for access to a record may be refused. They are:

4.3.5.1 The protecting of personal information of a third person (who is a natural person) from unreasonable disclosure;

4.3.5.2 The protecting of commercial information of a third party. (For example trade secrets; financial, commercial, scientific or technical information that may harm the commercial or financial interests of a third party);

4.3.5.3 Refusing access to a record if disclosure would result in the breach of a duty of confidence owed to a third party.

4.3.5.4 Refusing access to a record if it would jeopardise the safety of an individual or prejudice or impair certain property rights of a third person.

4.3.5.5 Refusing access to a record that was produced during legal proceedings, unless that legal privilege has been waived.

4.3.5.6 Refusing access to a record containing trade secrets, financial or sensitive information or any information that would put FXI or its operating divisions at a disadvantage in negotiations or prejudice it in commercial competition.

4.3.5.7 Refusing access to a record containing information about research being carried out or about to be carried out on behalf of a third party or by FXI or its operating divisions.

4.3.6 Section 70 of the Act contains an overriding provision. Disclosure is compulsory if it would reveal a substantial contravention of, or failure to comply with the law, or imminent and serious public safety or environmental risk AND the public interest in the disclosure of the record clearly outweighs the harm contemplated by its disclosure.

4.3.7 If your request does affect a third party then we will first need to inform the third party within 21 days of us receiving your request. By this we mean that if the record you request affects any third party in any way, that third party will have to be informed that you are requesting access to the above record.

4.3.8 The third party then has 21 days to make representations and/or submissions regarding the granting of access to the record.

4.3.9 Once the information officer of FXI has heard all the submissions, s/he will make a decision as to whether or not access to the record will be granted. You must then be granted access to the record within thirty days of being informed of the decision.

4.3.10 If the information officer does not grant you access to the record you are entitled to appeal the decision. You must receive proper reasons as to why the request was refused. You need to lodge your appeal in the High Court.

4.3.11 If the information officer does decide to grant you access to the record, the third party that has been affected has thirty days in which to appeal the decision – also in the High Court. If no appeal is lodged within 30 days, you must be granted access to the record.

5. Other information as may be prescribed [Section 51(1)(f)]

The Minister of Justice and Constitutional Development has not made any regulations in this regard. The schedule below outlines the time-periods, which are applicable to this Act. This will enable you to understand the process whereby requests for access to records are considered and the time periods involved.

SECTION OF THE ACT	DESCRIPTION OF ACTIVITY	TIME PERIOD
10	The Guide published by the South African Human Rights Commission to assist in the use of this Act must be published.	It is meant to be available from August 2003.
51	Preparation of organisational Manual	To be available after 15 August 2002
56	Information officer to decide whether to grant request for access to record that does not relate to a third party and notify requestor	Within 30 days after the request has been received
57	Information officer to notify third party of an extension of the 30 day time period with reasons for the extension	Within 30 days of receiving the request (this may only be done <u>once</u> and only for the reasons in this section)
71	Information officer to notify third party of request for access to information that relates to him/her	Within 21 days of request for access to record affecting the third party has been received.
71	Third party to give written consent or written/oral submissions to information officer	Within 21 days of being informed by the information officer of the request for access to the record
73	Information officer to make a decision about the granting of access to a record which relates to a third party and notify third	30 days after every third party has been informed of the request

	party and requestor	
73	Information officer to give requestor access to the record if a decision has been made to grant access	Within 30 days of notifying requestor of the decision to allow access
74	If access to a record is denied, the requestor has 30 days in which to lodge an application at court to appeal against the refusal	30 days form date of notification by information officer of decision
74	If access to a record which affects a third party is granted, third party may lodge an application to court to appeal decision of information officer within 30 days	Within 30 days of notification by the information officer of the decision
71	If no appeals lodged by third party, information officer must give access to the record	Within 30 days of notification by information officer of third party

6. Availability of the manual [Section 51(3)]

The manual is available from the offices of the FXI and the SAHRC, as well as on the FXI website.